

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7483 OF 2014
(Arising out of Special Leave to Appeal (Civil) No. 29639 of 2012)

Rajasthan Rajya Vidyut Vitran Nigam Ltd.Appellant

versus

Dwarka Prasad Koolwal & Ors. ...Respondents

WITH

CIVIL APPEAL NO. 7484 OF 2014
(Arising out of Special Leave to Appeal (Civil) No. 30061/2012)
CIVIL APPEAL NO. 7485 OF 2014
(Arising out of Special Leave to Appeal (Civil) No. 30096/2012)
CIVIL APPEAL NO. 7486 OF 2014
(Arising out of Special Leave to Appeal (Civil) No. 30098/2012)
CIVIL APPEAL NO. 7487 OF 2014
(Arising out of Special Leave to Appeal (Civil) No. 30112/2012)
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(Arising out of Special Leave to Appeal (Civil) No. 30182/2012)
CIVIL APPEAL NO. 7491 OF 2014
(Arising out of Special Leave to Appeal (Civil) No. 30187/2012)
CIVIL APPEAL NO. 7492 OF 2014
(Arising out of Special Leave to Appeal (Civil) No. 30203/2012)

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CIVIL APPEAL NO. 7493 OF 2014

NEETU KHAJURIA
Date: 2014.08.09
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Reason:

(Arising out of Special Leave to Appeal (Civil) No. 30264/2012)

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JUDGMENT

Madan B. Lokur, J.

1. Leave granted.
2. The primary question for consideration in all these appeals is

whether the respondents were entitled, as of right, to one more opportunity to switch-over from the Contributory Provident Fund Scheme of which they were members, to the Pension Scheme and the General Provident Fund Scheme implemented by the appellant with effect from 28th November, 1988?

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Broadly speaking, the contention of the respondents is that they were unaware of the switch-over option since they were posted in remote areas of Rajasthan, while the contention of the appellant is that a large number of opportunities extending over 8 years were given to the respondents to exercise the switch-over option and that they could not claim any right to any further opportunity to make the switch over.

3. In our opinion, the contention of the appellant must be accepted and the impugned judgment and order dated 17 th May, 2012 accepting the contention of the respondents has to be set aside.

The facts

4. The Rajasthan State Electricity Board (for short 'the RSEB') had introduced a Contributory Provident Fund Scheme in 1972 (for short 'the CPF Scheme') for the benefit of its employees. This was in exercise of powers conferred by the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

5. On 28th November, 1988 the RSEB, in exercise of powers conferred by Section 79 of the Electricity (Supply) Act, 1948 made

the Employees Pension Regulations, 1988 (for short 'the Pension

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6. Both the set of regulations came into effect on 28 th November, 1988 and the existing employees of the RSEB on the cut-off date

were entitled to exercise an option of either continuing as members of the existing CPF Scheme or switching to the Pension Scheme and the GPF Scheme under the Pension Regulations and the GPF Regulations respectively within a period of 90 days from the date of commencement of the GPF Scheme. Such of the employees of the RSEB, who joined after 28th November, 1988 were automatically governed by the Pension Regulations and the GPF Regulations.

The switch-over option was, therefore, available to only those employees who were on the rolls of the RSEB on the cut-off date.

7. On 6th January, 1989 the RSEB issued a notice giving an option to the existing employees (including the respondents) to switch over from the existing CPF Scheme to the Pension and GPF Regulations.

8. The notice stated, inter alia, that the switch-over option should be exercised by the employee in writing within a period of 90 days from the date of its issue and that no request for extension Civil Appeal Nos. 7483 of 2014 etc.etc. (Arising out of SLP (C) No.29639 of 2012 etc.etc.) of time, seeking clarification or review would be entertained.

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Significantly, it was stated in the notice that if an employee does not exercise his clear option within the specified time limit, he shall be deemed to have retained the benefits available to him under the CPF Scheme to which he was already entitled. The notice set out the procedure for exercising the option, which is forwarding it to the concerned officers.

9. The notice also stated that it should be given wide publicity by pasting it on the notice board of various offices under the RSEB. It was stated in the notice that pasting would be treated as sufficient notice for all the Board employees for whom it was intended.

10. The respondents did not exercise their option in terms of the notice dated 6th January, 1989 although as many as 2741 employees exercised their switch-over option.

11. The RSEB issued a second notice dated 4 th April, 1989 extending the period for exercising the switch-over option for another 45 days after the expiry of the period of the first option of

90 days given in the first notice dated 6 th January, 1989. The

second notice was issued since the first notice was not published
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in Hindi which inhibited the employees of the RSEB in exercising
the switch-over option within the prescribed time limit.

12. The second notice did not mention anything about giving it
wide publicity but it appears that in keeping with the mandate
mentioned in the first notice dated 6th January, 1989 this notice
too was given wide publicity since it resulted in as many as 31,217
employees exercising their switch-over option within the period of
45 days.

13. A third notice dated 19th May, 1990 was issued by the RSEB
extending the period of the switch-over option up to 30 th June,
1990 that is for a period of about 40 days. The occasion for
issuing the third notice was that references were received by the
RSEB from 'various corners' to extend the period of exercising the
option for a further period of 45 days.

14. In terms of the Pension Regulations daily rated/work charge
employees were excluded from the scope of the Pension
Regulations and even though some of them were given a regular
pay scale with effect from 1st April, 1989 they could not exercise the
switch-over option since they were not on a regular pay

scale/service on the cut-off date that is 28th November, 1988. The
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third notice was issued to give the benefit of the Pension and GPF

Regulations to such daily rated/work charge employees as well as
to the regular employees covered by the CPF Scheme. It was
mentioned in the notice that this would be the last and final
opportunity for exercising the switch-over option and that the
employees, both regular as well as daily rated/work charge
employees should ensure that their option forms were received by
the concerned authority within the prescribed time limit that is 30 th
June, 1990 positively. As many as 3972 employees of the RSEB
exercised their switch-over option in response to the third notice.

