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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Decided on: 01.07.2025***+ **W.P.(C) 9491/2005****B.S.E.S. RAJDHANI POWER LTD.**

.....Petitioner

Through: Mr. Amit Kapur, Mr. Anupam Varma, Mr. Nikhil Sharma, Ms. Simran Kohli and Mr. Krishan Singh Rana, Advocates.

versus

**GOVT. OF N.C.T. OF DELHI & ANR**

.....Respondents

Through: Mr. Udit Malik ASC with Ms. Rima Rao and Ms. Palak Sharma, Advocates for GNCTD.  
Mr. Abhinav Sharma, Ms. Avsi Malik, Ms. Aakriti Jain, Advocates.  
Mr. Ashish Kumar and Mr. Anubhav Deep Singh, Advocates for R-2.

**CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****JUDGMENT**

1. By way of this petition under Article 226 of the Constitution, the petitioner assails an order of the Government of National Capital Territory of Delhi ["GNCTD"] dated 21.05.2004, as being violative of a Transfer Scheme, by which the undertaking and assets of the Delhi Vidyut Board ["DVB"] were transferred to its successor entities.

**A. FACTUAL BACKGROUND:**

2. Prior to enactment of the Delhi Electricity Reforms Act, 2000 ["the



2000 Act”], DVB was responsible for supply of electricity in the National Capital Territory of Delhi. By virtue of the 2000 Act, enacted with effect from 03.11.2000 by GNCTD, DVB was unbundled into various successor companies on 06.01.2001 for generation, transmission and distribution of electricity. The undertaking and assets of DVB were to vest in the successor undertakings by way of the Delhi Electricity Reform (Transfer Scheme) Rules, 2001 [“Transfer Scheme Rules”], under Sections 14 and 15 of the 2000 Act. The distribution undertaking of DVB was to be unbundled into three distribution companies [“DISCOMs”]. 51% of the shareholding and control of each DISCOM was to be sold by inviting bids.

3. On 15.02.2001, GNCTD issued a Request for Qualification [“RFQ”], inviting bidders to participate in the reforms relating to transmission and distribution of electricity. Qualified bidders were then issued Requests for Proposals [“RFP”] on 22.11.2001. Alongwith the RFQ and RFP, various financial projections were also published by GNCTD. These included the Opening Balance Sheets of the successor entities, so as to provide valuation of the assets and liabilities.

4. An order was issued by GNCTD on 13.11.2001 [“the Allocation Order”], by which the classification and allocation of the residential colonies and sub-station flats of DVB was made to the successor entities. The said order, to the extent that it is relevant for the purpose of the present litigation, reads as follows:

*“In consultation with Delhi Vidyut Board, the Government of NCT of Delhi has decided the classification and allocation of the residential colonies and sub-station flats of the Delhi Vidyut Board along with the existing amenities to the successor entities (of Delhi Vidyut Board) as under:-*



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**IV) South-West Delhi Electricity Distribution Co. Ltd. (DISCOM-II)**

S.No	Name of Colony	Type of quarter	No. of quarters
1.	Ridge Vally, N. Delhi - 10	I – II	12
2.	Andhiria Bagh, N. Delhi -30	I – II	10
3.	R.K. Puram, N. Delhi -22	II	4
4.	Pankha Road, N. Delhi - 58	I – IV	904
5.	Okhla, N.Delhi-20	I – IV	18
6.	<b><u>S/Stn. Flats, N. Delhi</u></b>	<b><u>I – VII</u></b>	<b><u>107</u></b>
	Total		1055

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**2. The above allocation will be subject to the following:**

- a) No part of the land shall form part of the asets [sic] transferred under this allocation. The Transferee shall be entitled to use such land as a licensee subject to the provisions of the Delhi Electricity Reform (Transfer Scheme) Rules, 2001 to be notified by the Government of NCT of Delhi.
- b) **No existing employee will be asked by the Transferee Company to vacate the flat occupied by him/her till his/her retirement or quitting the services of the company or ceasing to be entitled under the existing allotment to him/her of the said flat.**
- c) For the residential accommodation allocated to a Transferee Company, but occupied by employees of other companies, a license fee (as decided by the Government of NCT of Delhi) shall be paid by the other companies concerned to the Transferee Co. Similarly, damage charges/other arrears payable on account of revised license fee etc. will be recovered by the Transferee Company from the other companies whose employees are in occupation of such accommodation in its jurisdiction.
- d) **In the event of a flat falling vacant, Transferee Company may allot it to its own employees.** The Transferee Company will be responsible for eviction in case of un-authorized occupation. Maintenance of the colonies/residential quarters will be the responsibility of the Transferee Company.



e) *Any residential colony or sub-station flat or quarter or any other asset not related or used in generation, transmission and distribution of electricity and not elsewhere specified will stand allocated to the Delhi Power Supply Co. Ltd. (TRANSCO).*<sup>1</sup>

5. A draft Transfer Scheme was notified by GNCTD on 20.11.2001. The assets to be transferred to DISCOM-II were defined in Rule 2(b), to include the Distribution Undertaking related to South and West Delhi, as set out in Schedule-E to the Transfer Scheme Rules. Schedule-E included, under the heading “*Other Assets*”, a reference to the residential colonies and properties like shops, etc., situated in the colonies mentioned in the aforesaid Allocation Order. It was provided that such property “*shall also from [sic] the part of Distribution Undertaking*”. A provision for modification of the said Transfer Scheme was contained in Rule 9(2).

