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## The Hon'ble High Court of Punjab and Haryana at Chandigarh dismissed challenges to process of privatisation of electricity distribution in Union Territory of Chandigarh

The Hon'ble High Court of Punjab and Haryana at Chandigarh ("**P&H HC**") in the case of **U.T. Powermen Union, Chandigarh vs. Union of India and Ors.**<sup>1</sup>, dismissed the challenge to the process of privatisation of electricity distribution in the Union Territory of Chandigarh.

### Brief facts

1. Under Section 4 and 67 of the Punjab Reorganisation Act, 1966, the electricity supply and the assets of the Board located in the area of Union Territory of Chandigarh, vested in the Chandigarh Administration which did not form its own Electricity Board ("**Electricity Board**") but continued to manage the distribution of electricity.
2. Pursuant to a proposal to corporatise/privatise the Electricity Wing, a draft standard bidding document for the selection of bidders for the purchase of majority shares was issued on September 20, 2020, for comments. This provided for privatisation of the distribution licenses comprising the draft Request for Proposal ("**RFP**") with the drafts of employee transfer scheme, shareholder agreement, shareholder acquisition agreement for the sale of 100% stake, policy directions by the Union Territory, Chandigarh and bulk supply agreement.
3. Thereafter, on November 10, 2020, a notice was issued inviting the bids for purchase of the distribution business from the interested entities fulfilling the qualification requirements and other conditions set out in the RFP.
4. The said notice along with the decision to proceed with privatisation was challenged by the U.T. Powermen Union vide CWP No. 20439 of 2020 and CWP (PIL) No. 54 of 2022.

### Relevant issues

The issues framed by the P&H HC:

1. while interpreting the statutory provisions, whether the court is bound by the stand adopted by parties? and
2. whether the setting up of the Electricity Board is mandatory prior to finalisation of the scheme envisaged under Section 131 of the Electricity Act, 2003 ("**Electricity Act**") and before inviting bids for privatisation of the electricity supply?

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<sup>1</sup> CWP No. 20439 of 2020 and CWP (PIL) No. 54 of 2022 (judgment dated November 6, 2024)

## Findings and analysis

### Re. Section 131 of the Electricity Act

1. Section 131 of the Electricity Act provides for vesting of the property of the Electricity Board in the State Government. It is in that context a transfer scheme is envisaged. In the Union Territory of Chandigarh, the Electricity Board was never created and therefore Section 131(1) of the Electricity Act is not applicable. Section 131(2) of the Electricity Act is dependent upon sub-section (1) because it provides that the property which has vested in the State Government under sub-Section (1) will be re-vested by the State Government in a government company or in a company or companies in accordance with the transfer scheme. Hence, Section 131(2) of the Electricity Act is also not applicable.
2. Section 132 of the Electricity Act provides for the use of proceeds of sale or transfer of the Electricity Board etc. Section 133 of the Electricity Act is a provision related to the officers and employees in the transfer scheme. Section 134 of the Electricity Act starts with a *non obstante* clause which overrides the provisions of the Industrial Disputes Act, 1947, or any other law in the matters related to the transfer of the employment of the officers/employees. Thus, it is evident that Part-XIII of the Electricity Act is not applicable in the present case.
3. Furthermore, the statement of objects and reasons of the Electricity Act states that private sector's participation in generation, transmission and distribution must be encouraged.
4. Section 131 of the Electricity Act does not envisage existence of a transfer scheme before inviting bids. In fact, the transfer scheme is required to be drawn up under Section 131(4), after identifying a transferee. As per Section 131(5), the transfer scheme is required to include the various provisions as enlisted in Sub Section (5). While interpreting a statutory provision, the court is not expected to draw inferences based on assumptions and presumptions. Unless there is a categorical provision explicitly requiring the existence of a transfer scheme before the bids to identify the transferee, the court would not interfere. The courts will avoid filling in perceived gaps or adding meaning that is not explicitly provided by the statute, as this could lead to unintended legal outcomes.
5. Section 131(2) of the Electricity Act is not a standalone provision. On reading of Section 131(2) of the Electricity Act it is evident that sub-Section (2) is intrinsically linked to sub-Section (1) as is evident from the first sentence of Section 131 (2) of the Electricity Act.
6. In any case, scope of judicial review in a policy decision is extremely narrow.

### Re. Court being bound by the stand taken by parties

A Constitutional Court, while interpreting the statutory provisions, is not bound by the pleadings or the stand taken by the respective parties. Once the statute is capable of its literal interpretation, the court is expected to follow the same irrespective of the stand taken by the parties.

## Conclusion

The P&H HC dismissed a challenge to the process of privatisation of electricity distribution in Chandigarh. It rightly refrained from a pedantic interpretation of Section 131 of the Electricity Act as was argued by the petitioner that since there is no Electricity Board in existence, there can be no invitation for bids for privatisation. This encourages efforts to reform distribution sector in India, which is the need of the hour.

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