***THE HON'BLE SRI JUSTICE SUJOY PAUL**

AND

***THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

+WRIT PETITION Nos.35647 of 2022 and 34543 of 2023

% 11-11-2024

#Sri M. Lakshma Naik and others. ...Petitioners

vs.

$The Transmission Corporation of Telangana Limited and others. ... Respondents

!Counsel for the Petitioners: Sri M. Surender Rao, Senior Counsel, representing Ms. P. Anusha and Sri Srinivasa Madiraju, learned counsel for petitioners.

^Counsel for Respondents:
1. Sri G. Vidyasagar, learned Senior Counsel representing Ms. K. Udaya Sri, learned counsel for respondent Nos.3 to 5 in W.P.No.35647 of 2022.
2. Ms. V. Uma Devi, learned Standing Counsel for TRANSCO.
3. Sri Zakir Ali Danish, learned Standing Counsel for TSNPDCL.
4. Sri D.V.Sitharam Murthy, learned Senior Counsel representing respondent Nos.6 to 8 in W.P.No.35647 of 2022.

<Gist :

>Head Note :

? Cases referred

1. (2004) 2 SCC 267
2. (1975) 3 SCC 76
3. (1981) 4 SCC 130
4.2013 (8) SCC 693
5. (2008) 4 MP LJ 536
6. (2006) 11 SCC 548
7. AIR 1964 SC 1138
8. (2004) 12 SCC 673

IN THE HIGH COURT FOR THE STATE OF TELANGANA

HYDERABAD

* * * *

WRIT PETITION Nos.35647 of 2022 and 34543 of 2023
(Per Hon'ble Sri Justice Sujoy Paul)

Between:

Sri M. Lakshma Naik and others.

…Petitioners

vs.

The Transmission Corporation of Telangana Limited and others.

… Respondents

JUDGMENT PRONOUNCED ON: 11.11.2024

THE HON'BLE SRI JUSTICE SUJOY PAUL

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? :

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? :

3. Whether His Lordship wishes to see the fair copy of the Judgment? :

SUJOY PAUL, J

NAMAVARAPU RAJESHWAR RAO, J

THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT PETITION Nos.35647 of 2022 and 34543 of 2023

COMMON ORDER: *(Per Hon'ble Justice Sujoy Paul)*

The petitioners, Sub-Engineers, working with the Transmission Corporation of Telangana Limited (TRANSCO) were earlier eligible to be appointed by transfer as Additional Assistant Engineer, as per the Rules prevailing before issuance of T.O.O. (Jt-Secy-Per) Ms.No.1475, dated 08.09.2022, whereby through Amendment II, the erstwhile provisions/Note contained in Annexure-I of Regulation 6 (a) of Part III **of Andhra Pradesh State Electricity Board (Board) Service Regulations (APSEB)** was deleted, which is detrimental to the interest of petitioners to become Additional Assistant Engineers by way of transfer.

2. In this batch of petitions filed under Article 226 of Constitution the constitutionality of T.O.O. (Jt-Secy-Per) Ms.No.1475 dated 08.09.2022, is called in question by principally contending that it runs contrary to spirit of Section 24 of the **Andhra Pradesh Electricity Reforms Act, 1998** ('Act of 1998'),

Rule 7 of the **Andhra Pradesh Electricity Reforms (Transfer Scheme) Rules, 1999** ('Rules of 1999') and tripartite agreements.

Contention of the petitioners:

3. Sri M. Surender Rao, learned Senior Counsel for the petitioners urged that the main challenge to impugned order dated 08.09.2022 is on the ground of competence of the Corporation in issuing Amendment II to delete the existing proviso of item (i) and (ii) and Note-3 (service weightage), in Column (2) against Additional Assistant Engineer under Category-4 Class-II in Branch-II Civil. The 'note' which was deleted by way of issuance of impugned order reads thus:

> "Note:-
>
> For the computation of eight years of service half the continuous service other than the service as nominal muster roll worker rendered prior to acquisition of LEE diploma qualification subject to a maximum of four years shall be taken into account for all categories."

4. It is contended that the **Electricity (Supply) Act, 1948** ('Act of 1948') was enacted to provide rationalization of production in supply of electricity for taking necessary conduction of Electrical Development and for all matters incidental thereto.

