

TRILOCHAN LENKA AND ORS.
STATE OF ORISSA AND ANR.

A

v.

MANDI MOHAN SETHI AND ANR.
DR. BISWA KALYANA PATTNAIK AND ORS.

B

APRIL 26, 1995

[R.M. SAHAI AND B.L. HANSARIA, JJ.]

Constitution of India, 1950 : Article 12.

C

Orissa State Electricity Board—Whether State as defined in Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975—Held : No.

Service Law :

D

Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975.

Orissa State Electricity Board—Appointments to posts reserved for Scheduled Castes/Tribes—Board already implementing the Act—No legal right on the employees before a formal decision was taken—However employees shall continue to enjoy benefits given even prior to the decision—Their services would not be adversely affected.

E

The respondents, who are members of the Scheduled Castes, filed a petition before the High Court that benefit of the provisions of the Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 be given to them by the Orissa State Electricity Board prior to 15.3.82.

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The petition was allowed by the High Court. Aggrieved by the High Court's judgment, the appellants preferred the present appeals.

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On behalf of the respondents it was contended that the Act *ipso facto* applied to the services under the Board in as much as the Board is a "State" within the meaning of Article 12 of the Constitution; that the Act as enacted had applied to all appointments to the posts and services under the State; that the letter dated 29.5.76 issued by the Government to act in accordance

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A with the provisions of the Act has to be taken as a direction issued by it
under section 78-A of the Electricity (Supply) Act; that the letter of the
Deputy Secretary of the Board dated 3.7.96 required all concerned to act
in accordance with the provisions of the Act; and that long before the
B adoption of the resolution, the Board has started acting in accordance with
the provisions of the Act as is evident from the appointments made on 31st
August, 1978 and 19th September, 1979 against posts/vacancies reserved
for Scheduled Castes and Scheduled Tribes candidates.

On behalf of the appellants it was contended that the letter dated
3.7.76 had not been issued by the Deputy Secretary pursuant to any
C resolution of the Board, which really came to be adopted in its 266th
meeting held on 15.3.82.

Allowing the appeals, this court

HELD : 1. The word "State" was defined in the Orissa Reservation
D of Vacancies in Posts and Services (for Scheduled Castes and Scheduled
Tribes) Act, 1975, when enacted, to include the Government and the
Legislature of the State of Orissa. The word "State" as used in the Act has
to be understood in the sense the legislature wanted this word to be
understood. The Orissa State Electricity Board would not come within the
E purview of the definition in the general word "State". The Act as enacted
did not apply, by its own force, to the employees of the Board. [800-C-F]

2. The letter of the Government dated 29.5.76 was not addressed to the
Board nor is there any direction to the Board to implement the provisions
of the Act. This letter itself did not make the provisions of the Act applicable
F to appointments to the posts and services under the Board. [801-C]

3. The letter of the Deputy Secretary of the Board dated 3.7.76 and
the fact that appointments had been made on 31st August, 1978 and 19th
September, 1979 against posts/vacancies reserved for Scheduled Castes
and Scheduled Tribes candidates do show that the Board had started
G acting in accordance with the provisions of the Act. However, these facts
fell short of the provisions of the Act having become a condition of the
employees of the Board. For this a formal decision of the Board was
required which was taken on 15.3.82. Before that date the employees were
not clothed with any legal right to demand observance of the provisions of
H the Act. [802-A, D-E]

4. It is made clear that if any of the Scheduled Castes/Scheduled Tribes employees of the Board had been given the benefit of the provisions of the Act even before the decision of the Board dated 15.3.82, their services would not in any way be adversely affected and they would continue to enjoy the benefits conferred on them. [802-F] A

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1847 and 1848 of 1989. B

From the Judgment and Order dated 30.7.87 of the Orissa High Court in O.J.C. No. 1745 of 1979.

A.K. Panda for the Appellants. C

R.K. Mehta and Venkataramani for the State of Orissa.

A.K. Panda for the Respondent in C.A.No. 1848/89

The Judgment of the Court was delivered by D

HANSARIA, J. The two appeals require decision of one common question, namely, whether the Orissa State Electricity Board, hereinafter 'the Board, was required to comply with the requirements of the Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975, for short 'the Act', before the Board had resolved to implement the provisions of the Act in its meeting held on 15.3.82. This date is material because it is prior to this date that benefit of the Act was sought for and allowed by the Orissa High Court on being approached by two members of the Scheduled Castes who are respondent No. 1 in both the appeals, which have been filed by the affected service holders of general category and the State. E F

2. The case of the Scheduled Castes service-holders before the High Court was that the provisions of the Act applied by virtue of a direction given by the State Government, as empowered by section 78-A of the Electricity (Supply) Act more so, because the Board itself had required all concerned to act in accordance with the provisions of the Act by letter dated 3.7.76 issued by its Deputy Secretary, on receipt of copy of Government letter dated 25.9.76. The High court accepted the contention and directed the Board to act in accordance with the provisions of the reservation provided in the Act. G H

A 3. Shri Venkataramani, appearing for the aforesaid respondents, has
butressed the stand taken by the respondents by submitting that *de hors*
the aforesaid circular and letter, the Act *ipso facto* applied to the services
under the Board inasmuch as the Board is a "State" within the meaning of
B Article 12 of the Constitution; and the Act, even as enacted, had applied
to all appointments to the posts and services under the State.

