

UT POWERMEN UNION, CHANDIGARH (REGD.) VS UNION OF
INDIA AND OTHERS

Present: Mr.AK Chopra, Sr. Advocate with
Mr.Akshit Chaudhary, Advocate for the applicant/ petitioner

Mr.SP Jain, Addl. Solicitor General of India with
Ms.Neha Sharma, Central Government Counsel
for respondent Nos.1- UOI

Mr.Pankaj Jain, Senior Standing Counsel with
Mr.Namit Kumar, Addl. Standing Counsel
UT, Chandigarh for respondent Nos. 2 to 5

Mr.Aseem Rai, Advocate for respondent No.6.

The matter has been taken up through video-conferencing in
the light of the pandemic Covid-19 situation and as per instructions.

The matter for the first time came up for hearing before this
Court on 1.12.2020 and the following order was passed:-

*“The matter has been taken up through video
conferencing in the light of the pandemic Covid-19
situation and as per instructions.*

*States that there is no provision of privatization under
the Electricity Act, 2003 (in short 'the Act'). No provision
has been framed for reservation policy for the OBC, BC,
sports personnel, ex-army personnel and various
deprived sections of the society. The impugned action of
the respondents in taking effective steps to privatize the
Electricity Wing, U.T., Chandigarh/power utility in
Chandigarh by selling of 100% stake of the Govt. is not*

legally sustainable, the same being violative of Section 131 (2) of the Act, as per which the power department/utility cannot be transferred to a totally private entity with no stake or control of the Government at all. The sale of 100% stake of the U.T. Administration in the Electricity Wing of U.T., Chandigarh which is running in profits and is revenue surplus for the past 3 years and is also economically efficient having T & D losses less than 15 % the target fixed by the Ministry of Power is unjust and illegal. The transfer scheme (Annexure P-11) has been prepared without calling for the objections of all the stakeholders i.e. Consumers and employees of the Electricity Wing as well as the heads/representatives of the three State Governments i.e. Punjab, Haryana and U.T. Chandigarh and thus cannot be legally sustained and acted upon.

Learned Senior counsel further contends that in the absence of finalizing and notifying transfer scheme under Section 131 of the Act, process of inviting bids vide the impugned notice dated 10.11.2020 (Annexure P-14) could not be initiated. The impugned action of the respondents in privatizing the Electricity Wing of U.T., Administration is also violative of mandatory provisions of Sections 30, 31, 32, 39, 40 and 41 as well as provisions of Sections 16 and 17 of the Act.

Notice of motion.

At this stage, Mr. S.P. Jain, Addl. Solicitor General of India assisted by Ms. Neha Sharma, Advocate accepts notice on behalf of respondent No. 1. Mr. Pankaj Jain, Sr. Standing counsel, U.T., Chandigarh assisted by Mr. Namit Kumar, Advocate causes representation on behalf of respondent Nos.2 to 5.

Heard.

Considering the nature of the issue involved, we feel that the matter will require detailed deliberations as it touches the employment scheme of the society in general.

Admitted.

The operation and effect of the impugned Office Memorandum dated 10.06.2020 (Annexure P-3) and Notice Inviting Bids dated 10.11.2020 (Annexure P-14) shall remain stayed till further orders.

To be heard within six months after the resumption of normal functioning of the Court.

Parties are directed to complete the pleadings in the meantime. In case, the matter is not taken up within the stipulated period, the parties shall be free to move an application for getting the matter fixed on an actual date.”

A challenge was laid to this order and Hon'ble the Supreme Court while issuing notice of motion vide order dated 12.1.2021 passed in

SLP (C) Nos. 16091 & 16092 of 2020, observed that there shall be interim stay of the order dated 1.12.2020 passed by this Court. On 9.2.2021, Hon'ble the Supreme Court while disposing of the said SLP ordered that the interim order dated 12.1.2021 shall continue till the disposal of the present writ petition by this Court with a request to dispose of the same as expeditiously as possible preferably within a period of three months.

The writ petition again came up for hearing on 16.2.2021, wherein the Court observed that any execution of the MoP in question shall be subject to the final outcome of the present petition and the matter was posted for 16.3.2021. On that day, learned senior arguing counsel for the petitioner being in personal difficulty, could not cause appearance. Accordingly, the matter was deferred to 9.4.2021. On 9.4.2021, the hearing was deferred to 29.4.2021, at the request of learned counsel for respondent Nos. 2 to 5. Due to unprecedented surge in Covid-19 cases throughout the nation, all the matters including the present case, listed for 29.4.2021 were adjourned to 18.8.2021 by the administrative orders passed by this Court, without being taken up by the Courts.

On 24.5.2021, the instant civil miscellaneous applications i.e. CM Nos. 6812 & 6813-CWP-2021 came up for hearing before this Court by way of special mentioning. In the instant applications, challenge has been laid to communication dated 19.4.2021 (Annexure A-1) whereby Special Secretary Engineering, UT, Chandigarh issued instructions to M/s Deloitte Touche Tohmatsu India LLP, Gurgaon, the Transaction Advisor appointed by the respondents, asserting that the process of privatisation in Chandigarh is required to be kept on fast track. Reference was also made to the order

dated 9.2.2021, passed by Hon'ble the Supreme Court in SLP(C) Nos.16091 & 16092-2020, vide which this Court was requested to decide the matter as expeditiously as possible within a period of three months, which stands expired now.