6. Bids were submitted by qualified bidders, including BSES Limited, on 14.05.2002. BSES Limited, the petitioner herein, was the successful bidder in respect of DISCOM-II for a consideration of Rs. 234.60 Crores. The bid of BSES Limited was accepted by GNCTD on 29.05.2002, and a Share Acquisition Agreement was signed on 31.05.2002, followed by a Shareholders Agreement dated 27.06.2002. The petitioner – Company is admittedly the successor entity of DISCOM – II.

7. On 26.06.2002, GNCTD issued a notification designating 01.07.2002 as the date on which the Transfer Scheme Rules would come into force. Under the Transfer Scheme Rules, the undertakings set out in Schedule-E stood transferred and vested to the petitioner with effect from 01.07.2002, subject to the terms and conditions specified therein.

8. The controversy in this case concerns one property, being House

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<sup>1</sup> Emphasis supplied.



No.C-52 A, Friends Colony (East), New Delhi-110065 [“the subject property”], which was admittedly included in the properties to be transferred to DISCOM – II under the Allocation Order. It was the only accommodation classified as Type-VII, among the 107 substation flats referred to in the Table extracted in paragraph 4 hereinabove.

9. The subject property was occupied by the Chairman of the erstwhile DVB, who superannuated in February 2004. In terms of Clause 2(b) of the Allocation Order, the petitioner had not sought possession of the property until the occupant remained in possession.

10. However, the petitioner’s grievance is that, instead of transferring the property to the petitioner upon its vacation, GNCTD issued the impugned order dated 21.05.2004 [“the impugned order”] which reads as follows:

*“Whereas the Government of National Capital Territory of Delhi is satisfied that House No.C-52 A, Friends Colony (East), New Delhi - 110 065, having always been in possession of the erstwhile DESU/DVB/DTL and never utilized for generation, transmission or distribution, stands allocated to Delhi Transco Limited, a Government Company, in terms of Part -2 (e) this Government’s order No.F.11(99)/2001/Power/PF-III/2828 dated the 13<sup>th</sup> November, 2001.*

*Now, therefore, the Government of National Capital Territory of Delhi, hereby, makes the following amendments in this Government’s Order No.F.11(99)/2001/Power/PF-III/2828 dated the 13<sup>th</sup> November, 2001, namely:-*

AMENDMENTS

*In this Government’s Order NO. F.11(99)/2001/Power/PF-III/2828 dated the 13<sup>th</sup> November, 2001, in part I; in section IV with the heading “IV) South West Electricity Distribution Co. Ltd. (DISCOM-II)”, for the entries against serial number 6 of the Table and the entry against the word “Total” of the said Table, the following shall be substituted, namely:-*

S.No.	Name of Colony	Type of Quarter	No. of Quarters
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<u>6.</u>	<u>S/Stn. Flats, New</u> <u>Delhi</u>	<u>I-VI</u>	<u>106</u>
	Total		1054'' <sup>2</sup>

11. The effect of the impugned order was to remove the subject property [being the only Type VII sub-station flat allocated to DISCOM-II], from the list of assets allocated to the petitioner, and to allot it to respondent No. 2 – Delhi Transco Limited instead.

**B. RELEVANT PROVISIONS OF THE 2000 ACT AND THE TRANSFER SCHEME RULES.**

12. The following statutory provisions are relevant for adjudication of the present dispute:

**I. The Delhi Electricity Reforms Act, 2000 :**

***“14. Incorporation of companies for the purpose of generation, transmission or distribution of electricity.***

*(1) The government may, as soon as may be after the commencement of this Act, cause one or more companies to be incorporated and set up under the provisions of the Companies Act, 1956 for the purpose of generation, transmission or distribution of electricity, including companies engaged in more than one of the said activities, in the National Capital Territory of Delhi and may transfer the existing generating stations or the transmission system or distribution system, or any part of the transmission system or distribution system, to such company or companies.*

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*(6) The Government may convert the companies set up under this Act to joint venture companies through a process of disinvestment, in accordance with the transfer scheme prepared under the provisions of this Act.*

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***15. Reorganisation of Delhi Vidyut Board and transfer of properties,***

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<sup>2</sup> Emphasis supplied.