5. Sub-section 2 of Section 2 of the Act of 1948 defines the word 'Board'. Section 5 provides 'constitution and composition' of said Electricity Board. Section 79 empowers the 'Board' to make regulations by publishing notifications in the official gazette in relation to the matters provided therein, which includes the matters mentioned in Clause (c) thereof. As envisaged in Clause (c), the 'Board' is empowered to make regulations relating to the duties of the officers and other employees of the 'Board' and their salaries, allowances and other conditions of service.

6. In exercise of power under Section 79 (c) of the Act of 1948, the 'Board' made seven types of regulations, 1. The Andhra Pradesh State Electricity Board Service Regulations Part-I. 2. The Andhra Pradesh State Electricity Board Service Regulations Part-II. 3. The Andhra Pradesh State Electricity Board Service Regulations Part- III. 4. The Andhra Pradesh State Electricity Board Employees Leave Regulations. 5. The Andhra Pradesh State Electricity Board Special Pay and Allowance Regulations. 6. The Andhra Pradesh State Electricity Board GPF Regulations. 7. The Andhra Pradesh State Electricity Board Pension Regulations.

7. It is canvassed that the aforesaid seven regulations were brought into force by BPMS No.199 dated 04.03.1970. The petitioners are concerned with the APSEB Service Regulations Part I, II and III. Part-III of the regulation provides for constitution of service and satisfaction thereof.

8. It is contended that the post of Additional Assistant Engineer, which was included in Category-I of Clause III of Branch-I of Electrical was required to be filled up by appointment from the categories of 'Board' employees mentioned in Annexure-I to the regulation. The regulation provides that the employees in the category of posts mentioned therein having eight years of service after acquiring LEE Diploma were entitled to be considered for appointment as Additional Assistant Engineer. A 'note' is appended to the said provision, which is reproduced in paragraph No.3 of this order.

9. The learned Senior Counsel for the petitioners submits that in the instant case the post of Additional Assistant Engineer figuring as Category-1 in Class-III and the posts of Sub-Engineer in Category-2 of Class-VI and Tracers (Category-3), Sub overseer (Category-4) and Blue Print operation are affected. Because of

taking away/withdrawal of 'note' aforesaid, the service conditions of aforesaid categories of employees were adversely affected.

10. It is submitted that before establishing the electricity companies, the service conditions of employees were governed by regulations made by the 'Board' in exercise of its power under Section 79 (c) of the Act of 1948. The Act of 1948 was repealed and the **Electricity Act, 2003** ('Act of 2003') came into being. By taking this Court to Section 56 of the Rules of 1999, it is submitted that a conjoint reading of this Section, which deals with applicability of provisions of Act of 1948 and perusal of Clause (vi), it is clear that Section 79 (c) of Act of 1948 was no more applicable in the State. Thus, for aforesaid twin reasons i.e., repeal of the Act of 1948 and non applicability of Section 79 (c) pursuant to Clause (vi) aforesaid, the impugned amendment could not have been introduced by exercising power under Section 79 (c) of the Act of 1948.

11. The next limb of argument of the learned Senior Counsel for the petitioners is that the impugned order runs contrary to Section 23 of the Act of 1998. It is argued that in exercise of power under Section 23, the transfer scheme was required to be

prepared by the State Government. From that date, the powers of 'Board' will belong to the State Government. The 'Board' came to end pursuant to introduction of Act of 1998 w.e.f. 01.02.1999. While reorganizing the said Electricity Board only such powers which were exercisable by the 'Board' under the Act of 1948 could have been exercised by the TRANSCO, which were specified by notification by the State Government. It is strenuously contended that no such notification was issued by the Government describing the powers of the 'Board' exercisable by the TRANSCO. In absence thereof, the impugned order runs contrary to Section 23 of the Act of 1998.

12. Learned Senior Counsel for the petitioners placed reliance on Section 24 of the Act of 1998 and it is contended that Sub-section (2) provides two protections: (i) terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to the employees if they were not transferred and (ii) transfer scheme so prepared must be consistent with tripartite agreements entered into between APSEB and the employees. The 'explanation' was referred to show that 'personnel' means including all the persons who were on the rolls of the 'Board' on the effective date. By referring to tripartite

agreement which are part of Schedule-D list of tripartite agreements as per the Rules of 1999, it is submitted that there are two tripartite agreements which are covered by Entry-8 of Schedule-D. The impugned order is passed in clear breach of aforesaid two tripartite agreements.

13. Furthermore, it is submitted that the Regulation 41 of the APSEB Service Regulations deals with 'Relaxation of regulation by the Board'. In absence of notification under Section 23 (3) of the Act of 1998, the power under Regulation 41 could not have been source for issuing the impugned order dated 08.09.2022.

