

CASE NO.:
Appeal (civil) 7965 of 2001

PETITIONER:
U.P.S.E.B. & Anr.

RESPONDENT:
Sant Kabir Sahakari Katai Mills Ltd.

DATE OF JUDGMENT: 19/09/2005

BENCH:
ARIJIT PASAYAT & H.K. SEMA

JUDGMENT:
J U D G M E N T
WITH
CIVIL APPEAL NOS. 7966 to 7973 of 2001 and
7990 to 7991 of 2001

ARIJIT PASAYAT, J.

These appeals are directed against the judgments rendered by a Division Bench of the Allahabad High Court. The main judgment was rendered in Civil Misc. Writ Petition no. 5859 of 1999 which is the subject-matter of challenge in Civil Appeal No. 7965 of 2001. Following the judgment rendered in the said case other writ petitions were disposed of. In each of the writ petitions filed before the High Court correctness of the electricity bills raised by the appellant no.1-Uttar Pradesh State Electricity Board (hereinafter referred to as the 'Board') was questioned. The High Court by the impugned judgment held that the Board was as authority under Article 12 of the Constitution of India, 1950 (in short 'the Constitution') and similar was the position so far as the writ petitioners are concerned who according to the High Court were Public Sector Undertakings. The High Court held that in cases where the dispute involves the State Government and a Public Sector Undertaking, Committee in the line indicated by this Court in Oil and Natural Gas Commission and Another v. Collector of Central Excise [1992 Supp(2) SCC 432] (for convenience referred to as ONGC-I) should be set up. Accordingly it was observed that the writ petitioners would move the State through the Chief Secretary to constitute a Committee to resolve the dispute. Further direction was given to the effect that the power supply to the writ petitioners was not to be discontinued.

According to the appellant-Board factual position is as follows:-

State Government issued a notification under Section 22-B of the Indian Electricity Act, 1910 (in short 'Electricity Act') titled as Uttar Pradesh Electricity (Regulation of Distribution, Consumption) Order 1972 (in short the '1972 Order') which imposed certain restrictions on various categories of consumers for using electricity during certain periods. The 1972 Order was repealed and in the year 1977 another Notification under Section 22-B, known as Uttar Pradesh Electricity (Regulation of Supply,

Distribution, Consumption and Use) Order 1977 (in short '1977 Order') was issued. In this order consumers were divided into several categories and so far as the Industrial Consumers are concerned two categories were indicated. They are "Continuous Process Industries Power Consumers" and "Non-continuous Process Industries Power Consumers". List of consumers belonging to the aforesaid category was annexed as Annexure 2 of the said Order. It was provided in the 1977 Order that Non-continuous Process Industries Power Consumers would not use electricity from 18.00 to 22.00 hours every day. It meant that the distinction between the Continuous Process Industries Power Consumers and the Non-Continuous Process Industries Power Consumers was that peak hours restrictions, not to use electricity were not applicable in case of Continuous Process Industries Power Consumers. The spinning mills and textiles Mills were exempted from observing power cutting during peak hours as per clause 8 of the Order and thus these industries also were covered by category "Continuous Process Industries".

The Writ Petitioners were co-operative societies registered under Uttar Pradesh Co-operative Societies Act, 1965. Undisputedly they had entered into agreements with the Board and one of the clauses in the agreement provided that supply shall be available to the consumers continuously during 24 hours of each day and throughout whole period of agreement. This Clause was however, subject to the following restrictions:

"Supplier shall not be responsible for the damages or otherwise on account of accidental interruption of supply or stoppage or deficiency of energy caused by any order or direction issued by the Government of U.P. or resulting from fire, flood, tempest or any accident or from any strike or lock out of workers or from any other cause beyond the control of the supplier but the supplier shall make every effort to restore the supply as soon as possible."

Clause 20 of the Agreement provided that in case of any dispute between the consumer and the Board the matter was to be decided by a person nominated by the Chairman of the Board and the dispute can only be referred when the consumer pays outstanding dues. The said clause reads as follows:

"If any question or dispute or difference arises between the parties to this agreement as to the interpretation or effect of any provisions or clause herein contained or the construction thereof or as to any other matter thereof or the rights, duties or liabilities of either party in connection therewith, such question, dispute or difference shall be referred to the arbitration of the Chairman, U.P. State Electricity Board or the person nominated by him and the award/decision of the said arbitrator shall be final and binding upon the parties.

Provided that if the question, dispute or difference relates to or concerns any dues chargeable to the Consumer in terms of this

agreement, no reference to arbitration shall at the instance of such consumer be made till the consumer has either deposited with the supplier the amount of dues in dispute or difference or given a Bank Guarantee of such amount in favour of the Supplier valid upto the period of one year from the date in which the award becomes final or the amount or dues is cleared, whichever is earlier."

