Before Sanjay Kishan Kaul, Chief Justice &
Augustine George Masih, J.

LUDHIANA HAND TOOLS ASSOCIATION, LUDHIANA—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS—*Respondents*

CWP No. 4881 of 2011

November 27, 2013

Electricity Act, 2003 - Ss. 61 and 62 - Tariff fixation - Overstaffing - Petitioner association alleged that overstaffing by State Power Corporation PSPCL has a direct impact on tariff fixation by Punjab State Electricity Regulatory Commission and general public are sufferers - Held, that Corporation cannot continue to incur losses and yet continue to employ more personnel if there is no such requirement - Being a Government undertaking it may not be possible to reduce manpower through retrenchment and, thus, practical solution would be to reduce staff through retirement over a period - Recruitments of linemen & SSAs, in organisation to replace retiring employees should be limited to only essential requirement.

Held, that the respondent No. 2-Corporation cannot continue to incur losses and yet continue to employ more personnel if there is no such requirement. The subsidy given by the State of Punjab really amounts to public money being spent by the Corporation, which must make endeavour to come out of the woods and once it has surplus funds, it can have all rights to run itself. However, till the situation is achieved, there has to be a check and balance and that is possible within the framework of the regulatory mechanism already framed under the Electricity Act, 2003 as the tariff fixation is by the Commission. The Commission has been making observations qua excess staff of respondent No. 2, which affects tariff fixation and it even reduced the budget available for deployment of personnel.

(Para 7)

Deepak Sibal, Advocate, *for the petitioner* (in CWP No. 1012 of 2012).

Sanchit Punia, Advocate, for Sanjeev K. Tamak, Advocate, *for the petitioners* (in CWP No. 3104 of 2009).

J.S. Puri, Addl. A.G. Punjab.

Ashok Aggarwal, Senior Advocate with Alok Jain, Advocate.

Girish Agnihotri, Senior Advocate with Saurabh Gulia, Advocate.

Amanpreet Kaur, Advocate, for Harit Sharma, Advocate.

P.S. Brar, Advocate.

Arvind Kashyap, Advocate

Sanjiv Pabbi, Advocate.

SANJAY KISHAN KAUL, CHIEF JUSTICE (Oral)

(1) This order will dispose of Civil Writ Petition Nos. 4881 of 2011 (*Ludhiana Hand Tools Association, Ludhiana v. State of Punjab and others*) and 3104 of 2009 (*Baljinder Singh and others v. State of Punjab and others*). The facts are being taken from Civil Writ Petition No.4881 of 2011.

(2) The issue sought to be raised in the present petition emanates from the alleged over staffing by Punjab State Power Corporation Limited/ respondent No.2, which, in turn has a direct impact on the tariff fixation by Punjab State Electricity Regulatory Commission/respondent No.3, including leading the State of Punjab to support it through subsidization process. The petitioners claim that they and the general public are the sufferers in the bargain as the electricity tariff is to be based on the balance-sheet of respondent No.2.

(3) In order to improve the functioning of respondent No. 2, the said entity itself engaged the services of M/s Pricewaterhouse Coopers, an internationally renowned concern, to set forthwith the reforms and infrastructure required to be carried out qua the developments. The report was submitted in the year 2010 titled "The Road Ahead". In so far as the issue of recruitment is concerned, Chapter 6 deals with the summary of all recruitments proposed. Suffice to say that for an illustration,

the immediate need of Linemen was stated to be zero with retirement till 2015 being specified as 2625, which were the gross recruitment needs. This was, thus, proposed in the form of a recruitment plan spread over 2011-15. On the other hand, endeavour was made by respondent No. 2 to recruit 5000 Linemen vide advertisement issued in January, 2011.

