

Telangana Power Generation ... vs Andhra Pradesh Power Generation ... on 24 January, 2020

Bench: Ashok Bhushan, M.R. Shah

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS APPLICATION NO.60 OF 2020

in

CIVIL APPEAL NO.11435 OF 2018

TELANGANA POWER GENERATION
CORPORATION LTD.

APPELLANT(S)

VERSUS

ANDHRA PRADESH POWER GENERATION
CORPORATION LTD & ORS.

APPLICANT(S)/RESPONDENT(S)

WITH

MA 61/2020 in C.A. No.11436/2018
MA 62/2020 in C.A. No. 11437/2018
MA No(s).139-144/2020 in C.A. No(s).11453-11458/2018
MA 169-175/2020 in C.A. No. 11462-11468/2018
MA 177-178/2020 in C.A. No. 11462-11468/2018
MA 155-157/2020 in C.A. No. 11459-11461/2018
MA 145/2020 in C.A. No. 11453-11458/2018
MA 176/2020 in C.A. No. 11462-11468/2018
MA 179-185/2020 in C.A. No. 11462-11468/2018
MA 158-160/2020 in C.A. No. 11459-11461/2018
MA 161-163/2020 in C.A. No. 11459-11461/2018
MA 148-153/2020 in C.A. No. 11453-11458/2018
MA 146-147/2020 in C.A. No. 11453-11458/2018
MA 165-167/2020 in C.A. No. 11459-11461/2018
MA 154/2020 in C.A. No. 11453-11458/2018
MA 217-225/2020 in C.A. No.11444-11452/2018

O R D E R

Civil Appeal No.11435/2018 was finally decided by this Court by judgment dated 28.11.2018. This Court disposed of the appeal with the following directions:

"In these circumstances, learned counsel for all the parties agree that in order to find out a proper and final solution to the problem at hand, this Court can appoint a Committee which would determine the modalities for distributing the personnel i.e. the aforesaid 1157 employees. It is also agreed that one man Committee consisting Hon'ble Mr. Justice D.M. Dharmadhikari, former Judge of this Court be appointed. Accordingly, one man Committee consisting Hon'ble Mr. Justice D.M. Dharmadhikari, former Judge of this Court, is appointed. The Hon'ble Judge can take assistance of the representatives from both the States in this matter.

We may point out here that this Court had rendered a decision in a batch matter leading with Writ Petition (C) No. 85 of 2015 titled as "Telangana Judges Association vs. Union of India" reported in (2018) SCC Online SC 1729. Some of the observations made therein may be relevant for deciding the controversy of distribution of man power, particularly, those which pertained to exercising of option of the concerned employees and the Committee may keep that in mind while undertaking the exercise. We also request the Committee to make an endeavour to complete this 10 exercise within six months.

We make it clear that the decision of the one man Committee head by Justice Dharmadhikari shall be final and binding on all the parties including Power Utility Companies of the two States as well as the employees and shall be executed by all the parties as an order of this Court.

We may also clarify that in case dispute persists in respect of other employees of these Power Utility Companies of the two States, it would be open to the respective States/Power Utility Companies to bring the same before the said Committee. The High Court in the impugned judgment has already given a direction that till the division takes place the employees working in the Telangana State power utilities, who were relieved, must be allowed to work on par with other employees without any discrimination, in any aspect. It is also directed that increments and all other service benefits, such as Earned Leave Encashment, Leave Travel Concession etc., must be extended to these employees. Since they are allowed to work in Telangana State power utilities, it hardly needs to be clarified that they are entitled to all other service benefits as well including increments and their promotion etc. The power utility companies of both the States shall provide adequate facilities to Hon'ble Mr. Justice Dharmadhikari, former judge of this Court in the form of office accommodation, secretarial staff etc. The remuneration of Hon'ble Mr. Justice Dharmadhikari, former Judge of this Court is fixed at Rs. three 11 lakhs per sitting which shall be shared equally by the power utility companies of both the States. In addition, actual expenditure for travel, hotel accommodation etc. shall also be reimbursed by the power utility companies of both the States in equal proportion.

The appeals are disposed of in the aforesaid terms.

However, in case, any clarification or further direction is required by any of the parties they are entitled to approach this Court by filing interlocutory application in these proceedings."