In the year 1984 in exercise of powers conferred under Section 49 read with Section 79 of the Electricity Supply Act, 1948 (in short the 'Supply Act') the Uttar Pradesh Electricity Supply (Consumers Regulation) 1984 (in short the 'Regulations') was framed. The regulations have statutory force and Regulation 14 has considerable significance so far as the present cases are concerned. It reads as follows:

"Regulation 14 : Failure of supply

The supplier shall not be liable for any claim for any loss, damage or compensation, whatsoever arising out of any accidental failure of supply or stoppage or curtailment of diminution or variation in supply or for failure restoring as a result of any direct or indirect strike or order of the Government or other competent Authority in regard to distribution of power or due to war, mutiny, commotion, Riot, strike, lockout, fire flood, lightning earthquake or other causes beyond the control of the supplier."

In 1986 a Notification dated 28.1.1986 was issued categorizing the industrial consumers into two categories i.e. Continuous Process Industries and Non-Continuous Process Industries. Challenging the different rates fixed by the Board, writ petitions were filed which were dismissed by the High Court upholding the validity. It was held that it was a valid classification. Board felt that the language of the Notification dated 28.1.1986 was not very clear and therefore a corrigendum was issued clarifying the position that Continuous Process Industries which are not observing peak hours restrictions have to pay higher charges. Writ Petitions were filed challenging the levy of higher charges. The High Court allowed the levy from the date the corrigendum was issued. The Board has filed appeals questioning the High Court's view. During pendency of the appeals, writ petitions were filed alleging that uninterrupted power supply was not given though higher rates were being charged. Therefore, it was claimed that amounts paid, which were in excess of the amounts payable, should be adjusted against the future bills along with interest. The High Court by its impugned order held that the writ petitioners and the Board were 'State' within Article 12 of the Constitution, and directed a resolution of the dispute by a person to be nominated by the Chief Secretary of State of U.P. It held that writ petitioners were "Public Sector Undertakings".

According to the learned counsel for the appellant \026 Board and its functionaries, the approach of the High Court is clearly erroneous. Huge amounts have not been paid by the respondents-writ petitioners. What was challenged before

the High Court was the levy of higher charges on the allegation that uninterrupted power supply was not given. The decision in ONGC-I case (supra) has no application to the facts of the present case. In any event, the High Court should not have passed a blanket order of stay.

Learned counsel for the respondents on the other hand submitted that the respondents are entitled to receive some amount from the appellants. According to him, the payment raised is absolutely unreasonable and without any basis. It was also submitted that disputes between public sector undertakings and the State should be resolved in the line suggested by this Court in ONGC-I case (supra). There is nothing wrong in the High Court's order granting interim protection.

In ONGC-I case (supra) it was felt desirable that to avoid unnecessary litigation, disputes between the Governments and the Public Sector Undertakings should be sorted out by a Committee to be constituted. It was pointed out that most of the disputes between the Public Sector undertakings and the Government get resolved by meeting of minds.

It is certainly desirable that inter-departmental disputes and disputes between Governments and Public Sector Undertakings should be sorted out in the manner suggested by this Court in ONGC-I case (supra).

The stand of the learned counsel for the Board is that the operation of the High Court's order was stayed and, therefore, the Committee as directed by this Court has not been set up. The quantum of arrears in different cases has been set out in the affidavit filed by the appellant-Board. They are as follows:

1.	CIVIL APPEAL NO. 7965	Rs. 1,65,49,000/-
2.	CIVIL APPEAL NO. 7968	Rs. 6,26,73,485/-
3.	CIVIL APPEAL NO. 7970	Rs. 16,62,497/-
4.	CIVIL APPEAL NO. 7971	Rs. 1,04,11,681.02/-
5.	CIVIL APPEAL NO. 7972	Rs. 1,88,85,823/-
6.	CIVIL APPEAL NO. 7990	Rs. 4,98,42,000/-

High Court equated the Board with the State Government and held that the writ petitioners who were co-operative societies were public sector undertakings.

The High Court's view is clearly untenable. Board cannot be equated with State Government. Section 80 of the Code of Civil Procedure, 1908 (in short 'CPC') is a pointer in that regard. Co-operative Societies and Public Sector Undertakings are conceptually different. The Board is a Public Sector Undertaking and not a State Government department. It may be "State" for the purpose of Article 12 of the Constitution. There the similarity ends. Co-operative Societies (writ petitioners) cannot be, without examination of relevant factual aspects, equated with Public Sector Undertaking. The High Court has come to abrupt conclusion that they are Public Sector Undertakings without indicating any reason for such conclusion. The High Court, therefore, was wrong in applying ratio of ONGC-I case (supra) to the facts of the present cases.

The view in ONGC-I case (supra) was further elaborated in Oil and Natural Gas Commission v. C.C.E. 1995 (Supp.) 4

SCC 541) (For sake of convenience described as ONGC-II). It was noted in Oil and Natural Gas Commission v. C.C.E. (2004(6) SCC 437) (for convenience described as ONGC-III) that some doubts and problems arose in the working out of the arrangements in terms of the order of this Court dated 11.10.1991 (ONGC-II case (supra)). It was noted in ONGC-III case (supra) as follows:

"There are some doubts and problems that have arisen in the working out of these arrangements which require to be clarified and some creases ironed out. Some doubts persist as to the precise import and implications of the words "and recourse to litigation should be avoided". It is clear that the order of this Court is not to the effect that \026 nor can that be done \026 so far as the Union of India and its statutory corporations are concerned, their statutory remedies are effaced. Indeed, the purpose of the constitution of the High-powered Committee was not to take away those remedies. The relevant portion of the order reads: (SCC pp. 541-42 para 3)

"3. We direct that the Government of India shall set up a committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of the Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves to ensure that no litigation comes to court or to a tribunal without the matter having been first examined by the Committee and its clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline."

