

U. P. State Electricity Board

Vs

Ram Autar and Another

Civil Appeal No. 4746 of 1996

(CJI A. M. Ahmadi, K. Ramaswami JJ)

22.03.1996

JUDGMENT

K. VENKATASWAMI, J. -

1. Leave granted. Heard counsel on both sides.

2. The appellant, U.P. State Electricity Board (hereinafter referred to as the "Electricity Board") seems to be more aggrieved by the following pungent/harsh observations made by the High Court against the officials of the Electricity Board and in particular against its Chairman and Secretary :

"Probably the authorities of the U.P. State Electricity Board, think themselves above the State or at least a State within the State. It seems that they are under an illusion that if they flout the directions of the State Government, there would be no forum where the person can seek redress. They failed to realise that the State Government acting within its powers, sanctioned by law, had the authority to issue directions, particularly in matters, where a policy is involved leaving no option to them except to comply with those directions. As they refused to comply with the directions of the State Government in a most reckless and indiscreet manner, this Court, has no option except to force them to act, within the boundaries of law. But before doing so, I am constrained to say, that the Chairman and Secretary of the U.P. State Electricity Board, considering themselves, a rare species like White Elephants, tried to ransack and destroy, circumvent the directions of the State Government. I am definitely of the view that the aforesaid officers are not only guilty of flouting the directions of the State Government, but are responsible for harassing, a retrenched employee who deserved sympathy and compassion. However, it is for the State Government to consider, as to whether such persons should be allowed to continue on such higher positions."

3. The circumstances under which the above observations came to be made can be briefly noted :

The Government of Uttar Pradesh took a policy decision to absorb the employees of the Corporations/Undertakings which have been wound up due to recurring losses in other Departments/Undertakings of the Government. One such State-owned Corporation which ended in winding up was the U.P. Chalchitra Nigam. After giving notice, steps were taken to terminate the services of the employees of that Corporation and on humanitarian ground, the Government decided to take steps for absorption of the employees of this Corporation in other Departments/Organisations under the Government, Out of 600 employees of Chalchitra Nigam, only a few had been left

without absorption in other Departments, one among those left out was the first respondent herein. Pursuant to the policy as stated above, the Government asked the Electricity Board to appoint the first respondent as Electrician. In spite of several such requests from the Government, the appellant Electricity Board took a stand that the Electricity Board being an autonomous body cannot be directed by the Government to absorb/appoint the first respondent in the Electricity Board as Electrician. Finding that the Electricity Board was not prepared to appoint/absorb him, the first respondent moved the High Court for the issue of a writ of mandamus commanding the Electricity Board to appoint/absorb him on the post of Electrician and for consequential reliefs. Even before the High Court, the appellant took the same stand by placing reliance on Sections 15 and 78-A of the Electricity (Supply) Act, 1948.

4. The learned Single Judge after looking into the various correspondence that passed between the Government and the Electricity Board made the above observations.

5. The learned counsel appearing for the appellant Electricity Board fairly and rightly stated that in compliance of the order of the High Court, the first respondent has been appointed/absorbed and the appellant has decided to continue his services irrespective of the result of this case. Therefore, so far as the question of law is concerned, we need not go into that in view of the fair and reasonable attitude taken by the appellant Electricity Board. However the learned counsel for the appellant was particular about the deletion of the pungent observations extracted above.

6. In *Rakesh Ranjan Verma v. State of Bihar* (1992 Supp (2) SCC 343 : 1992 SCC (L&S) 866 : (1992) 21 STC 521 : AIR 1992 SC 1348) this Court had occasion to consider the scope of Section 78-A of the Electricity (Supply) Act, 1948. Considering Section 78-A of the Act, the Court observed as under : (SCC pp. 348-49, paras 9-10)

"78-A. Directions by the State Government. - (1) In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.

(2) If any dispute arises between the Board and State Government as to whether a question is or is not a question of policy, it shall be referred to the authority whose decision thereon shall be final.

The above provision clearly lays down that the Board shall be guided by such directions on questions of policy as may be given to it by the State Government. In the circumstances of the case before us the directions given under letters dated 18-7-1988 and 5-5-1989 cannot be considered as directions on any questions of policy. So far as the appointment of staff is concerned, Section 15 empowers the Board to appoint such officers and employees as may be required to enable the Board to carry out its functions under the Act."

7. In view of the law laid down by this Court as above, one cannot find fault with the appellant for taking a stand as they took before the High Court, namely, that the Government have no authority to give directions to the Electricity Board to appoint/absorb the first respondent as Electrician in the Board. The further question whether the direction in the facts and circumstances of this case will fall within the scope of Section 78-A is a debatable question and, therefore, the appellant cannot be condemned for taking such a stand before the High Court. This Court has time and again observed that making stringent observations/strictures must be avoided by the courts as far as possible and only in exceptional circumstances such observations can be made. We do not think the case on hand

presents any exceptional circumstance. For the reasons stated above, we set aside the observations extracted at the beginning from the judgment of the High Court appealed against and dispose of the appeal accordingly. However, there will be no order as to costs.