(4) Learned counsel for the petitioners has drawn our attention to some of the documents on record. First is a communication dated 30.8.2010 by Government of Punjab/respondent No.1 to respondent No. 2 pointing out that in the Tariff Order of 2010-11 issued by respondent No. 3, a cut of ₹100 crores in the employee cost head has been imposed by the Commission. The conclusion set out in Paras No. 5 and 6 is as under:–

> "*5. In view of above, it is imperative that, before going for fresh recruitment, the powercom/Transco should finalize the norms and manpower requirements for different functions/business based on finally approved report of M/s PWC, submit the roadmap for right sizing the staff strength to the Commission, get it approved and then make recruitment if required based on finalized/approved manpower requirements.*
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> *6. You are, therefore, requested to review your proposal for recruitment in the light of above observations. It would further be ensured that while sending such proposals to the State Government, the Policy Guidelines issued by the Finance Department, Government of Punjab vide their U.O. No.1526 dated 22.12.2009 (copy attached) should be kept in view.*"

(5) The next communication dated 22.9.2010 once again addressed by respondent No.2 to the State of Punjab while referring to this aspect states that it was proposed not to make recruitment in any of the categories of the employees in the current financial year and the position would again be reviewed in the next financial year. Despite this, the advertisement was issued in the same financial year in January, 2011. On 7.9.2010, the Commission wrote to respondent No. 2 noticing that it had come across a proposal to recruit additional staff in various cadres while the question of employee cost had repeatedly come up for

discussion in each Tariff Order. Respondent No.2 had recorded that a study to fix the work norms and re-determine manpower on that basis was underway. It was, thus, stated in the letter that it would be inappropriate to change the present status of employees on the rolls of the Board of its successor entities.

(6) We may notice that on 19.7.2011 vide a detailed order, respondent No.3-Commission was asked to look into the matter and give a report after considering the rival points of view and till then respondent No. 2 was not to make any recruitment proposed to be made. This order stands clarified on 22.2.2013 to state that the order was unambiguous and was to be continued till the report was submitted by the Commission and permission was granted for recruiting 1000 Linemen vide order dated 9.11.2011, but on a contract basis for two years.

(7) We are of the view that respondent No.2-Corporation cannot continue to incur losses and yet continue to employ more personnel if there is no such requirement. The subsidy given by the State of Punjab really amounts to public money being spent by the Corporation, which must make endeavour to come out of the woods and once it has surplus funds, it can have all rights to run itself. However, till the situation is achieved, there has to be a check and balance and that is possible within the framework of the regulatory mechanism already framed under the Electricity Act, 2003 as the tariff fixation is by the Commission. The Commission has been making observations qua excess staff of respondent No.2, which affects tariff fixation and it even reduced the budget available for deployment of personnel.

(8) It is, thus, in the fitness of things that respondent No.2 must operate within certain frame work while having the leverage as an independent public sector Corporation to look to its affairs. Thus, in the matter of deployment of personnel, it should obtain guidelines from the Commission, which can always be done at the time of tariff fixation for each year and should, thus, abide by the observations/directions of the Commission qua this aspect as that forms the basis of the tariff fixation. In our view, this is sufficient to protect the interest of the public at large. We make it clear that the issue of Linemen was taken up only as an

illustrative one and, thus, these directions are to be applied across the Board for deployment of personnel. This would also save money for the State of Punjab as it is professing financial crunch in respect of various aspects pending before the Court.

(9) In compliance with the order passed by this Court on 19.7.2011, the report of the Commission dated 19.9.2011 is available, which would meet the position till that date. For convenience of reference, we reproduce the conclusion as under:–

> "<u>Conclusion</u>
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> *Keeping all the above facts in view, while the commission is for right sizing the overall strength of employees, it is not against recruiting the required manpower of Linemen/SSAs to run the existing and ever expanding power networks of PSPCL and PSTCL in line with recommendations of PwC Reports on PSPCL and PSTCL. Being a Govt. undertaking, it may not be possible for PSPCL/PSTCL to reduce its manpower through retrenchment and the practical solution would be to reduce it through retirement over a period of 2011-15. Recruitments of Linemen & SSAs in the organization to replace such retiring employees should be limited to only the essential requirement. The Commission thus concluded that PSPCL/PSTCL should decide to recruit Linemen/ SSAs against CRA No.267/11 in line with PwC Reports."*

(10) Insofar as the view beyond September, 2011 is concerned, guidelines/instructions can be obtained from the Commission.

(11) The writ petitions accordingly stand disposed of.

A. Aggr.