In pursuance of the above judgment of this Court Hon'ble Mr. Justice D.M. Dharmadhikari, former Judge of this Court, took up the exercise as indicated in the judgment of this court. The power utility companies of both the reorganized States have participated and after several sittings along with the State representatives, final modalities for allocation of the personnel between the Andhra Pradesh and Telangana power utility companies in accordance with Section 82 of the Andhra Pradesh Reorganisation Act, 2014 were finalized, which are to the following effect:

"Final modalities for allocation of the personnel between the Andhra Pradesh and Telangana Power Utility Companies in accordance with section 82 of the Andhra Pradesh Reorganisation Act 2014.

(I) All identifiable allocable employees

I. All State Cadre Employees of the rank of Assistant Engineer and equivalent post and above.

II. All posts at the Head Quarters of APGENCO, APTRANSCO and DISCOMs falling within the territory of the two states are allocable.

(II) All identified allocable employees in Power Utilities of united Andhra Pradesh (including 1157 unilaterally relieved by Telangana + 229 unilaterally allowed to join by Telangana) will be considered for final allocation to the new States of Andhra Pradesh and Telangana on "as is where is basis" on the appointed day 02.06.2014 in accordance with the provisions of Sec 82 of the Act of 2014.

(III) The allocation of employees to the two new States would be power utility-wise (i.e. GENCO, TRANSCO and DISCOMs) in proportion to the posts sanctioned in each Power Utility and in accordance with G.O.Ms No.24 for DISCOMs and C.O.Ms No. 25 for GENCO and G.O.Ms No.26 for TRANSCO issued by Energy (CC department) of Government of Andhra Pradesh under Sec 53 of the Act of 2014.

(IV) The allocable employees will have liberty to give options in the prescribed form annexed to the present modalities. However the employees who have already exercised options, will not be allowed again to submit options for a different place or location in any of the two States. The opportunity of submitting option in the prescribed form would be available only to such employees who have not submitted their options earlier.

(V) The allocable employees would, as far as possible, after consideration of their options be adjusted in the State in which their Home District falls as per the information contained in their service records and obtained from them through the information available and provided by them in their written representations.

(VI) The provisional allocation list after preparation will be displayed on the Notice Board of the Head Quarters of each Power Utility and also put on the web-site and other electronic sites for information of the employees. The employees may make their written representations within three weeks from the date of the optics for proposed allocation.

(VII) Representations of employees in respect of the proposed allocation shall be duly considered by Two Member Sub Committee comprising one member each of the Power Utilities within the area of AP and TS. After considering the representations of the employees by the Sub Committee, the Proposed allocation List will be submitted to the One Man Committee.

(VIII) The employees of the category of SCs and STs shall, as far as possible, be allotted to the appropriate Company in the State in which the concerned SC or ST employee is notified as such in accordance with the Constitutional provisions.

(IX) Case of alleviation of extreme personal hardship of State Government employees will be exceptions to the principle. It would be open to the Committee to consider the representation or request of allocation on case to case basis.

(X) Widowed female employees legally separated and divorced women employees will considered for allocation to the State, basing on their request for allotment. It would be open to the Committee to consider the representation or request of allocation on case to case basis.

(XI) Handicapped persons of more than 60% disability may be allocated on the basis of option, subject to the procedure prescribed by the State Government. It would be open to the Committee to consider the representation or request of allocation on case to case basis.

(XII) An employee of whose spouse of child is known to be facing serious medical hardship, like in cases of cancer, open heart bypass and kidney transplant/kidney failure dependent on dialysis or mentally challenged, shall be considered for allotment on special grounds on the basis of request of allotment, subject to strict proof of verification as per the procedure prescribed by the State Government.

it would be open to the committee to consider the representation or request of allocation on case to case basis.

(XIII) In spouse cases, where the employee of the Spouse working in State Government, Central Government, State Government institutions, Local Bodies, the following guidelines may be adopted. It would be open to the Committee to consider the representation or request of allocation on case to case basis.

(I) Allocation of both spouses may be considered for the state to which both of them are native.

(II) In case where one of them is working in State Power Utilities and other is working in PSU/Defence Organizations/Railways/Banking and Insurance Sectors/Central Government/State Government, the said cases may be considered on case to case basis.

(III) Spouses who belong to different States (AP/TS) may be allocated together as per their request to one State.

(XIV) All the employees who have retired/died after the Appointed Day and the pensioners shall be allotted as per the above formulated modalities."

Thereafter, the Committee has submitted a final report on 26.12.2019. Deliberations took place in between before the submission of the final report. List of the employees has also been annexed with the final report giving the names.