14. It is further submitted that as per Rule 7 (7) of the Rules of 1999, which deals with 'transfer of personnel', it is crystal clear that upon transfer of personnel, they will be subjected to certain conditions mentioned in Rule 7 (6) (a) to (f). A conjoint reading of sub-clauses leaves no room for any doubt that new service condition so formulated cannot be less favourable or inferior than those applicable before the effective date. Rule 7 (7) is relied upon to contend that it gives power to the transferee to frame regulation governing the conditions of service of personnel, but till such time such conditions are framed, the existing service conditions of

'Board' may continue. The impugned order is not outcome of framing of new regulations. Instead, it is an amendment to the existing provision framed by the 'Board', which cannot be done in the teeth of Rule 7 (7) aforesaid.

15. Lastly, it is submitted that as per Section 179 of the Act of 2003, every rule or regulation made by the authority was required to be placed before the State Legislature. The official respondents have not placed any material to show that aforesaid mandatory condition was fulfilled.

16. Learned Senior Counsel for the petitioners on more than one occasion fairly urged that attack to the impugned order is confined to the question of competence of TRANSCO in issuing the impugned order dated 08.09.2022.

Contention of the TRANSCO:-

17. Sri G. Vidyasagar, learned Senior Counsel representing Ms. K. Udaya Sri, learned counsel for respondent Nos.3 to 5 in W.P.No.35647 of 2022. Ms. V. Uma Devi, learned Standing Counsel for TRANSCO and Sri Zakir Ali Danish, learned Standing Counsel for TSNPDCL appeared for the employer/other side and

contended that the grounds taken by the petitioners are devoid of merits. Sri D.V. Sitaram Murthy, learned Senior Counsel appeared for respondent Nos.6 to 8 in W.P.No.35647 of 2022. It is common ground taken by all the learned counsel for the respondents that in the Writ Affidavit no specific grounds are taken to assail the impugned order. The argument of 'competence' is not founded upon any clear and specific pleading of the petitioners. In absence thereof, argument without pleading cannot be entertained.

18. Sri G. Vidyasagar, learned Senior Counsel contended that no doubt, the Act of 1948 stood repealed upon introduction of the Act of 2003. However, he fairly submitted that a conjoint reading of Section 56 of the Act of 1998 with clause (vi) on which reliance is placed by the petitioners, it cannot be doubted that power under Section 79 (c) of the Act of 1948 was no more available to the TRANSCO for issuance of the impugned order. Although, one of the sources of power is shown as Section 79 (C) of the Act of 1948, mere non-quoting of provision or wrong quoting of provision will not make any difference if the TRANSCO is able to show the

source of power. Reference is made to judgment of Supreme Court in the case of **M.T. Khan** v. **Government of A.P.**[1].

19. In order to show the source of power, it is submitted that the Act of 1948 is repealed by the Act of 2003, the office order dated 18.02.1999 was issued whereby w.e.f. 01.02.1999 the 'Board' proceedings, orders, etc., which were in existence as on 31.01.1999 in APSEB were continued in the same manner and in the same terms and conditions in the TRANSCO *as if the same have been made by TRANSCO.* Thus, all the provisions, regulations, proceedings, service conditions etc., shall be deemed to be the proceedings of TRANSCO. In this backdrop, Regulation 41 must be seen. To elaborate, it is submitted that once pursuant to order dated 18.02.1999 all the proceedings of the 'Board' including the regulations became regulations of TRANSCO the power of 'Board' 'mentioned in Regulation 41' must be treated as powers of TRANSCO. Thus, it cannot be said that there was no source of power in issuing the impugned order.

20. It is also common ground taken by the respondents that the Writ Affidavit is sketchy and contains bald submissions that

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[1] (2004) 2 SCC 267

service conditions of the petitioners are adversely affected. No particulars, details and explanations are given as to how the impugned order results into such deprivation. The right of consideration for promotion may be statutory or fundamental right, but chances of promotion are not.

21. Sri D. V. Sitaram Murthy, learned Senior Counsel for unofficial respondents placed reliance on the judgments of Supreme Court in the cases of **Mohammad Shujat Ali** v. **Union of India**[2] and **State of Maharashtra** v. **Chandrakant Anant Kulkarni**[3] in this regard. It is submitted that in view of judgment of Supreme Court in **P. Sudhakar** v. **U.Govind Rao**[4], the petitioners had different birthmark and they cannot enjoy benefit which is flowing from the 'note', where 'note' itself runs contrary to the main provision.

