

Electricity Employment Union etc.

Vs

Union of India and others .

Civil Appeal No. 10705 of 1996 etc.

(Mr. V.N.Khare and Mr. S.H.Phukan, JJ.)

29.08.2000

### JUDGMENT

**S.H. Phukan, J.:**— These three appeals are directed against the judgment dated 17th July, 1995 of the Central Administrative Tribunal, Chandigarh. Three applications filed before the Tribunal by the Electricity Employment Union, Shri Bal Krishan and Shri Harjinder Singh Brar were disposed of by the common judgment as the question of fact and law were same. The Tribunal dismissed all the three applications and hence these appeals.

2.By the Punjab Reorganization Act, 1966 (for short ‘the Act’) the erstwhile State of Punjab was reorganised and the successor States were States of Punjab and Haryana, Union Territories of Chandigarh and Himachal Pradesh, which subsequently became a State. The erstwhile Punjab State Electricity Board continued to function in the areas in which it was functioning before the reorganisation of the State of Punjab. Subsequently a new State Electricity Board (for short ‘Board’) was constituted by the successor State of Punjab and it is not disputed that the members of the appellants Electricity Employment Union and other two appellants were employees of the erstwhile Board. The claim of the present appellants is that as on the date the successor State of Punjab was formed they were working within the geographical limits of the Union Territory of Chandigarh, their services were deemed to have been allotted to the said Union Territory by operation of the provisions of the Act. It may be stated that Union Territory of Chandigarh did not constitute a separate Board under the Electricity Supply Act of 1948 and functions of the Board were being carried on by the department of the administration. The Tribunal did not accept the said contentions and held that by virtue of the provisions of the Act, their services were allotted to the Board and were working on deputation under the Union Territory of Chandigarh.

We have heard Mr. P.P.Rao, learned senior counsel for the appellants and Ms. Kamini Jaiswal, learned counsel for the respondents.

For appreciating the contention of the parties, we may refer to the relevant provisions of the Act. For the present purpose, parts TV, VII and IX of the Act are relevant.

Part VI of the Act deals with apportionment of assets and liabilities of the erstwhile State of Punjab.

Part VII deals with certain Corporations. Section 67 which is relevant for our purpose and is quoted below:—

**"67. Provisions as to certain Corporation** —(1) The following bodies corporate constituted for the existing State of Punjab, namely:—

- (a) the State Electricity Board constituted under the Electricity Supply Act, 1948: and
- (b) The State Warehousing Corporation established under the Warehousing Corporations Act, 1962.

shall, on and from the appointed day, continue to function in those areas in respect of which they were functioning immediately before that day subject to the provisions of this section and to such directions as may, from time to time, be issued by the Central Government.

(2) Any directions issued by the Central Government under sub-section (1) in respect of the Board or the Corporation may, include a direction that the Act under which the Board or the Corporation was constituted shall, in its application to that Board or Corporation, have effect subject to such exceptions and modifications as the Central Government thinks fit.

(3) The Board or the Corporation referred to in sub-section (1) shall cease to function as from and shall be deemed to be dissolved on, the 1st day of November, 1967, or such earlier date as the Central Government may, by order, appoint, and **upon such dissolution, its assets, rights and liabilities shall be apportioned between the successor States in such manner as may be agreed upon among them within one year of the dissolution of the Board or the Corporation, as the case may be, or if no agreement is reached, in such manner as the Central Government may, by order, determine. (emphasis supplied)**

(4) Nothing in the proceeding provisions of this section shall be construed as preventing the Government of any of the successor States from constituting at any time on or after the appointed day, a State Electricity Board or a State Warehousing Corporation for that State under the provisions of the Act relating to such Board or Corporation; and if such a Board or a Corporation is so constituted in any of the successor States before the dissolution of the Board or the Corporation referred to in sub-section (1), —

(a) Provision may be made by order of the Central Government enabling the new Board or the new Corporation to take over from the existing Board or Corporation all or any of its undertaking, assets, rights and liabilities in that State, and

(b) upon the dissolution of the existing Board, or Corporation, any assets, rights and liabilities which would otherwise have passed to that State by or under the provisions of sub-section (3) shall pass to the new Board or new Corporation instead of to that State".