Mr. Neeraj Kishan Kaul, learned senior counsel appearing for the applicant in I.A. Nos.11779/2020, 11752/2020, 11785/2020 contends that the applicant i.e. Transmission Corporation of Andhra Pradesh Limited, Andhra Pradesh Power General Corporation Limited and Southern Power Distribution Company of A.P. Limited, are fully in agreement with the final modalities finalized by the Committee on 17.04.2019. They have no grievance with regard to those modalities. The submission of Mr. Kaul, learned senior counsel, is that the said modality has not been correctly implemented and the list annexed with the report is not in accordance with the modalities. He submits that the Committee itself noticed that there is a variance in the list submitted by two States utilities and those variance were noticed but in the final report there is no reflection as to how those variance have been resolved.

Learned counsel appearing for the appellant has opposed all the interlocutory applications and submits that the judgment of this Court passed in civil appeal is final, which is categorically laid down that the report of one man committee headed by Hon'ble Mr. Justice D.M. Dharmadhikari shall be executed by all the parties as an order of this Court.

Mr. Kaul, learned senior counsel, submitted that in view of the fact that this Court has granted liberty to file a clarification or for further direction by the parties, these I.As have been filed. He submitted that judgment of this Court has clearly noticed that one man committee report was to finalize the modalities. He submitted that there are several other errors in the final allocation with regard to which details have been given in the miscellaneous applications. We have considered the submissions of learned counsel for the parties and perused the record. This Court by the final judgment having entrusted the work of allocation to one man committee, as agreed by parties, the

modalities finalized by one man committee is binding on all, to which, there is no dissension between the parties. There being no dispute regarding modalities, in event, there is some error or mistake in the working of the modalities that can be pointed out to the same committee by means of a representation and we hope and trust that the committee shall look into the said grievance and correct the error, if any. We also make it clear that if the representation is submitted by the applicant, copy of the same shall be given to the power utilities of both the States, who may also have liberty to submit a response to those representation, which may be considered by the one man committee. The representation be submitted within two weeks and response thereto be also submitted within two weeks thereafter. In view of the issues, which have been raised and difficulties which are being faced by the employees, we request the Committee to expeditiously take up the call and take appropriate decision. It has also been pointed out before us that several employees have been relieved from the State of Telangana and they have not been permitted to join at Andhra Pradesh. The Committee shall also take into consideration the same and issue appropriate directions.

All the miscellaneous applications are disposed of along with connected interlocutory applications.

.....J. (ASHOK BHUSHAN)J. (M.R. SHAH) New Delhi;

January 24, 2020

ITEM NO.22+24+50

COURT NO.8

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Miscellaneous Application No.60/2020 in C.A. No(s).11435/2018 (Arising out of impugned final judgment and order dated 28-11-2018 in C.A. No.11435/2018 passed by the Supreme Court Of India) TELANGANA POWER GENERATION CORPORATION LTD (TSGENCO)Petitioner(s) VERSUS ANDHRA PRADESH POWER GENERATION CORPORATION LTD Respondent(s) (FOR ADMISSION and IA No.1115/2020-APPROPRIATE ORDERS/DIRECTIONS) WITH MA 61/2020 in C.A. No.11436/2018 (XII-A) (FOR ADMISSION and IA No.1105/2020-STAY APPLICATION and IA No.1026/2020-APPROPRIATE ORDERS/DIRECTIONS) MA 62/2020 in C.A. No. 11437/2018 (XII-A) (FOR ADMISSION and IA No.1126/2020-APPROPRIATE ORDERS/DIRECTIONS) MA No(s).139-144/2020 in C.A. No(s).11453-11458/2018 (FOR ADMISSION and IA No.2953/2020-CLARIFICATION/DIRECTION) MA 169-175/2020 in C.A. No. 11462-11468/2018 (XII-A) (FOR ADMISSION and IA No.2232/2020-CLARIFICATION/DIRECTION) MA 177-178/2020 in C.A. No. 11462-11468/2018 (XII-A) (FOR ADMISSION and IA No.2257/2020-CLARIFICATION/DIRECTION) MA 155-157/2020 in C.A. No. 11459-11461/2018 (XII-A) (FOR ADMISSION and IA No.2926/2020-CLARIFICATION/DIRECTION and IA No.2936/2020-CLARIFICATION/DIRECTION) MA 145/2020 in C.A. No. 11453-11458/2018

