

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 99 of 2009

Dated: 13th April, 2011

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member,
Hon'ble Mr. Justice P.S. Datta, Judicial
Member

IN THE MATTER OF

Punjab State Electricity Board
The Mall, Patiala-147001
Punjab

... Appellant(s)

Versus

Punjab State Electricity Regulatory
Commission,
SCO No. 220-221, Sector 34-A
Chandigarh-160034

....Respondent(s)

Counsel for Appellant(s): **Mr. M.G.Ramachandran**
Mr.Anand K. Ganesan
Ms. Swapna Seshadri
Ms Ranjitha Ramachandran
Ms Sneha Venkataramani

Counsel for Respondent(s): **Mr. Sakesh Kumar**
Mr. J.C. Shukla,Registrar(PSERC)
Mr. C.S. Rai

JUDGMENT

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. Punjab State Electricity Board is the Appellant herein. Challenging the order impugned dated 3.7.2008, the Appellant has filed this Appeal as against the disallowance of the employees' cost. The short facts are as under:-

(a) The Appellant is a deemed licensee for the electricity transmission, distribution and trading in terms of Section 14 of the Electricity Act, 2003.

(b) The Appellant undertakes generation of electricity also besides the above licensed activities.

(c) Earlier, in the application filed by the Appellant before the State Commission, the State Commission passed the

order dated 14.6.2005 disallowing various claims including the claim towards the employees' cost. Therefore, the Appellant filed an Appeal before this Tribunal in Appeal No.54 of 2005. This Tribunal disposed of the said Appeal on 26.5.2006 rejecting the contention of the Appellant and disallowing the employees' cost. In that order, the Tribunal held that the employees' cost of the Appellant should remain capped till the performance of the Appellant's employees is improved.

In the meantime, the Punjab State Commission notified the Regulations namely Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations 2005 (Tariff Regulations). Under these Tariff Regulations, the employees' cost was to be allowed as the part of the operation and maintenance expenditure.

(d) On 12.2.2008, the Appellant filed a petition in Petition No.5/2008 before the State Commission for determination of the Revenue Requirements and Tariff for the year 2008-09 and also truing-up for the year 2006-2007 and 2007-2008. In the said Petition, the Appellant claimed the operation maintenance expenditure which includes employees' cost on the assets added by the Appellant during the tariff years 2006-2007 and 2007-2008.

(e) The State Commission disposed of the said petition through the order dated 3.7.2008 by determining the Annual Revenue Requirements and Tariff for the tariff year 2008-2009. However, in the said order, the State Commission disallowed the employees' cost claimed by the Appellant and kept the employees' cost at the capped levels and allowed only the wholesale price index escalation.

(f) The Appellant thereupon filed a Petition for review over this claim but the same was dismissed by the State

Commission by the order dated 24.3.2009. Challenging these orders the present Appeal has been filed.

2. Assailing the findings in the impugned order with reference to the disallowance of the employees' cost, the Learned Counsel for the Appellant has submitted that the State Commission has wrongly disallowed the employees' cost claimed on the basis of the actual expenditure incurred but has merely allowed such expenditure only on the basis of the normative expenditure. It is further contended by the Appellant that the State Commission has not taken into account the additional fixed assets as per Regulation 28 (6) of the Tariff Regulations, 2005 even though the Appellant had shown substantial improvement in employees' efficiency and productivity.

3. In reply to the above contentions, the Learned Counsel appearing for the State Commission submitted that the State Commission in the impugned order has correctly allowed the

reasonable cost in the tariff order following its previous orders in accordance with the Regulations in the light of the fact that there was no material to show that the Appellant has taken steps to improve the performance parameters and as such the order impugned does not call for interference.

4. In the light of the above contentions urged by both the parties, we will have to consider the following question that may arise for consideration in this Appeal:

“ Whether the State Commission was correct in not allowing the employees cost as claimed by the Appellant and in not following the tariff regulations framed by the State Commission to include the assets added by the Appellant during the Financial Years 2006-07 and 2007-2008 for the purpose of calculating the operation maintenance expenditure allowable to the Appellant “ ?

5. According to the Appellant, the State Commission did not consider the various steps or initiatives which have been taken by the Appellant to ensure the substantial improvement in the employees efficiency and productivity and that, on the other hand, the State Commission mechanically followed the previous orders passed thereby the employees cost has been capped. Learned Counsel for the State Commission refuted this submission in justification of the impugned order.