In Part IX legislature has made provisions for allocation of members of All India Services and other services who were serving in connection with the affairs of the erstwhile State of Punjab. It will be pertinent to reproduce relevant provisions, namely, Section 82,83 and 84.

**"82. Provisions relating to other Services—** (1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Punjab shall, on and from that day, provisionally continue to serve in connection with the affairs of the State of Punjab unless he is required, by general or special order of the Central Government, to serve provisionally in connection with the affairs of any other successor State.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect".

**"83. Provisions as to continuance of officers in the same posts** - Every person who immediately before the appointed day in holding or discharging the duties of any post of office in connection with the affairs of the existing State of Punjab in any area which on that day falls within any of the successor State shall continue to hold the same post or office in that successor State and shall be deemed, on and from that, to have been duly appointed to the post or office of post by the Government of, or other appropriate authority in, that successor State:

Provided that nothing in this section shall be deemed to prevent a competent authority on or after the appointed day from passing in relation to such person any order affecting his continuance in such post or office".

**84. Power of Central Government to give directions** - The Central Government may give such directions to the State Government of Punjab and Haryana and to the Administrators of the Union Territory of Himachal Pradesh and Chandigarh as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Governments and the Administrators shall comply with such directions".

3. The Administrative Tribunal held that the allocation of the employees of the erstwhile State of Punjab among the successor States would be governed by sub-section (3) of Section 67 of the Act. Relying on the documents produced before the Tribunal by the respondents, it was held that there was an agreement among the successor States regarding such allocation including the present appellants and by virtue of the said agreement, the present appellants were allocated to the Board and they were allowed to continue to work on deputation under the administration of Union Territory of Chandigarh. It is not disputed that erstwhile Punjab State Electricity Board was dissolved on 2nd May, 1967 and the present Board was constituted on the same day. According to the Tribunal, the above agreement of allotment of the employees were arrived at within one year from the above date i.e. 2nd May, 1967 as required under sub-section (3) of Section 67 of the Act and, therefore, rejected the contentions of the appellants that the Central Government could issue directions for allotment of the employees under sub-section (3) of Section 67.

4. First point to be decided is whether allocation of the services of the employees of the erstwhile Punjab State Electricity Board was to be done under Section 67 as held by the Tribunal or under Section 82 of the Act or deemed to have been allocated to Union Territory of Chandigarh under other provisions of the Act, as urged by Mr. Rao, learned senior counsel for the appellants.

The Union Territory of Chandigarh is a successor State as defined in Section 2(m) read with Section 2(n) of the Act.

Part VI of the Act as stated above deals with apportionment of assets and liabilities of the erstwhile State of Punjab. This part is not applicable for apportionment of assets and liabilities of the existing Punjab State Electricity Board, as there is specific provision for this purpose viz. Section 67 and moreover the Board has a separate legal entity.

According to sub-section (3) of Section 67 of the Act assets, rights and liabilities of the erstwhile Punjab State Electricity Board shall be apportioned between successor States in such manner as may be agreed upon within one year of the date of dissolution of the erstwhile Board, failing which Central Government was empowered to determine apportionment of such assets, rights and liabilities. As there is no other specific provision in the Act for allocation of the services of the employees of the erstwhile Punjab State Electricity Board, whether under this sub-section such

allocation could be done?

This question was considered by Delhi High Court in Mohd. Yakub versus The Union of India and Others, AIR 1971 Delhi 45. A Division Bench of Delhi High Court referred the following two questions to the Full Bench, namely:—

"(1) Whether the employees of the Punjab State Electricity Board are persons serving in connection with the affairs of the Punjab State who could be allocated to the successor States under Section 82 of the Punjab Reorganisation Act.