*functions and duties thereof.*

- (1) *With effect from the date on which a transfer scheme prepared by the Government to give effect to the objects and purposes of this Act, is published or such further date as may be specified by the Government (hereinafter referred to as “the effective date”), any property, interest in property, rights and, liabilities which immediately before the effective date belonged to the Board shall vest in the Government.*
- (2) *The Government may transfer such property, interest in property, rights and liabilities to any company or companies established under section 14 for the purpose in accordance with the transfer scheme prepared therefore.*

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- (4) Notwithstanding anything contained in this section or any other Act, where -
- (a) the transfer scheme involves the transfer of any property or rights to any person or undertaking not wholly owned by the Government, the scheme shall give effect to the transfer only after asset valuation; and
- (b) where any transaction of any description is effected in pursuance of a transfer scheme, it shall be binding on all persons including third parties, even if such persons have not consented to it.

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- (6) A transfer scheme may -
- (a) provide for the formation of subsidiaries, joint venture companies or other schemes of division, amalgamation, merger, reconstruction or arrangements;
- (b) define the property, interest in property, rights and liabilities to be allocated-
- by specifying or describing the property, rights and liabilities in question,
  - by referring to all the property, interest in property, rights and liabilities comprised in a specified part of the transferors under-taking, or
  - partly in the one way and partly in the other :

*Provided that the property, interest in property, rights and liabilities shall be subject to such further transfer as the Government may specify;*

- (c) *provide that any rights or liabilities specified or described in the scheme shall be enforceable by or against the transferor or the*



transferee;

- (d) impose on any licensee an obligation to enter into such written agreements with, or execute such other instruments in favour of any other subsequent licensee as may be specified in the scheme;
- (e) make such supplemental, incidental and consequential provisions as the transferor licensee considers appropriate including provision specifying the order in which any transfer or transaction is to be regarded as taking effect;
- (f) provide that the transfer shall be provisional subject to the provisions of section 18.

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- (9) The Board shall cease to exist with the transfer of functions and duties specified and with the transfer of assets as on the effective date.

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#### 18. Variation of transfers by agreement.

- (1) The Government may provide that the transfers in terms of sections 15 and 16<sup>3</sup> shall be provisional for a period of twelve months from the effective date unless confirmed earlier and reserve the right to alter, vary, modify, add or otherwise change the terms in such manner as the Government may consider appropriate.
- (2) At any time before the end of the period of twelve months commencing on the effective date, a company or companies established as the case may be, under section 14 or generating company or distribution company or companies, as the case may be, to whom property, interest in property, rights, liabilities and personnel have been transferred, may, with the consent of the Government draw up a transfer scheme to vest some or all the property, rights, liabilities and personnel in another licensee, or generating company subject to the consent of such other licensee or generating company to such vesting and any such transfer scheme shall take effect as if it were a transfer scheme under section 15.”<sup>4</sup>

## II. Delhi Electricity Reform (Transfer Scheme) Rules, 2001

### “2. Definitions:

- (b) “assets” includes all rights, interests and claims of whatever nature

<sup>3</sup> Section 16, entitled “Provisions relating to personnel”, provides *inter alia* for transfer of personnel to successor companies.

<sup>4</sup> Emphasis supplied.



**as well as block or blocks of assets of the Delhi Vidyut Board;**

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(d) "date of the transfer" means the date [sic] to be notified by the Government as the effective date of transfer to the successor entities in accordance with these rules of such of the undertakings, assets, liabilities, proceedings or personnel as may be specified in the notification published in the Official Gazette;

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(f) "DISCOM 2" means "South-West Delhi Electricity Distribution Company Limited", a company incorporated under the Companies Act, 1956 (1 of 1956) with the principal object of engaging in the business of distribution and supply of electricity in the area as specified in Part II of Schedule 'H'; of South and west Delhi Electricity Distribution Co. Ltd.

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**3. Transfer of assets etc. of the Board to the Government**

- (1) **On and from the date of the transfer to be notified for the purpose, all the assets, liabilities and proceedings of the Board shall stand transferred to and vest in, the Government absolutely** and in consideration thereof the loans, subventions and obligations of the Government shall stand extinguished and cancelled, which shall be in full and final settlement of all claims whatsoever of the Board.
- (2) Nothing in sub-rule (1) shall apply to rights, responsibilities, and obligations in respect of the personnel and personnel related matters, which have been dealt in the manner provided under rule 6.

**4. Classification of undertakings**

- (1) The assets, liabilities and proceedings transferred to the Government under sub-rule (1) of rules 3 shall stand classified as under :-

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(e) Distribution Undertaking as set out in Schedules 'E'.