6. The Learned Counsel for State Commission has cited the decision rendered by this Tribunal in SIEL Vs. Punjab State Electricity Regulatory Commission & Ors reported in 2007 APTEL, 931. The relevant paragraphs on this issue are given below:

“139. It is significant to note that in so far as the increase in DA and merger of DA with DP of the employees of the Board is concerned on the own showing of the Board, the benefits have been extended in order to maintain parity with the employees of the State Government. These benefits have been extended on the ostensible ground that when the electricity undertaking was transferred to the

Board, it was stipulated that the salary allowances etc of the transferred employees were not to be less favourable than the Government employees. It appears to us that this condition applied only to the salary and allowances etc, which were in vogue on the date of the transfer. This stipulation does not in any manner guarantee same salary, allowances for the PSEB employees as may be admissible to the employees of the State Government in comparable posts. There is no obligation on the part of the Board to extend same salary and allowances to the employees of the Board as are payable to the employees of the State Government. The process of reforms which has been triggered by the Act of 1998 and the Act of 2003 will lose its momentum in case salaries/incentives are not linked to the performance of the employees. There is nothing on record to show that there has been improvement in the performance of the employees of the Board. Benefit should be made available for rewarding efficiency in performance. Automatic availability of benefits generates inefficiency and indolence.

141. *The principle adumbrated by the Supreme Court applies to the case in hand. In spite of the fact that the Commission had capped the employees' cost++ by its first tariff order and there was no ground for holding that there has been improvement in the functioning of the employees of the Board, the Commission having regard to the increase in the employees' cost++ allowed cumulative increase of 15.61% for the year 2005-06 in the approved level of employees' cost++ of Rs.1274.66 crores. Thus, the*

employees' cost++for the year 2005-06 was worked out at Rs.1473.63 crores. This increase of 15.61% was calculated by the Commission on the basis of growth in wholesale price index of all commodities starting from the year 2001-04 to 2005 every year.

144. We also make it clear that we cannot allow a pass through of Rs.1700 crores as employees' cost++ as demanded by the Board. No worthwhile measures were adopted by the Board to reduce the employees' cost+++ during the years in question. Even voluntary Retirement Scheme, which could have been one of the options, was not adopted on the ground that the State Government was not in a position to find funds. These are mere excuses. The State Government itself had taken stand during the year 2002-03 that the employees' cost++ of Rs.1316.50 crores claimed by the Board was quite high. The Government was of the view that the employees' cost++ at Rs.1123.83 crores should be allowed based on norms of 3-5 employees per MU of energy sold. Subsequently, the same Government changed its stance for the year 2004-05. It seems to us that it is not prudent for the Board to employ excessive manpower.

145. In the circumstances, we decline to interfere with the decision of the Commission disallowing increase in the employees' cost++ for the year 2003-04 and allowing only Rs.1473.63 crores as employees' cost+++ for the year 2004-2005".

7. On going through this judgment, it is noticed that the observation made by this Tribunal in the above judgment, would clearly reveal that unless there has been substantial improvement in the performance of the employees of the Board, there cannot be any automatic allowance with reference to the actual expenditure as the automatic availability of benefits generates inefficiency and indolence.

8. The Appellant has contended that the State Commission has not considered employees' cost for the assets added during the years 2006-07 and 2007-08 even though Regulation 28 (6) of the Tariff Regulations, 2005 provides for allowing operation and maintenance expenditure which included employees' cost for additional assets added during the year. This contention is wrong. As a matter of fact, it has taken note of the Regulations 28 (6) of the Tariff Regulations, 2005 and allowed operation and maintenance expenditure for the fixed assets added during the year on pro-rata basis from the date of commissioning.

9. In the absence of revised manpower norms and considering very high employees' cost of the Appellant, the state Commission found no justification in allowing any additional employees cost on this account. While making this observation, the State Commission took into consideration all the observations made by this Tribunal in its judgment dated 26.5.2006 to the effect that employees' cost of the Appellant will remain capped until performance parameters are improved. The State Commission has also considered the submissions made by the Appellant to the effect that it has taken all possible measures to restrict the number of its employees and put-up a ban on creation of new posts as well as fresh recruitment.

10. Besides this, the State Commission has also taken note of the contention of the Appellant that the cost such as terminal benefit, LTA and medical reimbursement are uncontrollable cost and its prayer to allow these cost separately. In this context, it is to be pointed out that the State Commission has followed a consistent policy and took into consideration the

principle of applying WPI increase over the employees' cost as determined under Commission's Regulations framed in the year 2005 and has been consistently followed the same in the subsequent tariff orders.