15. The RSEB issued a fourth notice dated 17 th September, 1991

extending the time limit for exercising the switch-over option by a further period of 90 days. This was on the basis of references having been made to the RSEB from 'various corners' to allow one more opportunity to exercise the option for obtaining the benefits under the Pension and GPF Regulations. The fourth notice mentioned that in case an employee did not exercise the option within the period of 90 days it would be deemed that he had retained the benefits available to him under the CPF Scheme. In

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response to the fourth notice, as many as 2741 employees of the RSEB exercised their option.

16. A fifth notice was issued by the RSEB on 27 th January, 1993 which was in the form of an order. This related to counting of the period of service for pension purposes of work charge employees who were absorbed or appointed to regular posts under the RSEB.

17. It was stated that the work charge employees of the RSEB who were absorbed/appointed on a regular basis would be allowed to exercise the switch-over option subject to certain conditions. The option to switch over was to be exercised in writing up to 15 th March, 1993 that is within a period of about 45 days. It was specifically stated in the order that those employees who do not exercise the option within the aforesaid period would be deemed to have retained the benefits under the CPF Scheme. The benefit of the order dated 27th January, 1993 was also extended to those work charge employees who were brought on a regular post on or after 28th November, 1988 but had died before exercising their option. In respect of these persons, the order stated that they

would be deemed to have opted for pension unless the members of the family of the deceased specifically make a request that they Civil Appeal Nos. 7483 of 2014 etc.etc. Page 12 of 52
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may be paid CPF benefits due to the deceased. This order also

conferred a benefit on those employees of the RSEB who had retired after 28th November, 1988 but prior to the issue of the order and had received the retirement benefits admissible under the CPF

Scheme. They too were made entitled to exercise the switch-over option subject to certain conditions. As many as 2749 employees exercised their option in response to the fifth notice.

18. A sixth notice was issued by the RSEB on 8 th May, 1995 extending the benefit of the switch-over option to the existing employees till 31st March, 1996 that is for an extended period of about 320 days. It was mentioned that in case the switch-over option was not exercised, it shall be deemed that the employee has retained the existing CPF benefits. The number of options exercised in response to the sixth notice was 4460.

19. A seventh notice was issued by the RSEB on 22 nd August, 1995 as a result of representations received from retired employees who desired to switch to the Pension and GPF Regulations but had failed to avail of the opportunity despite the notice dated 17 th September, 1991 either because of ignorance or some erroneous understanding. The period for exercising the option was available Civil Appeal Nos. 7483 of 2014 etc.etc. Page 13 of 52 (Arising out of SLP (C) No.29639 of 2012 etc.etc.) till 30th November, 1995. The notice mentioned that pasting the seventh notice on the notice boards of the various offices of the RSEB would be treated as sufficient notice to all the retired employees of the RSEB.

20. The eighth and final notice was issued by the RSEB on 4 th February, 1997 in which it was stated that all employees in regular pay scales on the cut-off date of 28 th November, 1988 who could not avail the opportunity of exercising the switch-over option but who were still in the services of the RSEB could now exercise their option by 30th June, 1997. It was reiterated that those employees who could not exercise their option before the final date would be deemed to have retained the CPF benefits available to them. The RSEB received the options of 5076 employees in response to the eighth notice.

21. Eventually, on 12th March, 1999 the RSEB communicated a decision to the effect that several opportunities had been given to the employees to switch over to the Pension and GPF Regulations but despite this, representations were pouring in to allow one more

opportunity to switch to the pension benefits. It was felt that it would not be desirable to provide any more such opportunities
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otherwise it would become a never ending exercise. Therefore, it was made clear that any request for allowing an opportunity to exercise the switch-over option would not be entertained under any circumstances.

22. In the meanwhile, a meeting of the Whole-Time Members of the RSEB and the Heads of Department was held on 4 th January, 1995 in which it was decided, inter alia, that although the last date for exercising the switch-over option had expired in 1991, representations were being received to extend the date. Therefore, looking into the difficulty faced by the employees, it was decided that the facility of exercising the switch-over option would be available to the existing employees up to six months prior to the date of retirement, that is, the employee could opt for Pension and GPF Regulations while in service. According to the respondents, by virtue of this decision, such of the employees who are still in service can yet accept the switch-over option. But according to the RSEB, the decision taken on 4th January, 1995 stands obliterated by the sixth notice given on 8 th May, 1995, the seventh notice given on 22nd August, 1995 and the eighth notice given on 4 th February, 1997 read with the final decision taken on 12 th March, Civil Appeal Nos. 7483 of 2014 etc.etc. Page 15 of 52
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1999 closing the receipt of switch-over options.

23. At this stage, it may be mentioned that the Rajasthan Legislature enacted the Rajasthan Power Sector Reforms Act, 1999 which resulted in the Rajasthan Power Sector Reforms Transfer Scheme 2000, which in turn resulted in the unbundling of the RSEB into five companies. The five companies are owned and controlled by the Government of Rajasthan and their employees have been absorbed on the same terms and conditions governing them while they were employees of the RSEB. The unbundling of the RSEB does not have any consequence so far as the decision in these appeals is concerned but this fact is mentioned only to complete the record. For convenience, the expression RSEB refers

to both the erstwhile RSEB as well as the entities post the unbundling of the RSEB.

Proceedings in the High Court

24. Consequent to the decision communicated on 12 th March, 1999 whereby the option of switching over from the CPF Scheme to the Pension and GPF Regulations was not extended, a large number of aggrieved employees of the RSEB filed Writ Petitions in the Rajasthan High Court.

In these Writ Petitions the challenge Civil Appeal Nos. 7483 of 2014 etc.etc. Page 16 of 52 (Arising out of SLP (C) No.29639 of 2012 etc.etc.)

was to the closure of the switch-over option. The writ petitioners also claimed a declaration of being entitled to all the pension benefits available under the Pension and GPF Regulations upon their retirement. These Writ Petitions came to be disposed of by a learned Single Judge of the Rajasthan High Court by an order dated 28th February, 2008 with a direction that the writ petitioners may submit a representation to the RSEB voicing their grievances and the RSEB should decide the representation within a month.

25. The order dated 28th February, 2008 was followed in several other Writ Petitions filed by aggrieved employees and they made as many as 30 representations to the RSEB pursuant to the various orders passed by the Rajasthan High Court in over 30 writ petitions. By an extremely detailed order dated 26 th June, 2008 the RSEB disposed of these representations in which the issues raised were clearly formulated and findings given on each of the issues. A little later, we shall refer to two of the issues relevant for our purposes and the finding thereon.