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**5. Transfer of Undertaking by the Government**

- (1) **Subject to the terms and conditions contained in these rules:-**

- (a) the rights and interests in the Pragati Power forming part of Schedule 'A', shall stand transferred to, and vest in, the PPCL, on and from the date of the transfer appointed for the purpose;
- (b) the undertaking forming part of the Generation Undertaking as set



- out in Schedule 'B', shall stand transferred to, and vest in, the GENCO, on and from the date of the transfer appointed for this purpose;
- (c) the undertaking forming part of the Transmission Undertaking, as set out in Schedule 'C' shall stand transferred to, and vest in, the TRANSCO on and from the date of the transfer appointed for the purpose
- (d) the undertaking forming part of Distribution undertaking as set out in Schedule 'D' shall stand transferred to and vest in DISCOM 4, as and from the date & transfer appointed for the purpose
- (e) **the undertaking forming part of Distribution Undertaking as set out in Schedule 'E', shall stand transferred to, and vest in, DISCOM 2, on and from the date of the transfer appointed for the purpose;**
- (f) the undertaking forming part of the Distribution Undertaking, as set out in Schedule 'F', shall stand transferred to, and vest in, the DISCOM 3, on and from the date of the transfer appointed for the purpose; and
- (g) the assets and liabilities as set out in Schedule 'G', shall vest in the holding company, on and from the date of the transfer appointed for the purpose.
- (2) On such transfer and vesting of the undertakings in terms of sub-rules (1), the respective transferee shall be responsible for all contracts, rights, deeds, schemes, bonds, agreements and other instruments of whatever nature, relating to the respective undertaking and assets and liabilities transferred to it, to which the Board was a party, subsisting or having effect on the date of the transfer, in the same manner as the Board was liable immediately before the date of the transfer, and the same manner as the Board was liable immediately before the date of the transfer, and the same shall be in force and effect against or in favour of the respective transferee and may be enforced effectively as if the respective transferee had been a party thereto instead of the Board.
- (3) **The rights in the undertaking or the assets transferred to the transferee shall be subject to the restrictions and limitations, specified in these rules or in the applicable Schedule.**
- (4) **The transfer and vesting of the undertakings or assets to the transferees in terms of these rules shall take effects immediately on the date transfer as notified for the purpose, with the opening balance sheet of transferees other than the holding company, as set out in the applicable Schedule.**
- (5) In consideration of the undertakings vested in the PPCL, GENCO, TRANSCO, and DISCOMS, they shall issue shares and instruments in favour of the holding company as specified in Schedules 'A' to



*'F' and the holding company shall issue shares and instruments in favour of the Government as specified in Schedule 'G'.*

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**9. Classifications and transfer of property, rights, liabilities and proceedings**

- (1) The classification and transfer of undertakings including personnel under these rules, unless otherwise specified in any order made by the Government, shall be provisional and shall be final upon the expiry of three months from the date of the transfer.**
- (2) At any time within a period of three months from the date of the transfer, the Government may, by order to be notified, amend, vary, modify, add, delete or otherwise change terms and conditions of the transfer including the items included in the transfer and transfer such properties, interests, rights, liabilities, personnel and proceedings and forming part of one transferee to that of any other transferee or to the Government in such manner and on such terms and conditions as the Government may consider appropriate.**

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**11. Transfer by operation of law.**

**The Transfers under these rules shall operate and be effective on the date of transfer notified for the purpose as a statutory transfer and without any further act, deed or thing to be done by the Government, the transferees or any other person.**

**12. Decision of Government final**

- (1) If any doubt, dispute, difference or issue shall arise in regard to the transfers under these rules, subject to the provisions of the Act, the decision of the Government thereon, shall be final and binding on all parties.**
- (2) The Government may, be order published in the official Gazette, make such provisions, not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulties arising in implementing the transfers under these rules.**

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**SCHEDULE – 'E':**



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*Unless otherwise specified by the Government the Transmission Undertakings shall comprise of all the assets, liabilities and proceedings concerning Distribution consisting of:*

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### **3. OTHER ASSETS :**

**Other assets and movable properties including plant and machinery, motor car, jeeps, trucks, cranes, trailers, other vehicles, furniture, fixtures, air conditioners, computers, etc. to the extent they are utilized and operated by or associated with the assets referred to under Items I and II above, along with the residential colonies and properties like shops etc. situated in the colonies as per the order No.F.11/99/2001 - Power/PF-III/2828 dated 13th November, 2001 of the government shall also from the part of Distribution Undertaking.**<sup>5</sup>

### **C. SUBMISSIONS OF COUNSEL:**

13. Mr. Amit Kapur, learned counsel for the petitioner, submitted that Rule 9(2) of the Transfer Scheme Rules provided that the transfer would be provisional, but would attain finality upon the expiry of three months from the date of the transfer. The power of GNCTD to amend, vary, modify, add, delete or change the terms and conditions of transfer, including with regard to the items included in the transfer, was restricted to this three-month window.