(2) Whether the employees of the said Board constituted its assets or liabilities which were liable to be apportioned between the successor States under sub-sections (3) and (4) of Section 67 of the Punjab Reorganisation Act".

The Full Bench replied the question No.2 in the affirmative. The Full Bench speaking through the Chief Justice Khanna (as he was then) considered the word 'liability' occurring in sub-section (3) of Section 67 with reference to the dictionary meaning and held as follows:

"Keeping the above connotation of the word "liability" in view, we have no doubt in our mind that the employment of the employees of the Electricity Board did constitute the liability of the Electricity Board. The services of the employees of the Electricity Board like respondents 4 to 6 having not been terminated by the Board they had a right to be retained in the employment of the Board and this fact created a corresponding liability of the Board to keep them in employment. This liability, in terms of sub-section (3) of Section 67 of the Punjab Reorganisation Act, had to be apportioned between the successor States as has been done in the present case".

5.The contention raised that the word "liability" as used in Section 67 has reference to only those liabilities which are mentioned in Part VI of the Act, was rejected. The word 'liable' referred to in that part are of public debts, refund of taxes collected in excess, deposits, provident fund, pension and those arising out of contracts and actionable wrongs.

6.In view of the above answer to question No.2, the Full Bench was of the opinion that it was not necessary to answer question No.1 and in other words Section 82 of the Act would not apply for allocation of the services of the employees of the erstwhile Punjab State Electricity Board.

7.We are of the opinion that the views expressed by the Full Bench that allocation of services of the employees of the erstwhile Punjab State Electricity Board among the successor States could be done under sub-section (3) of Section 67 and not under Section 82 of the Act are correct.

8.Mr. Rao, learned senior counsel has urged that State Electricity Board being an instrumentality of the State, the employees of the Board should be treated as persons serving in connection with the affairs of the erstwhile State of Punjab and, therefore, their services could be allocated among the successor State under Section 82 of the Act. This contention needs no consideration in view of our above decision.

A committee was constituted for apportionment of the staff and posts of the erstwhile Punjab State Electricity Board among the successor States. The decisions of the Committee which are relevant for the present appeals are extracted below:

"1. For the Union Territory of Chandigarh, staff may be found by deputation from Punjab & Haryana. For the present the existing staff posted there should be allowed to continue on available posts.

2. For assessing requirements of staff for each territory, it was decided that reliance may be placed on the following principles:—(1) All existing posts which are solely concerned with the affairs of the particular State/Territory shall be allocated to the concerned State/Territory.

(2) The Committee has accordingly allocated to the following categories of staff to the Boards of Punjab & Haryana States and to Himachal Pradesh :—

(a) All Gazetted Officers.

(b) All Non-Gazetted Head Office Staff.

(c) Non-Gazetted Circle Cadre Staff engaged in common works.

Separate lists of staff allocated to Punjab & Haryana. Boards and Himachal Pradesh, categorywise, are added."

The representatives of the Government of India and the successor States who were members of the Committee signed the above minutes.

The decision of the Committee regarding allocation of staff to the Union Territory of Chandigarh was that the persons who were posted within the geographical area of the Union Territory of Chandigarh were allowed to continue on deputation and in future other members of the staff would be found by deputation from the Electricity Board of the States of Punjab and Haryana.

9. According to Mr. Rao the above decisions were not acted upon and, therefore, there was no allocation of staff. Our attention was drawn by the learned counsel for the respondent to the letter of April, 1968 (Annexure R-II annexed to the counter) from the Secretary, Punjab State Electricity Board, Patiala to the Chief Engineer of Union Territory Administration, Chandigarh. By the said letter a copy of the above report of the Committee was sent to the Chief Engineer and his attention was also drawn that the lists showing the allocation of members of the staff of erstwhile Board made by the above Committee to Electricity Boards of Punjab and Haryana were forwarded to him by letter dated 28th September, 1967 (Annexure R-V annexed to the counter) for notifying the allocations to all concerned for inviting representations, if any. He was also informed that all posts whether vacant or newly created under the Chandigarh Administration were to be filled up by taking persons on deputation in the ratio indicated in the letter.

