

CASE NO.:
Writ Petition (civil) 79 of 1997

PETITIONER:
Suresh Chandra Sharma

RESPONDENT:
Chairman, UPSEB & Ors.

DATE OF JUDGMENT: 24/02/2005

BENCH:
N. Santosh Hegde, B.N. Srikrishna & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T

I.A. Nos. 23, 26, 29, 31-34 & 36 IN

O R D E R

By an order made on 13th January, 1998, a High Powered Committee came to be appointed to carry out investigations into five areas, as indicated in the order. The High Powered Committee was initially headed by Shri S. Venkatnarayanan (IAS) Retd., Former Chairman, National Power Finance Corporation, who was substituted later on by Shri P.K. Kaul, former Cabinet Secretary of the Government of India. The High Powered Committee (hereinafter referred to as the "Kaul Committee"), with the expert advice and assistance of M/s Central Power Research Institute, Bangalore and Indian Institute of Management, Lucknow, made an indepth investigation into the areas of reference and produced a Report in two volumes.

One of the issues on which the Kaul Committee had adversely commented is that transfers and postings of officers and staff are not made in the State Electricity Board in a transparent and accountable manner. Although, guidelines for transfer policy of officers of the State Government (see at Page 495 Volume IA of the Paper Book), are supposed to be the transfer policy of such officers of the Board also, they have been observed in breach. The State Government has power under the Electricity Act to issue directives in the nature of policy directives, but with Board's Chairman and top Executive heads packed by political boses, the State Government appears to be exercising unbridled power of interference in the day to day working of the Electricity Board. This interference in transfers and postings with political patronage has totally destroyed the autonomous nature of the Electricity Board, which has been identified as a serious malaise affecting the functioning of the Electricity Board.

The original Electricity Board has now been split into U.P. Power Corporation Limited (for distribution and Transmission), with five subsidiary distribution companies, namely, Kanpur Electric Supply Company Limited (KESCO), Purvanchal Vidyut Vitaran Nigam Limited, Varanasi, Madyanchal Vidyut Vitaran Nigam Limited, Lucknow, Paschimanchal Vidyut Vitaran Nigam Limited, Meerut and Dakshinanchal Vidyut Vitaran Nigam Limited, Agra. Thermal generation is entrusted to U.P. Rajya Vidyut Utpadan Nigam Limited and Hydro generation to U.P. Jal Vidyut Nigam Limited. All these companies are Government companies, though under the provisions of the Electricity Act, yet independent bodies subject only to the directives of the State Government only on matters of general policy.

That there has been large scale interference with the autonomous functioning of the Electricity Board (now transformed into eight

autonomous Corporations), is evident from the highly critical report made by Kaul Committee, whose findings are as under:

"a) The State Electricity Board is functioning as an extension of the State Government.

b) The Government of UP and individual UP politicians have long regarded the UPSEB as a social service agency, not a commercial enterprise.

c) Although the UPSEB is, on paper, an independent entity, its management serves at the pleasure of Government of UP and changes frequently.

d) The GOUP officially imposes noncommercial constraints on UPSEB pricing and personnel policies.

e) While individual politicians interfere unofficially in personnel, operations, collections, procurement and more.

f) Employee morale and productivity are low due to lack of accountability and incentives.

g) Corruption is generally accepted to be serious at all levels."

(See: Kaul Committee Report Volume 1 Page 70)

Learned amicus curiae took us to the several paragraphs of the Kaul Committee's Report which highlighted the deplorable state of affairs found by it.

When we queried the learned counsel appearing for the State of U.P. and the learned counsel representing the electricity Corporations as to under what authority there was governmental interference with the day to day affairs of the Corporations in the matters like transfers and postings of officers and staff, neither of them was in a position to contest the situation that no minister or Government officer had any role to play in the transfers/postings of officers and staff of such Corporations.

Learned amicus curiae suggested that as the transfer season is round the corner, it is necessary to pre-empt another round of transfers/postings in the manner and for the reasons as highlighted by the Kaul Committee report. He submitted that one way to ensure transparency in the matter of postings/transfers of officers of these Corporations would be to appoint an independent monitoring committee consisting of persons with impeccable reputation and proven administrative ability, which would look into each and every case of posting/transfer and ensure that they are totally free from political interference.

We have heard the learned counsel for the State of U.P. and the Corporations. We are satisfied that the suggestion made by the amicus curiae has merit and needs to be accepted. That there is imperative necessity to act urgently, is born out by the facts. Considering that the transfers are likely to be made in a couple of months, we think that urgent steps are needed to be taken. We, therefore, direct as follows:

1. No Minister of the State of U.P., nor any Government officer shall interfere with the transfers/postings of the officers in any of the Corporations named above.

2. All postings/transfers of the officers/staff of the aforesaid Corporations shall be monitored by an independent committee consisting of the following persons:

- (i) Shri S. Venkatnarayanan, (IAS) Retd. Former Chairman, National Power Finance Corporation, as Chairman;
- (ii) A member of the U.P.S.C. to be nominated by the Chairman of the U.P.S.C.;
- (iii) A nominee of the Chairman of the Central Electricity Authority.;
- (iv) A nominee of the Comptroller and Auditor General; and
- (v) A nominee of the Central Vigilance Commission.

3. All proposals for transfers/postings of officers and staff of the aforesaid Corporation should, before finalization, be placed before the independent committee which shall examine and approve the transfers/postings on merits and in the light of the guidelines for transfer policy of officers. (see at Page 495 of Volume IA of the Paper Book).

4. No transfer/posting which is disapproved by the said Committee shall be made by the Board of Directors of any of the aforesaid eight Corporations.

5. The Committee shall make a report to this Court containing its observations with regard to the transfers/postings of officers and staff, if any, made for the year 2005, after all such cases have been considered and decisions thereupon taken.

The Chairman, Union Public Service Commission, the Chairman, Central Electric Authority, the Comptroller and Auditor General and the Central Vigilance Commission shall appoint one nominee each to be a member of the Independent Committee referred to in paragraph 2 of this order. The said nominations shall be made within a period of 3 weeks of receipt of a copy of this order.

The Chairman of the said independent Committee shall be entitled to remuneration of Rs. 3,000/- per sitting, while each of the members shall be entitled to remuneration of Rs. 2,500/- per sitting. The remuneration payable to the Chairman and the members of the said Committee as well as the expenditure incurred by the Committee in the discharge of its functions shall be payable in equal proportion by the abovesaid eight Corporations and the State of U.P.. The U.P. Power Corporation Limited shall, in the first instance, defray the expenses of the said Committee and pay the remuneration fixed per sitting and shall be entitled to recover the proportionate shares from the other Corporations as well as the State of U.P.

The Registrar General is directed to forthwith forward a copy of this order to Shri S. Venkatnarayanan, (IAS) Retd. Former Chairman, National Power Finance Corporation, the Chairman, U.P.S.C., the Comptroller and Auditor General and to Central Vigilance Commission, for information and immediate action.