14. In the present case, Mr. Kapur pointed out that the transfer to the petitioner was effected *via* notification dated 26.06.2002, with effect from 01.07.2002. The subject property was included in DISCOM-II's opening balance sheet, which formed the basis of proposals from prospective bidders. Mr. Kapur argued that the effect of the impugned order,

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<sup>5</sup> Emphasis supplied.



withdrawing a property from the list of properties allocated to DISCOM-II under the Allocation Order, is to vary the Transfer Scheme and the Allocation Order, beyond the time period contemplated for such amendment. He submitted that such belated and unilateral modification is impermissible, both under the Transfer Scheme Rules and the terms of the Allocation Order.

15. In fact, Mr. Kapur further contended that such variation was *ultra vires* Section 18 of the 2000 Act. Even under the principal statute, GNCTD had the power to make amendments/modifications to the transfer provisions, only within twelve months from the effective date, unless confirmed earlier. It was only during this limited period that GNCTD could unilaterally alter, vary, modify, add, or amend the terms of transfer. Mr. Kapur submitted that permitting such a belated amendment would render the timelines stipulated in Section 18 of the 2000 Act and Rule 9 of the Transfer Scheme Rules nugatory, contrary to the settled canons of statutory interpretation.

16. With regard to Rule 12 of the Transfer Scheme Rules, referred to in the counter affidavit filed by GNCTD as the source of its power to issue the impugned order, Mr. Kapur submitted that Rule 12 requires the existence of either a “*doubt, dispute, difference or issue*” and/or “*difficulties arising in implementing the transfers under these rules*”. According to him, these provisions have been erroneously relied upon, as the conditions precedent for the exercise of power thereunder have not been demonstrated. No statement regarding the existence of any such doubt, dispute, difference, issue, or difficulty appears on the face of the impugned order, nor have any such records been produced before the



Court.

17. On the other hand, Mr. Udit Malik, learned Additional Standing Counsel (Civil) for respondent No. 1 – GNCTD, submitted that the purpose of the 2000 Act and the Transfer Scheme Rules was to transfer such properties to the successor undertakings, which were part of the underlying distribution undertakings. He contended that the subject property did not form part of the distribution undertaking of DVB and, therefore, did not fall within the scope of the transfer provisions. Referring to Clause 2(e) of the Allocation Order, he pointed out that residential assets not used in generation, transmission, or distribution of electricity, were to be allocated to the successor transmission undertaking (respondent No. 2 – Delhi Transco Limited, herein) rather than to any other DISCOM.

18. With regard to the source of power, according to Mr. Malik, the impugned order dated 21.05.2004 is relatable to Rule 12(2) of the Transfer Scheme Rules. He submitted that a “*difficulty*” arose, as a significant asset, which was not related to generation, transmission, distribution of electricity, was ostensibly transferred to the petitioner. The said impugned order seeks to rectify that position by reallocation of the subject property.

19. Mr. Ashish Kumar, learned counsel for respondent No. 2 – Delhi Transco Limited, adopted the submissions made by Mr. Malik.

20. Mr. Kapur submitted in rejoinder, that the subject property was indeed part of a distribution undertaking, as it was co-located with an 11 KV/0.4 KV distribution sub-station under the allocation pursuant to the order dated 13.11.2001. These sub-station flats were specifically



allocated to DISCOMs, and not to the transmission company.

21. Learned counsel for parties cited various judgments, to which reference shall be made in the course of this judgment.

**D. ANALYSIS:**

22. The 2000 Act implemented fundamental reforms with regard to electricity supply in the National Capital Territory of Delhi. Section 14 of the 2000 Act envisaged the formation of new companies for generation, transmission, and distribution of electricity, and provided for the transfer of assets from the erstwhile DVB to these entities, in accordance with the Transfer Scheme Rules. It specifically provided for the possibility of undertakings being vested in joint venture companies, in accordance with Transfer Scheme Rules prepared in accordance with law. Section 15 of the 2000 Act clarified that the properties and assets held by DVB would vest in GNCTD and would then be available for transfer to the newly formed companies in accordance with the Transfer Scheme Rules.

23. Rule 3(1) the Transfer Scheme Rules, in furtherance of the 2000 Act, provided for vesting of DVB's assets in GNCTD, and their subsequent allocation to successor entities under Rules 4 and 5. By operation of the Rules, the assets were transferred and vested in the successor entities. The subject property was incorporated in Schedule – E thereto, which specifically referred to residential colonies and properties allocated to DISCOM-II by the Allocation Order. Schedule – E was, in fact, an opening balance sheet of DISCOM-II prepared on this basis. The property, thus, stood vested in the petitioner with effect from 01.07.2002, pursuant to the 2000 Act and Transfer Scheme Rules.