It is further asserted in the instant application that after the petitioner came to learn of the communication dated 19.4.2021 (Annexure A1), the petitioner moved a representation dated 3.5.2021 (Annexure A-2) and approached the learned Advisor to the Administrator-cum-Chairman, Disaster Management Committee, UT Chandigarh whereby a request was made to stop the further proceedings in the matter of privatization at least till the matter is finally adjudicated on the judicial side. The administration was further apprised that all the medical and other logistic infrastructure set up by the UT Administration, Chandigarh including its premier medical institutes i.e. PGIMER, GMCH-32 and GMSH-16 cannot carry out their functions *sans* the electricity supply. It has been further asserted that employees of the electricity department at the risk of their lives have been working as Frontline Corona Warriors to ensure that the medical and other institutes are provided uninterrupted electricity supply. It has been further claimed that without active and functional support of the electricity department employees, fight against the deadly disease would not have been possible and a prayer was made that during this difficult phase of mankind, there ought not to have been undue hurry on the part of the administration to privatise the electricity wing.

Another representation dated 6.5.2021 (Annexure A-3) was submitted by the petitioner to the Administrator, UT Administration

Chandigarh, wherein the learned Advisor was apprised that due to Covid-19 pandemic, such situation has been created, which has never been witnessed by the mankind. The respondents being the State instrumentalities are not justified in hurrying through the process of privatization, as the State being a welfare State is expected to concentrate on the ways and means of saving a citizen from the havoc being played by the Covid-19 pandemic, particularly the prevalent second wave especially when the electricity wing of the Engineering Department of UT, Chandigarh is doing very well for the last so many years; has been a revenue surplus entity and the electricity being supplied is 24x7 to the satisfaction of the residents/consumers. It has been further asserted in the application (Annexure A-3) that the process of opening and finalization of bids at this stage would not only create third party rights but would also lead to delay and multiplicity of litigation, which has the potential to cause immense loss to the cause of the petitioner and will not be in the interest of the State as well.

On the other hand, reply in CM-6813-CWP-2021 on behalf of respondent Nos. 2 to 5 has been filed today through email. The same is taken on record. Copy thereof has already been supplied to the opposite counsel.

As per the reply, a reference has been made to the order dated 1.12.2020 passed by this Court and the orders dated 12.1.2021 and 9.2.2021 of Hon'ble the Supreme Court, whereby the operation of the order dated 1.12.2020 passed by this Court was stayed. It is submitted in the reply that the apprehensions of the petitioner, as stated in the application, are totally wrong and baseless and that the detailed submissions on merits

already stand filed by the respondents. Therefore, a prayer is made to dismiss the present application.

Heard.

From the pleadings and the arguments raised by learned counsel for the parties, it is not clear as to what was the intended purpose of setting up the Engineering Wing, UT Chandigarh and as to whether the Engineering Wing has failed to achieve the same. This is the positive case of the petitioner that when the department is a profit making organization, therefore, it is not covered under the scheme 'Atamnirbhar Bharat Abhiyan' or 'Self -Reliant India Mission'. There is no effective assistance by learned counsel for the parties on this aspect of the matter.

The Engineering Wing of the UT Administration is akin to Public Sector Undertakings (PSUs), which were created by the Government of India to make a self sufficient nation and to become the master of our own destiny. While inaugurating the Bhakhra Nangal Dam in October, 1963, Prime Minister Nehru christened it as 'the temple of modern India'. The philosophy behind establishing the same was to end India's dependence on the rest of the world. If the argument on behalf of the respondents is to make India 'Atamnirbhar Bharat', we are at a loss to understand that what can be more 'Atamnirbhar' than an institution made in India, by Indians, operationalized by Indians, creating jobs for Indians and enriching the Indian State with its profits. We also feel that the idea establishing such wings is an egalitarian one with the aim to include those sections of society that need a helping hand. The philosophy of inclusion, as envisaged by Dr. Ambedkar in the Preamble, also included the concept of 'Economic Justice'.

To achieve this ideal of the Constitution as wished about by one of the greatest makers of this country, especially in such precarious times that we live in, it becomes imperative upon the administration to safeguard such institutions that protect the security of the livelihood. They provide a security net for the society to fall back upon, for the poorest of the poor to dream of a better future, for the person at the end of the line to be aspirational so that he too can be part of the Indian dream. All this indicates a social motive and not a profit motive.

Surprisingly, there is no reference in the petition or in the reply with regard to stakeholders, who happen to belong to lowest strata of the society like the Scheduled Castes, Backward Classes, OBC etc. The proposed action of privatization (Annexure A-1) is in direct conflict with the nation's agenda '*Sab Ka Saath Sab Ka Vikas*'.

We feel that privatization is not a panacea for all the ills and privatization with blind motive of so-called efficiency falls flat as this department is not only a profitable one but also time and again matched the high standards of customers' satisfaction and has a big role in maintaining the City Beautiful. With great pain and anguish, it is recorded that we are unable to reconcile with the fact that when the whole world is grappling with the deadly virus, when there is no oxygen, no ICUs, a long queue at the cremation grounds and no place in the hospitals, the undue hurry on the part of the administration to hand over the profit making department to the private entity at this stage of the history and in this situation of crisis faced by the entire mankind, seems to be misplaced.

In the present application, prayer has been made for stopping

further proceedings with regard to privatization of electricity in UT, Chandigarh including opening and finalization of the tender bids till the final adjudication of the writ petition. In the changed circumstances on account of Covid-19 pandemic, when the functioning of the Courts is curtailed to a very great extent and the writ petition could not be decided for the reasons mentioned above, keeping in view the exigency of the situation, we at this stage feel that the cause of justice and humanity will be better served by keeping the operation of communication dated 19.4.2021 (Annexure A-1) in abeyance, particularly when the matter is coming up for hearing before this Court on 18.8.2021. Ordered accordingly.

The parties shall make an endeavour to conclude the arguments on the next date of hearing.

[JITENDRA CHAUHAN]
JUDGE

[VIVEK PURI]
JUDGE

28.5.2021

gsv

सत्यमेव जयते