26. Not being satisfied with the order dated 26 th June, 2008 a large number of writ petitions came to be filed in the Rajasthan High Court challenging that order and praying for quashing and Civil Appeal Nos. 7483 of 2014 etc.etc. Page 17 of 52 (Arising out of SLP (C) No.29639 of 2012 etc.etc.) setting aside the decision dated 12th March, 1999. It was further

prayed that the writ petitioners (who are respondents before us) be held entitled to the benefits in accordance with the Pension and GPF Regulations. This batch of Writ Petitions was heard by a learned Single Judge and by his elaborate judgment and order

dated 21st October, 2011 the writ petitions were allowed and the communication dated 26th June, 2008 as well as the decision dated 12th March, 1999 were quashed and set aside. It was made clear that all the existing employees of the RSEB would be covered by the Pension and GPF Regulations including the writ petitioners and the legal representatives of the deceased employees interested in exercising the switch-over option from the CPF to the Pension and GPF Regulations. It was further directed that there was no need for any other writ petition to be filed by any existing employee and that the benefit of the order dated 21 st October, 2011 would inure to the benefit of all similarly situate employees.

27. Being aggrieved by the decision of the learned Single Judge the RSEB preferred writ appeals before the Division Bench of the High Court. By a judgment and order dated 17 th May, 2012

(impugned) the High Court dismissed the appeals relying entirely Civil Appeal Nos. 7483 of 2014 etc.etc. Page 18 of 52
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on the elaborate order passed by the learned Single Judge. It is under these circumstances that the present batch of appeals preferred by the RSEB is before us. For convenience, we have taken the facts from Civil Appeal arising out of SLP (C) No.29639 of 2012.

Submissions

28. For the sake of convenience a summary of the various notices issued by the RSEB are put down in the form of a chart:

No. ns	Notice date	Applica-b ility	Validity	Special reason	Publicity	Remark	Optio recei
1	06.01. 1989	All employees	90 days	-	Wide publicity through pasting on the notice board	On non receipt of option, employee deemed to have retained CPF benefits	2741
2nd	04.04. 1989	- do -	45 days	Non-publicati on of Hindi version	No specific mention	-	31217
3rd	19.05. 1990	All employees including daily rated and work	30.06.1990	References received from various corners requesting for an extension	- do -	On non receipt of option, employee deemed to have	3972

		charged employees				retained CPF benefits	
4th	17.09.1991	All employees	90 days	- do -	- do -	- do -	2741
5th	27.01.1993	Work charged, retired	15.03.1993	-	- do -	- do -	2749
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6th	08.05.1995	All employees	31.03.1996	-	- do -	- do -	4460
7th	22.08.1995	Retired employees	30.11.1995	Representations received from retired employees	Pasting on the notice board	-	-
8th	04.02.1997	All employees	30.06.1997	-	-	On non receipt of option, employee deemed to have retained CPF benefits	5076

29. Two things are quite clear from the narration of facts and the chart. Firstly, that several opportunities were given to the employees of the RSEB (and for prolonged periods) to switch over from the CPF Scheme to the Pension and GPF Regulations. It is stated in the rejoinder affidavit filed by the RSEB that in response to the various notices, out of about 50,000 of its employees, as many as about 46,000 had exercised their option at different points of time to switch over from the CPF Scheme to the Pension and GPF Regulations. Therefore, if some of the employees did not make the switch-over, it may be for reasons personal to them. Secondly,

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the switch-over option was given to various categories of employees

- regular employees, daily rated employees, work charge employees, retired employees and legal representatives of deceased employees. Within these categories were included senior and junior officers, technical and non-technical cadre. In other words, both high ranked and lower ranked staff were included for the purposes of the switch-over option.

30. Given this factual background, it is prima facie difficult to accept the contention of the respondents that they (about 700 of them and another 3000+ employees that they represent) were not aware of the Pension and GPF Regulations and therefore, they were unable to exercise their option to switch over before its closure by the decision dated 12th March, 1999.

31. To repel this prima facie view, some of the reasons given by the respondents for not exercising the switch-over option are as follows and they form the backbone of their submissions:

(1) They were not aware of the various notices issued from time to time since wide publicity was not given to all the notices.

By way of an example, it has been mentioned that in response

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to a query under the Right to Information Act, 2005 it was

admitted by the RSEB that the notice dated 4 th February,

1997 was not received or circulated in Suratgarh.

(2) Many of the respondents were posted in remote areas of

Rajasthan such as Jaisalmer, Barmer, Sirohi, Banswara etc.

There were no communication facilities in these remote places

and therefore they could not become aware of the notices

issued by the RSEB from time to time.

(3) Many of the respondents belong to junior/technical cadres

like peons, vehicle drivers, helpers, pump operators,

electricians, crane operators, chowkidars etc.

Given their

status, it is difficult to assume that they were aware of the

switch-over option.

(4) The option letters required the respondents to specifically

indicate whether they opt for continuing to remain with the

CPF Scheme or they opt to switch to the Pension and GPF

Regulations. This necessarily means that each employee of

the RSEB was required to be individually informed of the

switch-over option. Admittedly, individual notices were not

sent to all the employees of the RSEB.

Issue of awareness

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32. As far as the awareness of the respondents of the switch-over option is concerned, we have already mentioned that out of about 50,000 employees of the RSEB about 46,000 of them had opted to switch over from the CPF Scheme to the Pension and GPF Regulations. In other words, less than 10% of the employees did not opt to make a switch-over. These 10% employees were working with the RSEB at the relevant time and it is generally unlikely that they would have been unaware of the sea change for their monetary benefit in their terms of service with the RSEB. We can appreciate that retired employees of the RSEB who may have shifted out of the State may possibly be unaware of the availability of the switch-over option (although that is also unlikely over a prolonged period of 8 years) but it is difficult to appreciate how a working employee of the RSEB who is in day to day touch with the organization would be unaware of the switch-over option for such a long period.