24. Once vesting had taken place in terms of the 2000 Act and Transfer



Scheme Rules, its re-appropriation by GNCTD, or re-allocation to any other entity, could only take place in accordance with law. The Transfer Scheme Rules provided for such a possibility in Rule 9. Rule 9(1) provided that the classification and transfer of undertakings was provisional, but would become final upon expiry of the period of three months from the date of transfer. To this extent, it was consistent with Section 18 of the 2000 Act, which enabled the government to classify the transfers as provisional for a maximum period of twelve months.

25. The impugned order was issued on 21.05.2004, and expressly sought to amend the Allocation Order. The issuance of such an order, was not just beyond the period of three months from the transfer date, i.e. 01.07.2002, but even beyond the maximum period of twelve months specified in Section 18 (1) of the principal statute.

26. GNCTD's defence is that vesting did not take place because the asset in question was not a distribution asset, as it lay outside the distribution undertaking. I am unable to accept this contention, as the asset was clearly included in the list of residential colonies and sub-station flats allocated to DISCOM-II, under the Allocation Order, prepared by GNCTD itself. In fact, no order amending the Allocation Order would have been necessary, had the subject property not been vested in the petitioner at all. I do not also find GNCTD's reliance on Note 2(e) of the aforesaid Allocation Order convincing. The Notes cannot override the principal clause of the said order. Clause 2(e) refers to assets which are "*not elsewhere specified*", and is more in the nature of a residuary clause, rather than a substantial restriction on the preceding allocation clauses.





27. Further, the Transfer Scheme Rules, as noted above, provided a specific time limit for variations and amendments to be notified. If at all GNCTD contended that the subject property had wrongly been allocated to DISCOM-II under the Allocation Order, it ought to have taken remedial steps within the time provided. The interpretation proposed by GNCTD would enable it to renege from its earlier representations regarding the identification of the transferred assets at any stage. Such an interpretation does not commend to me, particularly when bids were invited and accepted on the basis of such express representations, subject only to the limited window for amendments. There is no other provision in the 2000 Act or the Transfer Scheme Rules, which expressly empowers GNCTD to effect an amendment in the enumerated assets, which already stood transferred.

28. Mr. Malik lastly sought to justify the impugned order by reference to Rule 12 of the Transfer Scheme Rules. Rule 12 has two parts. The first part deals with resolution of doubts, disputes, differences, or issues regarding the transfers. There is no material whatsoever on record to show that any doubt, dispute, or difference had arisen with regard to the transfer. Therefore, no occasion arose for the exercise of power under Rule 12(1). It is also significant that the power is expressly “*subject to the provisions of the Act*”. In these circumstances, I do not consider the provision to be wide enough to incorporate a unilateral amendment of the nature contemplated by the impugned order, especially at a point of time when such a modification was neither permitted by the Transfer Scheme nor could have been permitted under the 2000 Act.

29. Turning now to the provisions of Rule 12(2) of the Transfer



Scheme Rules, it deals with the removal of difficulties in implementing the transfers, by issuance of orders by GNCTD. The submission on behalf of GNCTD is that a difficulty arose because the government was found to be handing over assets to the petitioner, which were not part of the distribution undertaking and were, thus, contrary to the purpose of the said Transfer Scheme.

30. Similar provisions for removal of difficulties are found in many statutory provisions, and have been considered in several judgments of the Supreme Court, of which Mr. Malik referred to the following:

(a) In *CIT v. Dewan Bahadur Ramgopal Mills Ltd.*<sup>6</sup>, the Court considered a provision for removal of difficulties in Section 12 of the Finance Act, 1950, and found that a difficulty arose in applicability of the relevant statutory provisions to Part-B States. This was initially resolved by a “*Removal of Difficulties Order*”, issued in 1950. A further difficulty arose in implementation, which was resolved by the impugned order. While upholding the notification, the Court held as follows:

*“Furthermore, the true scope and effect of Section 12 seems to be that it is for the Central Government to determine if any difficulty of the nature indicated in the section has arisen and then to make such order, or give such direction, as appears to it to be necessary to remove the difficulty. Parliament has left the matter to the executive; but that does not make the notification of 1956 bad. In Pandit Banarsi Das Bhanot v. State of Madhya Pradesh & Ors [(1959) SCR 427] we said at page. 435: “Now, the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods and the like”. We are, therefore, of the view that the notification of 1956, was validly made under Section 12 and is not ultra vires the powers conferred on the Central Government by that section.”*

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<sup>6</sup> (1961) 2 SCR 318 at 327 [hereinafter “*Dewan Bahadur*”].