22. The parties confined their arguments to the extent indicated above.

23. We have heard at length and perused the record.

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[2] (1975) 3 SCC 76
[3] (1981) 4 SCC 130
[4] 2013 (8) SCC 693

Findings:

24. In view of the common objections raised by the learned counsel for all the respondents regarding absence of pleadings/foundation in the Writ Petition against the impugned order, during the course of hearing on a specific query from the Bench, the learned Senior Counsel for the petitioners fairly admitted that the pleadings relating to competence are only in paragraph No.34 of the Writ Affidavit. It is apposite to reproduce the same, which reads thus:

> "34. The amendment brought about affects the service conditions of employees who joined the service of the APSEB/TRASNCO or Distribution Companies in O&M categories. <u>The said amendment runs contrary to the spirit of Section 24 of the Electricity Reforms Act, 1998, Rule 7 of Electricity Reforms Rules 1999 and the Tripartite Agreement incorporated therein in Schedule D.</u>"

(Emphasis Supplied)

25. Apart from this, in paragraph No.36 of the Writ Affidavit, it is mentioned that the right to be considered for appointment by transfer was completely taken away. However, during the course of hearing, it was neither contended nor established that entire right for consideration for promotion was taken away. The 'note' which has been withdrawn only takes away certain weightage and does not take away the right of consideration. Curiously, the petitioners in the pleadings have not mentioned with necessary

clarity as to what is the nature of breach of Section 24 of the Act of 1998 and Rule 7 of Rules of 1999.

26. Learned Senior Counsel for the petitioners submits that this point can be established through arguments even if there is no specific pleading in the petition. Pertinently, in the petition, no 'grounds' are specifically and separately mentioned.

27. In our considered opinion, the averments at paragraph No.34 of petition are too sketchy. The petitioner should have pleaded with accuracy and precision about the nature of breach of Section 24 of the Act of 1998 and Rule 7 of Rules of 1999. Similarly, there is no foundation/pleading in the petition regarding nature of breach of Section 23 (3) of Act of 1999 and tripartite settlements.

28. As noticed above, during the course of hearing, based on Section 23(3) of the Act of 1998, the learned Senior Counsel for the petitioners placed much emphasis on the requirement of issuance of notification by the State Government specifying the powers of the 'Board', which are exercisable by the TRANSCO. There is no iota of pleading in the petition that no such notification was ever issued. The question of issuance of

notification is a question of fact and hence, it should have been pleaded to enable the other side to controvert it. In absence thereof, oral argument will not cut any ice. Similarly, the argument based on Section 179 of the Act of 2003 i.e., whether or not the regulation was placed before the State Legislature is also a question of fact. Pertinently, there is no pleading in the Writ Affidavit about this ground that regulation was not placed before the State Legislature.

29. The Madhya Pradesh High Court in **Gomti Bai Tamrakar** v. **State of M.P.,**[5] opined that in absence of necessary pleadings, the arguments cannot be entertained. The Apex Court in the case of **B.S.N.Joshi & Sons Ltd.** v. **Nair Coal Services Ltd**[6] held as under:

> "37. Before we embark upon the respective contentions made before us on the said issue, we may notice that although the point was urged during hearing before the High Court, the First Respondent in its writ application did not raise any plea in that behalf. The High Court was not correct in allowing First Respondent to raise the said contention. [See Tmajirao Kanhojirao Shirke and Another v. Oriental Fire & General Insurance Co. Ltd., [(2000) 6 SCC 622, at page 625]"
>
> (Emphasis Supplied)

[5] (2008) 4 MP LJ 536
[6] (2006) 11 SCC 548

30. Apart from this, a Five Judge Bench of Supreme Court in **The State of Uttar Pradesh** v. **Kartar Singh**[7], poignantly held as under:

> "15. ...In the circumstances, if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any appropriate reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Article 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Article 14 the burden is on him to plead and prove the infirmity is to well established to need elaboration. If, therefore, the respondent desired to challenge the validity of the rule on the ground either of its unreasonableness or its discriminatory nature, he had to lay a foundation for it by setting out the facts necessary to sustain such a plea and adduce cogent and convincing evidence to make out his case, for there is a presumption that every factor which is relevant or material has been taken into account in and formulating the classification of the zones and the prescription of the minimum standards to each zone, and where we have a rule framed with the assistance of a committee containing experts such as the one constituted under Section 3 of the Act, that presumption is strong, if not overwhelming. We might in this connection add that the respondent cannot assert any fundamental right under Article 19(1) to carry on business in adulterated foodstuffs.
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> 16. Where the necessary facts have been pleaded and established, the Court would have materials before it on which it could base findings, as regards the reasonableness or otherwise or of the discriminatory nature of the rules. In the absence of a pleading and proof of unreasonableness or arbitrariness the Court cannot accept the statement of a party as to the unreasonableness or unconstitutionality of a rule and refuse to enforce the rule as it stands merely because in its view the standards are too high and for this reason the rule

[7] AIR 1964 SC 1138

> is unreasonable. In the case before us there was neither pleading nor proof of any facts directed to that end. The only basis on which the contention regarding unreasonableness or discrimination was raised was an appropriate argument addressed to the Court, that the division into the zones was not rational,..."

(Emphasis Supplied)

31. Similar point came up for consideration before the Supreme Court in the case of **State of Haryana** v. **State of Punjab**[8], the relevant portion reads thus:

> "**82.** The challenge to Section 14 of the 1956 Act has been made "without prejudice to Punjab's pending application under Section 5(3) of the Act". Assuming such a reservation is legally possible, the ground for submitting that Section 14 of the 1956 Act is "unsustainable" is legally impermissible. It is well established that constitutional invalidity (presumably that is what Punjab means when it uses the word "unsustainable") of a statutory provision can be made either on the basis of legislative incompetence or because the statute is otherwise violative of the provisions of the Constitution. Neither the reason for the particular enactment nor the fact that the reason for the legislation has become redundant, would justify the striking down of the legislation or for holding that a statute or statutory provision is ultra vires. Yet these are the grounds pleaded in sub-paragraphs (*i*), (*iv*), (*v*), (*vi*) and (*vii*) to declare Section 14 invalid. Furthermore, merely saying that a particular provision is legislatively incompetent [ground (*ii*)] or discriminatory [ground (*iii*)] will not do. At least prima facie acceptable grounds in support have to be pleaded to sustain the challenge. In the absence of any such pleading the challenge to the constitutional validity of a statute or statutory provision is liable to be rejected in limine."

(Emphasis Supplied)

32. Our view is fortified by the aforesaid judgments that when constitutionality of provisions is called in question, the petitioners

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[8] (2004) 12 SCC 673

must plead with clarity, accuracy and precision about the nature of breach. The impugned order or the provisions like this cannot be set aside on mere asking or on the basis of oral argument alone. Thus, we are constrained to hold that the in the Writ Affidavit the necessary foundation is absent on the strength of which the impugned order dated 08.09.2022 can be jettisoned.

33. Apart from this, we find substance in the argument of Sri G. Vidyasagar, learned Senior Counsel that pursuant to office order dated 18.02.1999 proceedings and regulations are deemed to be issued by TRANSCO. The relevant portion of the said order reads as under:

> "2. In its 2nd Board Meeting of Transco of A.P. Limited held on 1-2-99 it was resolved that all existing Board Proceedings and orders etc., whatsoever in existence as on 31-1-99 in Andhra Pradesh State Electricity Board be continued in the same manner and on the same terms and conditions in the Transco of A.P. Limited with effect from 1-2-99 as <u>if the same have been issued by the Transmission Corporation of A.P. Limited.</u>"
>
> (Emphasis Supplied)

34. In this backdrop, if Regulation 41 is read, the argument of Sri G. Vidyasagar, learned Senior Counsel deserves to be accepted that regulations made by powers of 'Board', in view of Regulation 41 may be read as power of TRANSCO. Since regulation and proceedings of the 'Board' became regulation and proceedings of

the TRANSCO, the another limb of argument of petitioners based on Rule 7 (7) of Rules of 1999 deserves to be discarded. In other words, the Rule 7 (7) permits the TRANSCO to frame regulation. Once previous regulation became the regulation of TRANSCO, the power to amend the same is impliedly available with TRANSCO. Thus, no fault can be found in the impugned order dated 08.09.2022. Thus, both Writ Petitions fail and are liable to be dismissed.

35. In the result, the Writ Petitions are **dismissed**. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE SUJOY PAUL

JUSTICE NAMAVARAPU RAJESHWAR RAO

Date: 11.11.2024
Note:
LR copy be marked.
B/o.GVR