33. As regards the contention of the respondents that their lack of awareness was due to the absence of adequate publicity being given to the switch-over option, we need only mention that the

chart given above indicates that even though the notice dated 4th Civil Appeal Nos. 7483 of 2014 etc.etc. Page 23 of 52

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April, 1989 did not mention anything about giving wide publicity to

the switch-over option, yet more than 31,000 employees gave their

option pursuant to that notice. Even thereafter, between 2,000

and 5,000+ employees exercised their option whenever the notice

for exercising the switch-over option was issued. This clearly

suggests to us that wide and adequate publicity was given to the

various notices issued by the RBEB from time to time, even if it

was not specifically mentioned in each individual notice, otherwise

there could not have been such an overwhelming response to every

notice resulting in as many as about 46,000 employees out of

50,000 employees of the RSEB opting to switch-over from the CPF

Scheme to the Pension and GPF Regulations.

34. To rebut the presumption of their awareness, it is submitted

by the respondents that all of them were posted in remote areas of

Rajasthan such as Jaisalmer, Barmer, Sirohi, Banswara etc. and it is for this reason that they were not aware of the switch-over option. There is nothing to support this claim by the respondents except a bald statement. Even otherwise, the respondents were admittedly in transferable jobs and it is unlikely that each one of them continued to remain in one or the other remote area of Civil Appeal Nos. 7483 of 2014 etc.etc. (Arising out of SLP (C) No.29639 of 2012 etc.etc.) Rajasthan for as long as 8 years from 1989 to 1997.

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On the

contrary, it was not denied during the hearing of these appeals that the respondents had been transferred at least once during the period of 8 years when the switch-over option was available.

Where they were posted from time to time - whether in a remote area or in a not so remote area - has not been disclosed. It is difficult to accept that the respondents were always posted in remote areas of Rajasthan We, therefore, cannot accept such a bald statement by the respondents.

35. That apart, from the rejoinder affidavit filed by the RSEB it is clear that quite a few of the respondents were posted in Jaisalmer and Barmer which are certainly not remote parts of Rajasthan. As regards Sirohi and Banswara, it has been stated in the rejoinder affidavit filed by the RSEB that as many as 1476 employees from these (and other remote places) had exercised their option to switch-over from the CPF Scheme to the Pension and GPF Regulations. Given these facts, it is doubtful that the respondents were blissfully unaware of the existence of the Pension and GPF Regulations.

36. It was submitted by the respondents that apart from the Civil Appeal Nos. 7483 of 2014 etc.etc. (Arising out of SLP (C) No.29639 of 2012 etc.etc.) notice dated 6th January, 1989 none of the other notices were given wide publicity and in fact the subsequent notices do not even mention that wide publicity was required to be given. It is for this reason that the respondents, located in remote areas of Rajasthan were unaware of the Pension and GPF Regulations. To support their contention that wide publicity was not given to subsequent notices, the respondents relied upon the response dated 26 th

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November, 2007 to a query raised under the Right to Information Act, 2005 which states that the notice dated 4 th February, 1997 was not received in the office of the Executive Engineer (Prot.) Ratangarh nor was it dispatched to the Assistant Engineer (Prot.) Suratgarh.

37. Reliance was also placed upon a similar letter dated 5 th December, 2007 which is again with reference to the notice dated 4th February, 1997 and its receipt in Ratangarh and dispatch to Suratgarh.

38. Apart from the fact that the reference pertains to only one notice, it cannot be said that this would conclusively demonstrate or conclusively suggest that the notice dated 4 th February, 1997

was not received in other parts of Rajasthan or other places close Civil Appeal Nos. 7483 of 2014 etc.etc. Page 26 of 52
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to Suratgarh. It has been stated by the RSEB in their rejoinder

affidavit that so far as the office in Suratgarh is concerned, there were 4 employees who had joined service in Suratgarh post-1988 and who were automatically entitled to the benefit of the Pension and GPF Regulations and 2 persons who were similarly placed as the respondents had in fact exercised their switch-over option. Therefore, it is not that the employees in Suratgarh were completely unaware of the Pension and GPF Regulations.

39. It also cannot be assumed on the basis of the above that the employees in Suratgarh who were allegedly unaware of the Pension and GPF Regulations through the notice dated 4 th February, 1997 were also not aware of the half a dozen previous notices. Additionally, these allegedly unaware persons have not been identified by the respondents and the submission made in this regard is quite vague.

40. We have mentioned above that the reason why some employees did not switch over from the CPF Scheme to the Pension and GPF Regulations is perhaps because of reasons personal to them. But at the same time, it must be pointed out that the

respondents have virtually let the cat out of the bag by an Civil Appeal Nos. 7483 of 2014 etc.etc. Page 27 of 52
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averment made by them in their writ petition filed before the High

Court. The background to the averment is given below.

41. The RSEB passed an order on 23rd August, 1997 in which it was stated that the Government of Rajasthan had recently promulgated the Rajasthan Civil Services (Pension) Rules, 1996 as amended from time to time. In view of this, the RSEB decided that the pension, family pension and commutation of pension in respect of its employees would be computed under the specific provisions of the Rajasthan Civil Services (Pension) Rules, 1996.

42. In their writ petition filed in the High Court the respondents stated that by virtue of this order dated 23 rd August, 1997, the calculation of pension, family pension and commutation of pension under the Pension and GPF Regulations, became more beneficial to the employees as against the provisions in the CPF Scheme. It is perhaps this computation benefit made available to the employees of the RSEB with the adoption of the Rajasthan Civil Services (Pension) Rules, 1996 that prompted the respondents to switch-over from the CPF Scheme to the Pension and GPF Regulations. Unfortunately, by that time the period for making the switch-over had expired in terms of the 8 th notice dated 4th Civil Appeal Nos. 7483 of 2014 etc.etc. (Arising out of SLP (C) No.29639 of 2012 etc.etc.) February, 1997. Therefore, since the respondents were unable to

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take advantage of the beneficial computation under the Pension and GPF Regulations read with the Rajasthan Civil Services (Pension) Rules, 1996 they seem to have set up a case of being unaware of the various notices issued by the RSEB from time to time over a period of 8 years.

