

A NATIONAL POWER TRANSMISSION CORPORATION LTD.
v.
CORPORATE EXECUTIVE ASSOCIATION OF NTPC (CEAN)
NEW DELHI AND ORS.

B MARCH 13, 1992

[M.N. VENKATACHALIAH AND R.C. PATNAIK, JJ.]

Constitution of India, 1950 : Article 226.

C *Formation of National Power Transmission Corporation—Transfer of assets and employees of National Thermal Power Corporation and other generating organisations—Petition challenging transfer—Claim of equal pay for equal work by employees recruited from National Thermal Power Corporation—Direction by High Court at interlocutory stage, 'if employees recruited from other Corporations receive higher emolument then employees recruited from National Thermal Power Corporation should be treated on par'—Direction held unjustified.*

E **The National Power Transmission Corporation (NPTC) was incorporated on 23rd October, 1989. Governments of India issued instructions regarding transfer of assets and employees from other generating organisations to NPTC. The National Thermal Power Corporation (NTPC) also issued a circular in conformity with the Government's instructions. The respondent-association filed a writ petition in the Delhi High Court, challenging the instructions and the circular. Based on the undertaking given by the Attorney General the Division Bench of the High Court passed an interim order directing that the NPTC should not recruit persons from any source other than NTPC and if it recruits employees from other Corporations, it should pay equal pay for equal work i.e. in case the employees recruited from other Corporations get higher emoluments doing the same nature of work then the employees recruited from NTPC should also be paid the same higher emoluments. NPTC filed an appeal in this court challenging the interim order on the ground that having regard to the scope of the writ petition and the relief sought, the High Court erred in passing the interim order.**

H **Allowing the appeal, this court,**

HELD : The terms and conditions of service of employees of National Thermal Power Corporation were protected in the instructions issued by the Government of India and the circular issued by the National Thermal Power Corporation as also in the undertaking given by the learned Attorney General. The employees of National Thermal Power Corporation on transfer-absorption were not to suffer any detriment as regards the terms and conditions of service enjoyed by them before their transfer-absorption. No irreparable injury was going to be caused to the employees of National Thermal Power Corporation if the impugned direction was not given. In fact the said direction militated against the observation made by Division Bench of the High Court. The High Court at the interlocutory stage should not have given the direction that if the employees of other Corporations other than National Thermal Power Corporation receive higher emoluments, the employees of National Thermal Power Corporation should also be entitled to the same. Accordingly, the direction given by the High Court is set aside. [241G-H, 242A-C]

State of Andhra Pradesh & Ors. v. G. Sreenivasa Rao & Ors., [1989] 2 SCC 290, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2257 of 1992.

From the Judgment and Order dated 21.10.91 of the Delhi High Court in C.M. No.4875 of 1991 in C.W. No.2377 of 1991.

G. Ramaswamy, Attorney General, P.P. Malhotra, S.K. Dhingra, J.C. Seth and Gurnam Singh for the Appellants.

G.B. Pai, Janaranga Das, Amarendra Bal, Dr. Rajeev Dhawan, G.V. Rao and Ms. Kamini Jaiswal for the Respondents.

The following Judgment of the Court was delivered by

PATNAIK, J. Special leave granted.

On 23rd October, 1989 was incorporated National Power Transmission Corporation (NPTC) with the object of developing a power system network in all its aspects including planning, investigation, research, design and engineering preparation and construction of sub-stations, load despatch stations and communication facilities, co-ordination of regional

A and national grid system, providing consultancy, execution of turnkey jobs and purchase and sale of power. To achieve these objectives, it was decided to transfer its transmission lines and sub-stations of the various generating organisations and sub-stations of the various generating organisation namely (a) National Thermal Power Corporation (NTPC), (b) Nuclear Power Corporation of India Ltd. (NPC), (c) North Eastern Electric Power Corporation Ltd. (NEEPCO), (d) National Hydro-Electric Power Corporation (NHPC), (e) Neyveli Lignite Corporation Ltd. (NLC), (f) Tehri Hydro Development Corporation Ltd. (THDC), (g) Damodar Valley Corporation (DVC), (h) Bhakra Beas Management Board (BBMB).

C On 12th July, 1991, the Ministry of Power and Non-Conventional Energy Sources, Department of Power, Government of India issued instructions to NTPC and NPTC by way of follow up measure pertaining to transfer of assets, service conditions of employees, their absorption etc. The NTPC issued circular dated 18.7.1991 in conformity with the aforesaid instructions of the Government of India.