4. Let the aforesaid submission be first examined. The word "State"
was defined in the Act, when enacted, to include the Government and the
Legislature of the State of Orissa. Orissa Act 9 of 1982, which came into
C force with effect from 1.6.82, enlarged the definition to include all local or
other authorities within the State or under the control of the State Govern-
ment. The word "State" as used in the Act has to be understood in the sense
the legislature wanted this word to be understood. But Shri Venkataramani
strenuously urges that the Board being "State" within the meaning of Article
D 12, the definition of this word in the Act as enacted would not alter the
constitutional position, especially when the definition is inclusive in nature.
We have considered the matter with all seriousness it deserves, because of
the benefit which would accrue, on agreeing with Shri Venkataramani, to
the weaker sections of the society. Despite such approach to the question,
we find ourselves unable to concede to the submission of the learned
E counsel because when the legislature, while defining the word "State",
mentioned initially even about the Government in the inclusive part. So, it
cannot be accepted that the Board would come within the purview of the
definition in the general word "State". For this reason, we do not further
agree with Shri Venkataramani that the amendment of 1982 was only
F clarificatory in nature. According to us, but for the amendment, an entity
like Board would not have been a part of "State". So, we hold that the Act
as enacted did not apply, by its own force, to the employees of the Board.

5. It is really the second contention which had prevailed with the
High Court, which is that the Act even before this amendment in 1982 had
G become operative qua the employees of the Board, because of the
aforesaid letter of the Deputy Secretary of the Board issued on 3.7.76,
which, as already noted, had come to be issued after the letter of the
Government dated 29.5.76.

6. Shri Venkataramani has urged that the letter of Government itself
H has to be taken as a direction issued by it in exercise of powers under

section 78-A of the Electricity (Supply) Act, which provision requires the Board to be guided by such directions on question of policy as may be given to it by the State Government. Question is whether the letter in question was a direction to the Board to implement the provisions of the Act. A perusal of the letter shows it emanated from the Secretary of the Government of Orissa, Tribal and Rural Welfare Department, and was addressed to all the Secretaries to the Government/Heads of the Departments/Collectors. Neither the letter was addressed to the Board nor is there anything to show that any of the functionaries to which the letter was addressed was required to issue any direction to the Board to implement the provisions of the Act. We, therefore, do not agree with Shri Venkataramani that this letter itself made the provisions of the Act applicable to appointments to the posts and services under the Board. May it be mentioned here that while issuing notice in the SLP connected with C.A.No. 1847 of 1989, the State Government was directed to file affidavit explaining the legal position regarding reservation of posts for Scheduled Castes and Scheduled Tribes in the Board and other bodies functioning under the control of the Government. The affidavit states in paragraph 4 that prior to the amendment of 1982, the provisions of the Act could not be made applicable to the employees of the Board and other Government undertakings and corporations. So, the second contention too of Shri Venkataramani has no force.

7. There is, however, plausibility in the third argument, as the letter of the Deputy Secretary of the Board dated 3.7.76 required all concerned to act in accordance with the provisions of the Act; and it is indeed this letter which is the basis of the High Court's judgment. The stand of the Board qua this letter is that it had not been issued by the Deputy Secretary pursuant to any resolution of the Board, which really came to be adopted in its 266th meeting held on 15.3.82, as would appear from the Office Order of the Board dated 29.3.82.

8. Shri Venkataramani submits that long before the adoption of the aforesaid resolution, the Board had started acting in accordance with the provisions of the Act, as would appear from the letter of the Secretary of the Board dated 7th March, 1979, which is Annexure VII to the counter-affidavit of respondent No. 1 filed in CA No. 1847/89. By that letter, the Secretary had asked the Superintendent Engineer, Electrical Circle, Cuttack, that while filling up the posts in question the principle of reservation

A of posts for Scheduled Castes/Scheduled Tribes candidates have to be kept in view. Annexure VIII series shows that even appointments had been made on 31st August, 1978 and 19th September, 1979 against posts/vacancies reserved for Scheduled Castes and Scheduled Tribes candidates. Our attention is also invited to Annexure VI, which is a letter of the Deputy Secretary of the Board written on 22.12.1977 to the Under Secretary, Government of Orissa, on the subject of violation of the provisions of the Act. The letter was in reply to certain query by the Government and it stated that no Scheduled Castes and Scheduled Tribe candidate was available within the zone of consideration for promotion when the Board gave promotion in the month of July, 1976.

C 9. The aforesaid does show that the Board had started acting in accordance with the provisions of the Act. Question is whether this course of action can be said to have conferred a right on the members of the Scheduled Castes/Scheduled Tribes, so much so, as to get it enforced through a court of law. As to this, we would observe that the fact that the provisions of the Act were acted upon by the Board fell short of the provisions of the Act having become a condition of services of the employees of the Board. For this, according to us, a formal decision of the Board was required, which, as already noted, was taken in the meeting held on 15.3.82. Before that date the employees were not clothed with any legal right to demand observance of the provisions of the Act.

D 10. This being the position, we are constrained to hold that the impugned judgments of the High Court are not sustainable and the same are, therefore, set aside. It is, however, made clear that if any of the Scheduled Castes/Scheduled Tribes employee of the Board had been given the benefit of the provisions of the Act even before the decision of the Board dated 15.3.82, their services would not be in any way adversely affected because of this judgment of ours and they would continue to enjoy the benefits conferred on them.

F 11. The appeals are allowed accordingly. The parties would bear their own costs throughout.

V.S.S.

Appeals Allowed.