11. In the opinion of the State Commission, the Appellant had sufficient time to evolve suitable strategy for curtailing wherever possible as well as drawing up suitable Rules and Regulations with a view to ensuring that such cost can be kept under control. But even then, the Appellant has not taken the required steps. Therefore, the State Commission found that it is not appropriate to consider the Appellant's uncontrollable cost apart from the totality of the expenditure incurred. Under these circumstances, the State Commission had found no justification for allowing additional employees' cost for the assets added during these years in the absence of revised manpower norms and considering the already high employees' cost of the Appellant.

12. The State Commission in its earlier orders repeatedly noticed that the employees' cost of the Appellant was one of the highest among the State Electricity Boards and therefore, capped the same for the year 2003-04 and 2004-05 to the level of 2002-03. The Appellant itself had earlier admitted that it had surplus manpower. On the basis of these factors and also the mandate given by this Tribunal in the judgment dated 25.6.2006, the State Commission found that the employees' cost of the Board, shall have to be remained capped since the performance parameters did not improve.

13. The Appellant in its Table 4.23 has taken its projection for the employees cost for the year 2008-2009. These things have been taken into account by the State Commission while considering the primary contentions of the Appellant. The discussions made by the State Commission is contained in Paras 4.9.2, 4.9.3, 4.9.5 and 4.9.6. The same are reproduced below:-

“4.9.2 The Board has also referred to a host of measures being undertaken to control employee cost including freezing fresh recruitment, complete ban on creation of new posts, outsourcing of security works, reduction in generation incentive by 10%, withdrawal of compassionate appointments to dependants of deceased employees, introducing special schemes for employees to avail long leave for self employment, computerization of cash collection centers etc. In addition, the Board has commissioned M/S. Price Waterhouse Coopers to undertake a study of its man power requirements, whose report is expected in July, 2008.

4.9.3 The Board’s main contention is that it has taken all possible measures to restrict the number of its employees and there has been a virtual ban on creation of new posts as well as fresh recruitment. Given the fact that the Board is not in a position to make any further radical reduction in staff strength, the Board contends that it is reasonable to allow actual employee cost as incurred. The Board has specially emphasized the fact that almost Rs.600 crores of its total employee cost in 2008-09 constitute uncontrollable costs such as terminal benefits, LTA and medical reimbursement and the Commission needs to take special note of this factor and allow these costs separately even if it otherwise intends to cap employee cost in accordance with its Regulations.

Finally the Commission held;

4.9.5 In the light of the position brought out in the foregoing para, the Commission does not find sufficient justification to deviate from the Regulations in determining the employee cost of the Board. The WPI increase as on March, 2008 against the corresponding period in the previous year stands at 6.68%. The Commission takes this into account and applying the same on the employee cost determined for 2007-08 arrives at the allowable employee cost of Rs.1773.55 crores in 2008-09.

4.9.6 The Board, in its letter dated May, 16, 2008 has submitted that O&M expenses which include employee cost be allowed for the assets added during the year on prorate basis from the date of commissioning in accordance with Regulation 28 (6) of the PSERC Tariff Regulations. The Commission, however, for the reasons already elaborated in para 2.10.4 of this Order, finds no justification in allowing any additional employee cost”

14. The above paragraphs would indicate that the State Commission has taken into account the Regulation 28 (6) of the Tariff Regulations and has given reasons as to why the entire claim made by the Appellant on employees' cost could not be allowed. As a matter of fact, the State Commission has

specifically held that the State Commission does not find justification to deviate from the Regulations in determining the employees cost of the Appellant as the WPI increase as on March, 2008 against the corresponding period in the previous year stands at 6.68% and applying the same on employees cost determined for the year 2007-2008, the State Commission has arrived at the allowable employees cost of Rs.1773.55 crores in FY 2008-2009.

15. Even though the Appellant claimed Rs.2225.01 crores towards employees' cost, the State Commission allowed reasonable cost of Rs.1773.55 crores, based on the WPI increase and on the strength of sound reasonings.

16. **Summary of our Findings:**

The State Commission in its elaborate discussions made in the orders dated 3.7.2008 and 24.3.2009, has given valid reasonings as to why the entire claim made by the Appellant could not be allowed. The State Commission

has correctly held that there is no justification to deviate from the Regulations and determined the employees' cost of the Appellant. Even though, the Appellant claimed Rs.2225.01 crores towards employees' cost, the State Commission has allowed a reasonable cost of Rs.1773.55 crores in 2008-09, based on the WPI increase.

17. In view of the above, there is no merit in the Appeal. The Appeal is dismissed. No order as to cost.

**(Justice P.S.Datta)
Judicial Member**

**(Rakesh Nath)
Technical Member**

**(Justice M. Karpaga Vinayagam)
Chairperson**

Dated: 13th April, 2011

REPORTABLE/NON-REPORTABLE