D The respondent No. 1, an Association of Corporate Executive of NTPC filed a writ application in the High Court of Delhi for invalidating the aforesaid instructions of the Government of India and the circular issued by the NTPC as violative of Articles 14, 16(1), 21 and 23 of the Constitution of India and for an appropriate order, direction or writ in the nature of mandamus, restraining the respondents from giving effect to Paragraph 2(1)(b) of the instructions issued in letter dated 12.7.1991 and the entire circular dated 18.7.1991. It also moved an application for interim directions. By then, 2509 employee had already been transferred to NPTC. At the hearing of the said interlocutory application, the learned Attorney General appearing on behalf of the Government of India and also on behalf of the NPTC gave an undertaking in terms whereof an order was passed by the High Court on 14.8.1991. The order so far as is relevant is extracted hereinbelow :-

G "We have heard the parties counsel and the Attorney General wishes to make a statement giving an undertaking on behalf of the National Power Transmission Corporation. He states by way of undertaking as follows:-

H The services of the above employees shall not be deemed to be interrupted by National Power Transmission Corporation

consequent on such transfer and absorption. A

The terms and conditions of service applicable to these employees after transfer and absorption shall not, in any way, be less favourable than those applicable to them immediately before the transfer.

In the event of retrenchment of any employee who is a workman as defined in the Industrial Disputes Act, 1947, the National Power Transmission Corporation shall be legally liable to pay compensation on the basis of that his service is continuous and has not been interrupted by the transfer. B

That if the writ petitioners succeed in the writ petition, the entire position shall be reversed, as per directions, order and any interim order, and all interim orders as agreed to will be subject to the result of the writ petition. C

That during the pendency of the writ petition, the National Power Transmission Corporation shall not recruit persons from any source other than the National Thermal Power Corporation without the permission of the Court. D

We have heard the undertaking of the Attorney General given on behalf of the Union of India and on behalf of National Power Transmission Corporation. The words in the undertaking to the effect that transfer and absorption of employees of the National Thermal Power Corporation in the National Power Transmission Corporation shall, however, be the matter of final adjudication of the writ petition, and be subject thereto. E

Liberty is given to both the parties to mention the matter in case of difficulty and in case of any changed situation. No action be taken unilaterally affecting which are subject matter of this writ petition without permission of this Court. If the assets of the National Thermal Power Corporation are to be transferred to the National Power Transmission Corporation, then prior to taking such action, the Court be approached." F

Somedays later, an application was filed by the National Power Transmission Corporation for modification of the following direction con- G

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A tained in paragraph 6 of the aforesaid order:

“the National Power Transmission Corporation shall not recruit persons from any source other than the National Thermal Power Corporation without the permission of the Court.”

B The justification for making the application was the necessity of the Corporation to recruit/absorb more hands from the generating corporations with a view to running the Corporation effectively and efficiently for the purpose of transmission of energy.

C The Association opposed the said Motion contending that the transfer of assets and employees was illegal and neither the Government of India nor the NTPC had a right to change the service conditions of the employees unilaterally nor could they force on employees a transfer to National Power Transmission Corporation and against that background the High Court had, on the undertaking of the learned Attorney General, directed that National Power Transmission Corporation should not recruit persons from any source other than the NTPC without the permission of the Court. If the NTPC desired to recruit and absorb in its employment, employees from other Corporations, it should pay equal pay for equal work to its employees. More specifically, if the employees to be recruited by the NPTC from other Corporations received higher emoluments, the employees of the NTPC should also be entitled on par with employees of other Corporations to higher emoluments. The NPTC as a condition for the modification and as a privilege of recruiting its employees from other Corporations should pay higher emoluments to the employees of NTPC as the purchase price. The Division Bench observed as under:-

F “It is necessary and desirable that the new Corporation must be able to function by taking into its fold employees from various organisations, whose transmission lines are to be taken over.”

G It went out:-

H “In this connection we may refer to the undertaking given by the learned Attorney General, that the terms and conditions of service applicable to these employees after transfer and absorption shall not, in any way, be less favourable than those ap-

plicable to them immediately before the transfer. In other words, the pay of all sorts of employees will be protected. Even after protection of the pay if certain disparity in the emoluments of various sets of employees remains, we expect that keeping in view the principle of equal pay for equal work for the employees who are placed in the same circumstances and situation, and who discharge the same duties and responsibilities, and work in the same set of conditions, will be kept in view by the respondents, and such disparities, if any, would normally be rectified by them, by raising the salary and allowances of the lower paid employees to the level of the higher paid employees, but *at any rate that stage has not yet come, and the employees transferred from respondent No.2 to respondent No.3, in case they face the situation, they can always move the matter with respondent No.3, or the Court.*

However, even after so holding (underlining supplied) it directed that in the event :-

“some employees happen to get higher emoluments than some employees doing equal work, those employees who are transferred from respondent No.2 to respondent No.3 shall also get the same emoluments, and the shortfall in their emoluments, shall be made up by the respondents by raising their emoluments equal to the emoluments drawn by the corresponding employees of the other Corporations taken over by respondent No.3, during the pendency of the petition.”