43. All that we can infer from the conduct of the respondents is that they went along with the CPF Scheme so long as it was beneficial to them, but when the calculation of pension, family pension and commutation of pension underwent an alteration pursuant to the order dated 23rd August, 1997 the respondents had a change of heart and sought to take advantage of the revised manner of computation provided for in the Rajasthan Civil Services (Pension) Rules, 1996. We can only say that the argument of a lack of awareness of the switch-over option appears to be nothing

but a self-serving argument.

44. Another facet of this argument (which was feebly urged) is to found in Issue No.5 dealt with by the RSEB in its order dated 26 th June, 2008 in the following words:

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5. That the erstwhile RSEB adopted R.C.S. (Pension) Rules, 1996 of the Govt. of Rajasthan vide its order no. RSEB/F & R/F.3 (10)/D-42 dated 23.8.1997 but did not provide any opportunity to its employees for exercising option under RSEB Employees Pension Regulation, 1988.

Findings

Issue 5:

That the erstwhile RSEB through RSEB Regulations - 1988 issued separate pension rules for their employees. But in the year 1996, Finance Department, GoR issued new Pension Rules in which computation of pension, family pension, and commutation as well as amount of pensions etc. was amended or revised. RSEB vide order No.42/23.8.1997 opted only computation for the amount of pension, family pension and commutation, other provisions of RSEB Pension Regulations, 1988 remaining unchanged. It has no relation to the option. Thus the applicants were not entitled for any re-option for pension even after the order dt. 23.8.1997. There were already given 8 opportunities to switch over to pension but they retained CPF benefits only."

45. We are in agreement with the view expressed by the RSEB that any and every change in the computation of pension or in the Pension Regulations (either of the RSEB or the Rajasthan Government) does not warrant a fresh option being offered to the respondents.

46. With regard to the submission that the respondents belong to the junior or technical cadre consisting of low paid staff such as peons, vehicle drivers, helpers etc. we need only say that, as pointed out in the rejoinder affidavit of the RSEB, about 100 of the respondents are senior level officers holding posts of Head of Office

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and Head of Department with the RSEB. As per the Pension and

GPF Regulations, they receive the option forms from the employees,

countersign them and then forward them to the Controller of

Accounts. It is extremely difficult to accept their contention that

they were unaware of the switch-over option.

47. As regards the junior technical and non-technical staff, one can assume that the RSEB has a pyramidal structure of staff, with

the greater strength of staff being junior technical and non-technical. If that is presumably so, then of the about 46,000 employees who have exercised their option, the majority would consist of junior technical and non-technical staff. Under the circumstances, it is difficult to believe that while such an extremely large number of employees were aware of the switch-over option, despite their lower hierarchical status, the remaining junior technical and non-technical were unaware of the availability of the switch-over option, and that too over a prolonged period of 8 years.

48. Interestingly, the issues framed in the order dated 26 th June, 2008 passed by the RSEB (impugned in the High Court) does not include the alleged lack of awareness of the availability of the switch-over option on the part of the employees who made the 30 Civil Appeal Nos. 7483 of 2014 etc.etc. (Arising out of SLP (C) No.29639 of 2012 etc.etc.) representations. This argument seems to have been raised for the

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first time in the writ petitions filed by the respondents. But that is not really material for a decision in these appeals.

49. Ultimately the issue boils down to the overall assessment of the awareness level of the employees of the RSEB based on the available data. Based on the facts presented before us, on a composite consideration of the facts and taking a pragmatic view of the situation, a reasonable and legitimate inference can be drawn that the respondents were aware of the notices issued for the exercise of the switch-over option but they chose not to exercise that option either for personal reasons or perhaps because it did not suit them. The position changed in the second half of 1997, by which time it was too late for them to do a rethink.

50. One of the contentions urged by the respondents as writ petitioners in the High Court was that each employee should have been individually served with each notice inviting the switch-over option. That contention was accepted by the High Court by relying upon *Dakshin Haryana Bijli Vitran Nigam and Others v. Bachan Singh* but was not directly canvassed before us. In any

1 (2009) 14 SCC 793

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event the decision relied upon by the High Court was considered
and distinguished in PEPSU Road Transport Corporation,
Patiala v. Mangal Singh and Others.²

51. The contention in this regard is a bit collateral, and it is this:
the switch-over option form was required to be filled up by each
employee clearly indicating the option exercised - either to
continue with the CPF Scheme or to switch to the Pension and GPF
Regulations. This could be done only if the option form was made
available to each employee.

52. In Dakshin Haryana Bijli Vitran Nigam the instructions
relating to the exercise of the switch-over option specifically
mentioned that "These instructions may please be got noted from
all the employees and acknowledge the receipt of the letter." The
appellants therein were unable to show that the instructions were
actually got noted in writing by the respondent. It is under these
circumstances that it was inferred that the respondent had no
knowledge about the options called by the appellants.
Consequently, the denial of pension benefits to the respondent was
held bad.

2 (2011) 11 SCC 702

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(Arising out of SLP (C) No.29639 of 2012 etc.etc.)

53. In PEPSU RTC v. Mangal Singh the decision rendered in
Dakshin Haryana Bijli Vitran Nigam was distinguished on facts
since in the PEPSU appeal there was no condition of noting from
the employees or serving individual notices in the Pension Scheme
or Regulations. This Court went on to say:

"Furthermore, when notice or knowledge of the Pension Scheme can be
reasonably inferred or gathered from the conduct of the respondents in
their ordinary course of business and from surrounding circumstances,
then, it will constitute a sufficient notice in the eye of the law."

54. The fact situation in the present appeals is somewhat similar.
In this context, we may infer that under such circumstances, it
was equally the responsibility of the respondents to collect the
option forms from the concerned authority, fill them up and submit
them to the competent authority. It is too much to expect that even
though it was not necessary for each individual employee to be

served with each notice, yet there was a duty cast on the RSEB to ensure that each employee is furnished a copy of the option form. If such a contention is accepted, it will amount to circuitously accepting that, though the employees need not individually be served the notices, yet they would have to be individually served with a copy of the option form.

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(Arising out of SLP (C) No.29639 of 2012 etc.etc.)