It is abundantly clear that the machinery contemplated is only to ensure that no litigation comes to court without the parties having had an opportunity of conciliation before an in-house committee."

The matter was again examined in the case of Chief Conservator of Forest v. Collector (2003(3) SCC 472). In Paras 14 and 15 it was noted as follows:

"Under the scheme of the Constitution, Article 131 confers original jurisdiction on the Supreme Court in regard to a dispute between two States of the Union of India or

between one or more States and the Union of India. It was not contemplated by the framers of the Constitution or the C.P.C. that two departments of a State or the Union of India will fight a litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, therefore, they must act in co-ordination and not in confrontation. Filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court is not only against the propriety and polity as it smacks of indiscipline but is also contrary to the basic concept of law which requires that for suing or being sued, there must be either a natural or a juristic person. The States/Union of India must evolve a mechanism to set at rest all inter-departmental controversies at the level of the Government and such matters should not be carried to a court of law for resolution of the controversy. In the case of disputes between public sector undertakings and Union of India, this Court in *Oil and Natural Gas Commission v. Collector of Central Excise* (1992 Suppl. (2) SCC 432) called upon the Cabinet Secretary to handle such matters. In *Oil and Natural Gas Commission & Anr. v. Collector of Central Excise* (1995 Suppl. (4) SCC 541), this Court directed the Central Government to set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor dispute between Ministry and Ministry of the Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

The facts of this appeal, noticed above, make out a strong case that there is a felt need of setting up of similar committees by the State Government also to resolve the controversy arising between various departments of the State or the State and any of its undertakings. It would be appropriate for the State Governments to set up a

Committee consisting of the Chief Secretary of the State, the Secretaries of the concerned departments, the Secretary of Law and where financial commitments are involved, the Secretary of Finance. The decision taken by such a committee shall be binding on all the departments concerned and shall be the stand of the Government. "

The directions as noted above were quoted in Mahanagar Telephone Nigam Ltd. v. Chairman, Central Board, Direct Taxes and another (2004(6) SCC 431) and were adopted in paragraph 8. It was noted as follows :

"Undoubtedly, the right to enforce a right in a court of law cannot be effaced. However, it must be remembered that courts are overburdened with a large number of cases. The majority of such cases pertain to Government Departments and/or public sector undertakings. As is stated in Chief Conservator of Forests' case [2003] 3 SCC 472 it was not contemplated by the framers of the Constitution or the Civil Procedure Code that two departments of a State or Union of India and/or a department of the Government and a public sector undertaking fight a litigation in a court of law. Such a course is detrimental to public interest as it entails avoidable wastage of public money and time. These are all limbs of the Government and must act in co-ordination and not confrontation. The mechanism set up by this court is not, as suggested by Mr. Andhyarujina, only to conciliate between Government Departments. It is also set up for purposes of ensuring that frivolous disputes do not come before courts without clearance from the High Powered Committee. If it can, the High Powered Committee will resolve the dispute. If the dispute is not resolved the Committee would undoubtedly give clearance. However, there could also be frivolous litigation proposed by a department of the Government or a public sector undertaking. This could be prevented by the High Powered Committee. In such cases there is no question of resolving the dispute. The Committee only has to refuse permission to litigate. No right of the Department/public sector undertaking is affected in such a case. The litigation being of a frivolous nature must not be brought to court. To be remembered that in almost all cases one or the other party will not be happy with the decision of the High Powered Committee. The dissatisfied party will always claim that its rights are affected, when in fact, no right is affected. The Committee is constituted of highly placed officers of the Government, who do not have an interest in the dispute, it is thus expected that their decision will be fair and honest. Even if the Department/public sector undertaking finds the decision unpalatable, discipline requires that they abide by it.

Otherwise the whole purpose of this exercise will be lost and every party against whom the decision is given will claim that they have been wronged and that their rights are affected. This should not be allowed to be done."

The ONGC I to III cases (supra), Chief Conservator's case (supra) and Mahanagar Telephone's case (supra) deal with disputes relating to Central Government, State Government and Public Sector Undertakings. They have no application to the facts of these cases as the High Court has not indicated any reason for its abrupt conclusion that the writ petitioners are Public Sector Undertakings. In the absence of a factual determination in that regard, the decisions can have no application.

Accordingly, we set aside the impugned judgments of the High Court and remit the matter for fresh consideration of the cases. As the matter is pending consideration for a long time, it would be appropriate if the writ petitions are disposed of early. It is made clear that if parties place material to show that writ petitioners are Public Sector Undertakings then the High Court can direct action in line with Chief Conservator of Forest's case (supra) and not otherwise.

The appeals are accordingly disposed of. No costs.