(b) In *Mahalakshmi Mills Ltd. v. CIT*<sup>7</sup>, the Supreme Court followed the view taken in *Dewan Bahadur*, to hold that a validly made “removal of difficulty” order must be given effect. Paragraph 16 of the said judgment reads as follows :

*“16. In our opinion, the High Court rightly rejected this contention. The consequence of the Removal of Difficulties Order being validly made under Section 12 of the Finance Act, 1950, is that para 2 of the Order (as also the other paragraphs) have to be applied and no exception can be made.*

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**What is necessary in law is that before an order can be made by the Central Government under Section 12, the Central Government must be satisfied that in certain cases difficulties have actually arisen in giving effect to the provisions of the Indian Income Tax Act. Once on such satisfaction an order is made it is not again necessary for the application of the order in a particular case that difficulty must be found to have arisen.** A separate Order under Section 12 has not got to be made for each particular case. The order once made on the satisfaction of the Central Government that in some cases difficulties have arisen in giving effect to the provisions of the Indian Income Tax Act the order operates under its own terms and so in giving effect to the order it is not necessary for the Income Tax Officer to see first whether any difficulty has arisen.<sup>8</sup>”

(c) Mr. Malik also cited *Union of India v. Ogale Glass Works*<sup>9</sup>, wherein the Court found that no difficulty arose in implementation of the statute in question, as the interpretation had been settled by a judicial decision. In the absence of a difficulty requiring its removal, the Court held that no order of removal of difficulty could have been passed.

31. Other than the aforesaid judgments cited by Mr. Malik, the

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<sup>7</sup> (1963) 50 ITR 741 [hereinafter “*Mahalaxmi Mills*”].

<sup>8</sup> Emphasis supplied.

<sup>9</sup> (1971) 2 SCC 678.



following judgments also shed considerable light on the proper purpose and construction of a “removal of difficulties” provision in a statute:

(a) In *Madeva Upendra Sinai v. Union of India*<sup>10</sup>, a Constitution Bench of the Supreme Court emphasised the imperative condition that a “difficulty” must have arisen in giving effect to the statute. The Court noted as follows:

“38. For a proper appreciation of the points involved, it is necessary to have a general idea of the nature and purpose of a “removal of difficulty clause” and the power conferred by it on the Government.

39. To keep pace with the rapidly increasing responsibilities of a welfare democratic State, the Legislature has to turn out a plethora of hurried legislation, the volume of which is often matched with its complexity. Under conditions of extreme pressure, with heavy demands on the time of the Legislature and the endurance and skill of the draftsman, it is well nigh impossible to foresee all the circumstances to deal with which a statute is enacted or to anticipate all the difficulties that might arise in its working due to peculiar local conditions or even a local law. This is particularly true when Parliament undertakes legislation which gives a new dimension to socio-economic activities of the State or extends the existing Indian laws to new territories or areas freshly merged in the Union of India. In order to obviate the necessity of approaching the Legislature for removal of every difficulty, howsoever trivial, encountered in the enforcement of a statute, by going through the time-consuming amendatory process, the Legislature sometimes thinks it expedient to invest the Executive with a very limited power to make minor adaptations and peripheral adjustments in the statute, for making its implementation effective, without touching its substance. That is why the “removal of difficulty clause”, once frowned upon and nick-named as “Henry VIII clause” in scornful commemoration of the absolutist ways in which that English King got the “difficulties” in enforcing his autocratic will removed through the instrumentality of a servile Parliament, now finds acceptance as a practical necessity, in several Indian statutes of post-independence era.

40. Now let us turn to clause (7) of the Regulation. It will be seen that the power given by it is not uncontrolled or unfettered. It is strictly circumscribed, and its use is conditioned and restricted. The existence or arising of a “difficulty” is the sine qua non for the exercise of the

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<sup>10</sup> (1975) 3 SCC 765 [hereinafter “*Madeva Upendra Sinai*”].



**power. If this condition precedent is not satisfied as an objective fact, the power under this clause cannot be invoked at all. Again, the “difficulty” contemplated by the clause must be a difficulty arising in giving effect to the provisions of the Act and not a difficulty arising aliunde, or an extraneous difficulty.** Further, the Central Government can exercise the power under the clause only to the extent it is necessary for applying or giving effect to the Act, etc., and no further. It may slightly tinker with the Act to round off angularities, and smoothen the joints or remove minor obscurities to make it workable, but it cannot change, disfigure or do violence to the basic structure and primary features of the Act. **In no case, can it, under the guise of removing a difficulty, change the scheme and essential provisions of the Act.<sup>11</sup>**

(b) In a recent judgment on this point, *State of W.B. v. Anindya Sundar Das*<sup>12</sup>, the Supreme Court interpreted a “removal of difficulty” provision in the Calcutta University Act, 1979, with reference to the above observations in *Madeva Upendra Sinai*. It was held as follows:

“54. Section 60 contemplates a situation where inter alia any difficulty arises in giving effect to the provisions of the Act “on account of any lacunae or omission” in its provisions or for any other reason whatsoever. In such cases, the State Government is empowered, as the occasion may require, to do anything which appears to it to be necessary for removing the difficulty notwithstanding anything to the contrary contained elsewhere in the Act or any other law. **Where there is a specific provision, as in the present case Section 8(2)(a), it was not open to the State Government to conjure up a lacunae or omission and purportedly exercise the power to remove difficulties.**

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56. The State Government chose the incorrect path under Section 60 by misusing the “removal of difficulty clause” to usurp the power of the Chancellor to make the appointment. **A Government cannot misuse the “removal of difficulty clause” to remove all obstacles in its path which arise due to statutory restrictions.** Allowing such actions would be antithetical to the rule of law. **Misusing the limited power granted to make minor adaptations and peripheral adjustments in a statute for making its implementation effective, to sidestep the provisions of**

<sup>11</sup> Emphasis supplied.

<sup>12</sup> (2022) 16 SCC 318 [hereinafter “*Anindya Sundar Das*”].



**the statute altogether would defeat the purpose of the legislation.<sup>13</sup>**

32. The impugned order does not, in my view, meet the rigour of these tests. No difficulty has been shown to have arisen in implementation of the Transfer Scheme Rules. The clause is, in fact, sought to be used by GNCTD to effect a derogation from the terms of the Transfer Scheme. The provision itself states that such power must not be exercised in a manner inconsistent with the provisions of the 2000 Act. Crucially, it is intended to address practical impediments *in giving effect to transfers* under the Transfer Scheme Rules. It does not contemplate empowering GNCTD to reverse or undo a transfer that has already been effected. Rather, the provision is designed to facilitate the implementation of the Transfer Scheme Rules, not to negate or alter its outcome. The impugned order, to the contrary, is entirely opposed to the purpose and scope of the Transfer Scheme Rules.

33. In the present case, Rule 12(2) of the Transfer Scheme Rules expressly contains a qualification that the power is to be exercised in a manner “*not inconsistent with the provisions of the Act*”. The exercise of the power of amendment after the lapse of the period of twelve months from the date of vesting, if not three months as provided in Rule 12(2) is, at the very least, contrary to Section 18 of the 2000 Act. The observations of the Supreme Court in *Anindya Sundar Das*<sup>14</sup> make it clear that a statutory provision cannot be “*sidestepped*” by use of a “*removal of difficulties*” provision. The impugned order can, therefore, not be justified, even on this basis.

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<sup>13</sup> Emphasis supplied.



34. The judgments cited by Mr. Malik are, in my view, distinguishable. Whenever the impugned actions were upheld, the Court clearly found that difficulties had arisen for which the government was empowered to make provision. The Court's observation in *Dewan Bahadur*, that it was for the government to determine if any “*difficulty*” had arisen, was in the context of adjudicating whether delegation of such a power to the executive invalidates the provision. I do not read the said judgment to suggest that the government's decision, even on the existence of a difficulty, is non-justiciable. The satisfaction must be “*objective*”, as expressed in the *Madeva Upendra Sinai* judgment.<sup>15</sup> The judgment in *Mahalakshmi Mills* is also unhelpful to GNCTD, as it only states that if it is a validly made order, it must be fully implemented.

35. In summary, what emerges from the above discussion is that while bidding, interested parties were informed of the nature of the assets that would be transferred to the successor entities. These included the subject property. The subject property stood vested in the petitioner as a result of the 2000 Act and the Transfer Scheme Rules. The 2000 Act enabled the government to provide for a maximum period of twelve months for finalization of the list of transferred assets. GNCTD, in fact, provided in the Transfer Scheme Rules for only three months for this purpose. After the expiry of the three-month period, it lost the power to make an unilateral amendment. Its reliance upon Clause 12 of the Transfer Scheme Rules is neither justified by resort to the resolution of differences clause, nor by invocation of the removal of difficulties clause. There was

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<sup>14</sup> Paragraph 56, as extracted above.

<sup>15</sup> Paragraph 40, as extracted above.



no difficulty in implementation of the transfer, other than an attempt by GNCTD to revisit the issue, which had no basis in law. The impugned order dated 21.05.2004 is, therefore, liable to be set aside.

36. The petitioner has sought a consequential direction for handing over of the subject property to the petitioner. Other than the issuance of an impugned order, the counter affidavit does not disclose any other justification for withholding such relief. The subject property must also, therefore, be handed over to the petitioner, in accordance with law.

#### **E. CONCLUSION:**

37. For the reasons aforesaid, the writ petition is allowed and the impugned order dated 21.05.2004 is set aside. GNCTD is directed to hand over possession of the subject property to the petitioner within three months from today.

**PRATEEK JALAN, J**

**JULY 01, 2025**

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