The NPTC being aggrieved by the aforesaid direction as quoted above issued by the High Court has moved this Court under Article 136 of the Constitution of India urging that having regard to the scope of the writ petition, the reliefs sought, the High Court was in error in directing by way of interim order that in the event some employees of the Corporations other than the NTPC happened to get higher emoluments doing the same nature of work then the employees of NTPC would also be entitled to get the said higher emoluments. It has been urged on behalf of the appellant that the directions is inconsistent with the finding recorded by the Division Bench in an earlier paragraph and invoking the doctrine of equal pay for equal work at an interlocutory stage is misconceived and when the various

A controversies are being examined by the High Court and when the main writ application is being heard it was improper and inexpedient to give by way of interim order the direction as contained in paragraph 3 of the directions quoted above.

B The learned Attorney General appearing for the NPTC has urged that having regard to the instruction issued by the Government of India and the circular issued by the NTPC and the undertaking given by him in the proceedings before the High Court, the employees of NTPC are not being subjected to any term and condition of service less advantageous than those
C enjoyed by them before their absorption/transfer. The scale of pay and other emoluments which they were enjoying before transfer are not being affected. However, if they are entitled to higher emoluments by application of doctrine of equal pay for equal work, it is open to them to make a demand for the same which will be considered by the employer and if they are aggrieved, it is always open to them to move the Court but having
D regard to the nature and scope of the writ application the claim for equal pay for equal work on the ground that some employees of some Corporations would receive higher emoluments is outside the scope of writ application and was not available to be urged on an application moved by the Corporation for modification of an order restraining it from recruiting
E employees from Corporations other than NTPC. The employees of NTPC has not come with any independent application in that behalf. He has also urged that the claim was pre-mature. He has drawn our attention to the observation made by the Division Bench to the effect that the stage for claim of equal pay for equal work has not been reached and in such
F eventuality if the employees are aggrieved, they are at liberty to move the employer or the Court and has submitted that the third direction in last paragraph is inconsistent with the aforesaid observation.

Dr. Rajiv Dhawan, Senior Advocate appearing for the Association respondent No.1 has combated the aforesaid submissions of the learned
G Attorney General submitting that the difference in emoluments by way of higher D.A. is not by reason of the experience, ability or qualification. Inasmuch as transferred employees would form part of a single service, different scales of pay or emoluments would be unreasonable, arbitrary and unjust. He has contended that the employees of the various Corporations
H could not be forcibly transferred and the High Court had restrained NPTC

for recruiting from other sources and if the said Corporation wanted recruitment from other sources, it should be agreeable to pay to the employees of NTPC also on equitable ground higher emoluments if the employees of other Corporations received higher emoluments doing the same nature of work with similar responsibilities. He has sought to distinguish the rule laid down in the case of *State of Andhra Pradesh & Ors. v. G. Sreenivasa Rao & Ors.*, [1989] 2 SCC 290 confining the holding therein to the facts of the said case and urged that having regard to the similar nature of work, ability and experience, the employees of NTPC cannot be discriminated against. A B

Having heard the learned Attorney General, Shri P.P. Malhotra, Shri. G.B. Pai and Dr. Rajiv Dhawan, Senior Advocates at considerable length and giving our anxious consideration to the matter, we are of the view that we should be cautious in our approach having regard to the fact that the Division Bench of the High Court is hearing the substantive petition since some days and any observation touching merit would embarrass the learned Judges who should bring an independent mind to bear on the controversies raised before them. Hence we do not express any opinion on whether or not there has been a forced transfer of the employees of various Corporations to NPTC and whether or not such transfer/absorption in valid and even whether or not some of the employees so absorbed can claim equal pay for equal work on the ground that employees of some Corporations recruited by NPTC received higher emoluments. We are of the view that the learned Judges rightly observed that the stage for adjudicating the question raised in the interim application had not been reached. That was the correct approach having regard to the facts and circumstances of the case. C D E F

The terms and conditions of service of employees of NTPC were protected in the instructions issued by the Government of India and the circular issued by the NTPC as also in the undertaking given by the learned Attorney General. The employees of NTPC on transfer/absorption were not to suffer any detriment as regards the terms and conditions of service enjoyed by them before their transfer/absorption. The counsel for NPTC even did not rule out the possibility of rationalisation of emoluments at later stage if the transfer/absorption is up-held by the Court. No irreparable injury was going to be caused to the employees of NTPC if the third G H

- A direction quoted above by us was not given. The said direction in our view militated against the observation made by Division Bench in an earlier paragraph which has been underlined by us for emphasis. If the appellant's prayer was granted, the employees of NTPC were not in a less favourable position than they were. We are, therefore, of the view that the High Court at that interlocutory stage should not have given the direction that if the employees of other Corporations other than NTPC receive higher emoluments, the employees of NTPC should also be entitled to the same.

- C We, therefore, set aside the direction (iii) contained in last paragraph of the order passed by the Division Bench on 21.10.1991 and allow the appeal.

T.N.A.

Appeal allowed.