The above correspondences have established that the decisions taken by the Committee were duly acted upon and as urged on behalf of the respondents, appellants were allocated to the Punjab State Electricity Board and they were allowed to work on deputation under the Administration of Union Territory of Chandigarh.

10. Our attention was drawn by Mr. Rao to the letter dated 11th February, 1982 from the Ministry of Home Affairs to the Home Secretary, Union Territory Chandigarh. By this letter, the Government of India conveyed the views of the Ministry of Law, Government of India that employees of the erstwhile State of Punjab allocated to the successor State including the Union Territory of Chandigarh were wrongly treated as on deputation as they were to be absorbed by the

administration as employees of the Union Territory of Chandigarh. By this letter only the views of the Union Territory administration were sought for. Our attention was also drawn to the letter dated 14th October, 1983 from the Home Secretary, Union Territory Administration, Chandigarh to Chief Engineer by which attention of the Chief Engineer was drawn to the above letter of the Government of India dated 11th February, 1982 and he was requested to inform the Home Department regarding steps taken. Drawing our attention to the provision of sub-section(3) of Section 67 Mr. Rao, learned senior counsel has urged that these directions given by the Government of India under the above provisions of the Act were binding on all authorities.

11. By the above letter the Government of India only conveyed the opinion of the Law Ministry of asked for the views of the Union Territory of Chandigarh. In view of language of the letter it cannot be treated as the direction issued under sub-section (3) of Section 67 of the Act. In fact this letter would show that the appellants were on deputation to the Union Territory of Chandigarh and it demolishes the submission of Mr. Rao that the appellants have been absorbed by the Union Territory of Chandigarh. Moreover as within one year there was an agreement regarding allocation of employees of the erstwhile Punjab State Electricity Board between the successor States, the Government of India could not have exercised the power of issuing direction as envisaged under sub-section (3) of Section 67.

12. Next contention of Mr. Rao was that the above directions could be deemed to have been issued under Section 84 of the Act. Section 84 finds place in chapter IX under the heading 'provisions as to services'. These services under Sections 81 and 82 were all India Services and other services of the State. Under Section 84, Central Government is empowered to give direction to give effect to the provisions of this part. As we have already held that such allocation of employees of the erstwhile Punjab State Electricity Board could be done only under sub-section (3) of Section 67 and not under Section 82, no direction could be issued by the Central Government in respect of such employees under the above section.

13. According to Mr. Rao, learned senior counsel, in view of Section 83 of the Act the appellants were deemed to have been absorbed under the administration of the Union Territory of Chandigarh as they were working within the geographical area of the said Union Territory on the date of re-organisation of the erstwhile State of Punjab. This section provides that every person who immediately before the appointed day was holding or discharging duties of any post or office in connection with the affairs of the erstwhile State of Punjab in any area which on the appointed day became the area of any successor States would continue to hold the same post or office in that successor State and would be deemed to have been duly appointed to the post or office. The objection of this Section was to allow the holder of any post or office in the erstwhile State of Punjab to continue to discharge the function of the said post or office on the date the successor States were formed, otherwise for every such post or office it would have been necessary for the successor States to pass orders re-appointing the holder of the post or office to continue to discharge his function.

Keeping in view the purpose for which Section 83 was enacted, we hold that members of the erstwhile Punjab State Electricity Board could not claim deemed absorption under this section merely because on the date the successor States were formed, they were working within the geographical limits of the Union Territory of Chandigarh.

For the reasons stated above we do not find any merit in these appeals.

In the result appeals are dismissed and parties are directed to bear their own costs.