55. The second substantive contention urged by learned counsel

for the respondents was that the Whole-Time Members of the RSEB

had taken a decision on 4th January, 1995 to the following effect:

"It was brought to notice that the last date for giving option for Pension Scheme by the employees under CPF scheme had expired in 1991 and many representations were being received to extend this date. Looking to the difficulty of the employees, it was decided that the facility of opting for Pension Scheme will also be available upto 6 months before retirement to the serving employees only i.e., the employee can opt for GPF Pension Scheme while in service".

56. This decision was communicated by a letter dated 2 nd

February, 1995 to all concerned and according to the respondents

they were now given an option to switch from the CPF Scheme to

the Pension and GPF Regulations at any time upto six months

prior to their retirement from service. Consequently, it was

submitted that the closure of the switch-over option by the decision

dated 12th March, 1999 was not justified.

57. This contention is also liable for rejection. Subsequent to the

decision taken by the Whole-Time Members on 4 th January, 1995

the RBEB issued a notice dated 8th May, 1995 which effectively

superseded the decision taken on 4 th January, 1995.

In terms of

the notice dated 8th May, 1995 the Chairman of the RSEB in

consultation with other Whole-Time Members extended the period

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of exercising the switch-over option till 31 st March, 1996, that is,

for a period of more than 320 days.

Consequently, the decision

taken on 4th January, 1995 was given a go-bye or overridden and

adequate time was given by the notice dated 8 th May, 1995 to the

employees of the RSEB to make a switch-over, in modification of

the decision dated 4th January, 1995.

58. To further benefit the employees of the RSEB (and effectively confirm the demise of the decision dated 4th January, 1995) another notice was issued on 4th February, 1997 by which the Chairman of the RSEB in consultation with other Whole-Time Members extended the period of exercise of the switch-over option till 30th June, 1997. In view of these facts which demonstrate that the decision dated 4th January 1995 was no longer extant, the respondents cannot bank upon that decision in support of their contention that they can exercise the switch-over option upto six months prior to the date of retirement. The final nail in the coffin (if it was at all necessary) came through the decision dated 12 th March, 1999.

59. This issue was also considered by the RSEB in its order dated 26th June, 2008 in the following words, and we endorse that view:
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"Issue raised

3. That all doubts and worries for submitting option for pension by the employees came to rest in the year 1995 when the WTMS and HODS of the erstwhile RSEB took a decision that the facility of opting for pension scheme will also be available upto 6 months before retirement of the serving employees only i.e. the employee can opt GPF Pension Scheme while in service. The employee will himself be allowed to give option and not his nominee after death and reliance has been placed on circular/letter no. RSEB/S/1/F.4(122)/D-155 dated 2-2-1995.

Findings

Issue 3:

That it is true that in a meeting of WTM, such decision was taken but it was simply minutes of discussions and was not a decision of competent Board of RSEB. In pursuance of minutes of WTM meeting it was never placed before Board for approval and no order/amendment was ever issued of the nature of WTM minutes. Therefore, it has never been implemented. The applicants have no right to raise it after lapse of long period of 13 years. However, even after this decision, general decision was taken by Board of RSEB to further give opportunity mentioned hereinunder to opt for pension and GPF, thus, the WTM decision was superseded.

1. No. RSEB/F&R/F.(Pen)/D.35 dated 8.5.1995
2. No. RSEB/F&R/F.(Pen)/D.61 dated 22.8.1995
3. No. RSEB/F&R/F.(Pen)/D.9 dated 4.2.1997

Thus, the decision of WTM required approval of competent Board on such policy matters. Further Management vide letter/notice/order dated March 12, 1999 clarified that the date of option has been closed and no requests will not be considered. Therefore, the applicants cannot now take the excuse of WTM decision of the year 1995 after lapse of a long period of 13 years as sufficient opportunities have already been given."

60. The final question that arises for consideration relates to the right, if any, of the respondents to exercise the switch-over option

at any point of time or to have it kept alive by the RSEB for an

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indefinite period or at least till the superannuation of the

respondents.

61. In this regard, the definition of 'option' occurring in Regulation 2(o) of the Employees General Provident Fund Regulations, 1988 is important. An 'option' requires a written

consent of the existing employee to either continue with the CPF

Scheme or to opt for the GPF Scheme within a period of 90 days

from the commencement of the GPF Regulations. The period of 90

days commences with the GPF Regulations coming into force with

effect from 28th November, 1988. The definition also provides that

an employee who does not exercise the option within the period of

90 days shall be deemed to have exercised his option in favour of

the existing CPF Scheme. It is also provided that it will be "the

personal responsibility of the concerned employee/officer to ensure

that his option reaches timely in the office of the COA (P&F), RSEB,

Jaipur." In other words, not only is a time limit statutorily

prescribed by the GPF Regulations for exercising the option, but a

responsibility has been cast on the employee to ensure that his

option reaches the concerned authorities within the time

prescribed.

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62. Regulation 2(o) of the Employees General Provident Fund

Regulations, 1988 reads as follows:-

"Option" means a written consent of the existing employee to become either member of the Employees General Provident Fund Scheme, 1988 or to continue as member of the existing CPF/FPF scheme covered under the EPF Act, 1952 within a period of 90 days from the date of commencement of Employees General Provident Fund Scheme, 1988 by the RSEB. Any existing employee who does not exercise the option within specified period of 90 days shall be deemed to have exercised option in favour of the existing CPF/FPF Schemes covered under the provisions of Employees Provident Fund Act, 1952. The option once exercised or deemed to have been exercised shall be considered as final and no representation in this respect shall be considered valid for any revision. It will be the personal responsibility of the concerned employee/officer to ensure that his option reaches timely in the office of the COA (P &F), RSEB, Jaipur. Provided that a Board employee who is on that day out of India/within India on leave or deputation or foreign service

or under suspension, may exercise option within one month from the date he takes over the charge of the post, in case he does not get any intimation for exercising option, within one month from the date he is required to exercise it."

63. Notwithstanding the aforesaid Regulation providing for a time limit of 90 days for exercising the switch-over option, the appellant administratively continued to give one opportunity after another to the employees of the RSEB to exercise their switch-over option.

This continued for a period of 8 years and during that period if an employee chose not to exercise his option, it was deemed that he would continue to avail the benefits under the CPF Scheme.

Consequently, if this had any adverse financial impact on the

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employee in the long run (and realized by him in 1997-98), he had

no one else but himself to blame.