(XII-A) (FOR ADMISSION and IA No.4024/2020-INTERVENTION/IMPLEADMENT and IA No.8542/2020-CLARIFICATION/DIRECTION and IA No.4023/2020- APPLICATION FOR PERMISSION) MA 176/2020 in C.A. No. 11462-11468/2018 (XII-A) (FOR ADMISSION and IA No. 4048 / 2020 - I N T E R V E N T I O N / I M P L E A D M E N T a n d I A No.8525/2020-CLARIFICATION/DIRECTION and IA No.4047/2020- APPLICATION FOR PERMISSION) MA 179-185/2020 in C.A. No. 11462-11468/2018 (XII-A) (FOR ADMISSION and IA No.6890/2020-CLARIFICATION/DIRECTION) MA 158-160/2020 in C.A. No. 11459-11461/2018 (XII-A) (FOR ADMISSION and IA No.6994/2020-INTERVENTION/IMPLEADMENT and IA No.7019/2020-CLARIFICATION/DIRECTION and IA No.6991/2020- APPLICATION FOR PERMISSION) MA 161-163/2020 in C.A. No. 11459-11461/2018 (XII-A) (FOR ADMISSION and IA No.7902/2020-APPROPRIATE ORDERS/DIRECTIONS) MA 148-153/2020 in C.A. No. 11453 - 11458 / 2018 (X I I - A) (F O R A D M I S S I O N a n d I A No.7914/2020-CLARIFICATION/DIRECTION) MA 146-147/2020 in C.A. No. 11453-11458/2018 (XII-A) (FOR ADMISSION and IA No.7925/2020-CLARIFICATION/DIRECTION) MA 165-167/2020 in C.A. No. 11459-11461/2018 (XII-A) (FOR ADMISSION and IA No.8536/2020-CLARIFICATION/DIRECTION) MA 154/2020 in C.A. No. 11453-11458/2018 (XII-A) (FOR ADMISSION and IA No.8565/2020-INTERVENTION/IMPLEADMENT and IA No.9063/2020-CLARIFICATION/DIRECTION and IA No.8564/2020- APPLICATION FOR PERMISSION) MA 217-225/2020 in C.A. No.11444-11452/2018 (XII-A) (FOR ADMISSION and IA No.10911/2020-CLARIFICATION/DIRECTION) Date : 24-01-2020 These petitions were called on for hearing today. CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN HON'BLE MR. JUSTICE M.R. SHAH
Counsel for the parties:

Mr. Vikramjit Banerjee, ASG Mr. R. Balasubramanian, Sr. Adv. Mr. Nachiketa Joshi,
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Mr. Venkateswara Rao Anumolu, Adv. Mr. Ravi Shankar Jandhiyala, Adv. Mr.
Chandra Mohan Aniselly, Adv.

Mr. Vikas Singh, Sr. Adv. Mr. Vimlesh Kumar Shukla, Sr. Adv. Mr. B.H. Marlapalle,
Sr. Adv. Mr. Jayant Bhushan, Sr. Adv. Mr. Kumar Neeraj, Adv.

Mr. V. Sridhar Reddy, Adv. Mr. Abhijit Sengupta, Adv.

Mr. Neeraj Kishan Kaul, Sr. Adv. Mr. B. Adinarayana Rao, Sr. Adv. Mr. Rakesh K.
Sharma, AOR Mr. P. Siva Rao, Adv.

Mr. P.S. Patwalia, Sr. Adv. Mr. V. Giri, Sr. Adv.

Mr. Jaideep Gupta, Sr. Adv. Mr. C.U. Singh, Sr. Adv. Mr. Ranjit Kumar, Sr. Adv. Mr.
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Ms. Bhawana Das, Adv.

Mr. Mahabir Singh, Sr. Adv. Mr. Sravan Kumar, Adv.

Mr. Ramaswami Balaji, Adv. Mr. Hitendra Nath Rath, AOR Mr. Pulkit Tare, AOR Mr. Aditya Shekhar, Adv. Mr. Sandeepan Pathak, Adv.

Mr. P. Venkat Reddy, Adv. Mr. Prashant Tyagi, Adv. Mr. P. Srinivas Reddy, Adv.

UPON hearing the counsel the Court made the following O R D E R The miscellaneous applications are disposed of along with connected interlocutory applications in terms of the signed order.

(ARJUN BISHT)
COURT MASTER (SH)

(RENU KAPOOR)
BRANCH OFFICER

(signed order is placed on the file)