64. As regards the Pension Scheme, the admitted position is that

an employee could not continue with the CPF Scheme and also

avail the benefits of the Pension Scheme under the Employees

Pension Regulations, 1988. However, an employee could avail of

both the GPF Scheme as well as the Pension Scheme.

65. The Employees Pension Regulations, 1988 also defines

'option' in Regulation 3(1) thereof. 'Option' means a written consent

of the existing employee for either availing the pension and gratuity

benefits or to continue to be a member of the CPF Scheme.

In

other words, a switch-over option was made available to the

employee under the Pension Regulations as well.

66. Regulation 3(1) of the Employees Pension Regulation, 1988

reads as follows:

"Option" means a written consent of the existing regular employee for Pensionary and Gratuity benefits on the same lines/Rules as are being allowed to the employees of erstwhile employees of the E & M Department opted Board's service with Pensionary benefits or to continue to be the member of the CPF/EPF with benefits of RSEB Gratuity Rules, 1972 or Jodhpur CPF Scheme with benefit of gratuity under the Gratuity Act, 1972.

Note :- Any person who is not covered under the definition of employee shall not be entitled to opt for pensionary and gratuity benefits as per Board's/Govt. rules/regulations."

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67. When the Pension Regulations and the GPF Regulations are

read together, the necessary conclusion is that an employee must

give his option for either continuing to be a member of the CPF Scheme or to switch over to the Pension and GPF Regulations. This option has to be exercised within a period of 90 days from the cut-off date, that is, 28th November, 1988. But the RSEB, in its wisdom, chose to extend the time for exercising the switch-over option over a period of 8 years by giving several opportunities to the employees through its notices.

68. The right of an employee to switch over was, therefore, limited in time by the Pension and GPF Regulations. However, administrative orders issued by the RSEB from time to time extended the period for exercising the option. No employee had any inherent right to either demand an extension of the period for exercising the switch-over option or claim a right to exercise the switch-over option at any time prior to his retirement, and no such right has been shown to us.

69. But, learned counsel for the respondents finally submitted that pension is not a charity or a bounty and an employee is

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entitled to earn his pension. There can be no doubt about this

proposition but when two schemes are available to an employee, one being the CPF Scheme and the other being the Pension Scheme, it is for the employee to choose the scheme that he feels more comfortable with and appropriate for his purposes. No

employee can switch over back and forth from one scheme to another as per his convenience. Once an employee has chosen to be a part of a particular scheme, he continues to remain a member of that scheme unless an option to switch over to another scheme is given to him.

70. Insofar as the present appeals are concerned, the respondents who are members of the CPF Scheme were given several opportunities of switching over to the Pension Scheme and the GPF Scheme under the Pension Regulations and the GPF Regulations respectively but they chose not to do so. The question whether under these circumstances pension is a bounty or a charity

becomes completely irrelevant. The entitlement to pension was available to the respondents but they chose not to avail the entitlement for reasons personal to them. Having taken a decision in this regard the respondents cannot now raise an argument of Civil Appeal Nos. 7483 of 2014 etc.etc. (Arising out of SLP (C) No.29639 of 2012 etc.etc.) pension not being a bounty and therefore requiring the RSEB to give them another option to switch over to the Pension and GPF Regulations.

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71. Under the circumstances, we find no merit in the contentions urged by the respondents and consequently, the appeals of the RSEB deserve to be allowed.

Civil Appeal No.7503/2014 (Arising out of SLP (C) No.30577 of 2012 (from Civil Special Appeal (Writ) No.248 of 2012 in CWP No.13401 of 2008)

72. In this appeal, it is submitted by learned counsel that the facts are slightly different from the rest of the appeals. It was submitted that the writ petitioner had submitted his option on 20 th February, 1996 and that was forwarded to the concerned authorities on 6th March, 1996.

73. By a letter dated 10th April, 1996, the writ petitioner was informed that since his option was conditional, it could not be accepted. The writ petitioner responded to this by making a representation dated 20th April, 1996 to the effect that there was no condition attached to the exercise of option. Nevertheless, he clarified that the alleged condition may be treated as deleted and his option form may be considered. However, it appears that the

Civil Appeal Nos. 7483 of 2014 etc.etc. (Arising out of SLP (C) No.29639 of 2012 etc.etc.) option form of the writ petitioner was not considered by the

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concerned authorities and that led him to file a writ petition in the Rajasthan High Court.

Civil Appeal No.7570/2014 (Arising out of SLP (C) No. 9990 of 2013 (from Civil Special Appeal (Writ) No. 237 of 2012 in CWP No. 1079 of 2008)

74. Learned counsel submitted that the writ petitioner gave his switch-over option well in time and in fact deductions from his salary had been made under the GPF Scheme for several months thereafter.

75. It appears that the reason for not accepting the option given by the writ petitioner was that he had taken a housing loan under the CPF Scheme and was requested by a letter dated 18 th March,

2000 to return the amount so that his switch-over option could be considered. Since he failed to do so, his option was not accepted. The writ petitioner denied receipt of the letter dated 18 th March, 2000 and reiterated that deductions had been made from his salary under the GPF Scheme.

Civil Appeal No.7564/2014 (Arising out of SLP (C) No. 9983 of 2013 (from Civil Special Appeal (Writ) No.257 of 2012 in CWP No. 12230 of 2009)

76. It is submitted that the writ petitioner exercised his option in 1996 and that was forwarded to the competent authority by his

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controlling officer (Executive Engineer at Bhilwara) by a letter dated 30th March, 1996. Though the option form was received well within time, it was not accepted.

77. The entire facts of these cases are not before us nor has the learned Single Judge of the High Court specifically discussed these cases.

78. Consequently, we are not in a position to give any decision in these cases in view of the absence of full facts. We are of the view that the more appropriate course of action to adopt in these matters would be to remand them to a Single Judge of the High Court for fresh consideration on merits after hearing the writ petitioners and the RSEB.

79. No other distinct or partially dissimilar case was pointed out to us by any learned counsel although the learned Single Judge has made a reference to a few of them.

Conclusion

80. All the appeals are allowed but with no order as to costs.

Insofar as Civil Appeals arising out of SLP (C) No.30577 of 2012, SLP (C) No.9990 of 2013 and SLP (C) No.9983 of 2013 are

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concerned they are remitted to a Single Judge of the High Court for a fresh consideration on merits.

.....J
(Madan B. Lokur)

New Delhi;
August 7, 2014

.....J
(Kurian Joseph)

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(Arising out of SLP (C) No.29639 of 2012 etc.etc.)
ITEM NO.1A COURT NO.1
(For Judgment)

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SECTION XV

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

Petition(s) for Special Leave to Appeal (C) No(s). 29639/2012

(Arising out of impugned final judgment and order dated
17/05/2012 in DBCSA No. 274/2012 and in SBCWP No. 10900/2010
passed by the High Court Of Rajasthan At Jaipur)

Rajasthan Rajya Vidyut Vitran Nigam Ltd. ...Petitioner(s)

versus

Dwarka Prasad Koolwal & Ors. ...Respondent(s)
WITH

SLP (C) No.30061 of 2012

SLP (C) No.30098 of 2012

SLP (C) No.30112 of 2012

SLP (C) No.30116 of 2012

SLP (C) No.30096 of 2012

SLP (C) No.30152 of 2012

SLP (C) No.30182 of 2012

SLP (C) No.30187 of 2012

SLP (C) No.30203 of 2012

SLP (C) No.30264 of 2012

SLP (C) No.30311 of 2012

SLP (C) No.30321 of 2012

SLP (C) No.30352 of 2012

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SLP (C) No.30355 of 2012

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SLP (C) No.30367 of 2012

SLP (C) No.30384 of 2012

SLP (C) No.30385 of 2012

SLP (C) No.30536 of 2012

SLP (C) No.30578 of 2012
SLP (C) No.30577 of 2012
SLP (C) No.30579 of 2012
SLP (C) No.30580 of 2012
SLP (C) No.30658 of 2012
SLP (C) No.30674 of 2012
SLP (C) No.30706 of 2012
SLP (C) No.30773 of 2012
SLP (C) No.30777 of 2012
SLP (C) No.30780 of 2012
SLP (C) No.30783 of 2012
SLP (C) No.30788 of 2012
SLP (C) No.31030 of 2012
SLP (C) No.31053 of 2012
SLP (C) No.31215 of 2012
SLP (C) No.31421 of 2012
SLP (C) No.38428 of 2012
SLP (C) No.39208 of 2012

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SLP (C) No.39260 of 2012

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SLP (C) No.39903 of 2012
SLP (C) No.85 of 2013
SLP (C) No.89 of 2013
SLP (C) No.90 of 2013
SLP (C) No.91 of 2013
SLP (C) No.94 of 2013
SLP (C) No.141 of 2013
SLP (C) No.144 of 2013
SLP (C) No.150 of 2013
SLP (C) No.280 of 2013
SLP (C) No.281 of 2013
SLP (C) No.235 of 2013
SLP (C) No.785 of 2013
SLP (C) No.863 of 2013

SLP (C) No.858 of 2013
SLP (C) No.866 of 2013
SLP (C) No.855 of 2013
SLP (C) No.1082 of 2013
SLP (C) No.1021 of 2013
SLP (C) No.1136 of 2013
SLP (C) No.1205 of 2013
SLP (C) No.1179 of 2013
SLP (C) No.1176 of 2013

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SLP (C) No.1433 of 2013

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SLP (C) No.1368 of 2013
SLP (C) No.1371 of 2013
SLP (C) No.9983 of 2013
SLP (C) No.9984 of 2013
SLP (C) No.1659 of 2013
SLP (C) No.9988 of 2013
SLP (C) No.1664 of 2013
SLP (C) No.1474 of 2013
SLP (C) No.9985 of 2013
SLP (C) No.1554 of 2013
SLP (C) No.1565 of 2013
SLP (C) No.1635 of 2013
SLP (C) No.1650 of 2013
SLP (C) No.9987 of 2013
SLP (C) No.9990 of 2013
SLP (C) No.9989 of 2013
SLP (C) No.9991 of 2013
SLP (C) No.9993 of 2013
SLP (C) No.3883 of 2013
SLP (C) No.4058 of 2013
SLP (C) No.4033 of 2013
SLP (C) No.4115 of 2013

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SLP (C) No.4322 of 2013

SLP (C) No.5306 of 2013

SLP (C) No.5786 of 2013

SLP (C) No.6442 of 2014

Date : 07/08/2014 These petitions were called on
for pronouncement of judgment today.

For Petitioner(s) Mr. Shiv Mangal Sharma, Adv.
 Ms. Anjali Chauhan, Adv.
 Mr. Sitesh Narayan Singh, Adv.
 Mr. Shrey Kappor, Adv.
 Mr. Akshat Anand, Adv.
 Mr. Saurabh Rajpal, Adv.
 Ms. Pratibha Jain ,Adv.

For Respondent(s) M/s. Vidhi International

 Mr. Milind Kumar, Adv.

 Ms. Veera Kaul Singh, Adv.

 Ms. Pragati Neekhra, Adv.

 Ms. Aishwarya Bhati, Adv.
 Mr. Anshuman, Adv.
 Mr. Amit Verma, Adv.
 Mr. Sarad Kumar Singhania, Adv.

 Mr. Purushottam Sharma Triathi, Adv.

Hon'ble Mr. Justice Madan B. Lokur pronounced the
Judgment of the Bench comprising His Lordship and Hon'ble
Mr. Justice Kurian Joseph.

Delay condoned, if any.
Leave granted.

All the appeals are allowed but with no order as to
costs. Insofar as Civil Appeals arising out of SLP (C)
No.30577 of 2012, SLP (C) No.9990 of 2013 and SLP (C)

Civil Appeal Nos. 7483 of 2014 etc.etc.

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(Arising out of SLP (C) No.29639 of 2012 etc.etc.)

No.9983 of 2013 are concerned they are remitted to a
Single Judge of the High Court for a fresh consideration
on merits.

Pending IAs, if any, also stand disposed of.

(Neetu Khajuria)
Sr.P.A.

(Renu Diwan)
Court Master

(Signed reportable judgment is placed on file.)

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(Arising out of SLP (C) No.29639 of 2012 etc.etc.)