

W.P. (PIL) No. 693 of 2004

In the matter of an application under Article 226 of the Constitution of India



1. The Jharkhand State Electricity Supply Workers Union through its General Secretary Baikunth Nath Singh
2. The Jharkhand Power Engineers Service Association through its General Secretary Akshay Kumar ... Petitioners

-versus-



1. Jharkhand State Electricity Regulatory Commission through its Chairman and the Secretary, Second Floor, Rajendra Bhawan-cum-Sainik Bazar, Main Road, Ranchi 834 001.
2. Jharkhand State Electricity Board through its Chairman, Kusai Colony, Doranda, P.S. Doranda, District Ranchi.
3. Chief Engineer, Jharkhand State Electricity Board, Kusai Colony, Doranda, District Ranchi.
4. State of Jharkhand through its Chief Secretary, Govt. of Jharkhand, Project Building, Dhurwa, Ranchi.
5. Secretary, Department of Energy, Govt. of Jharkhand, Ranchi. Respondents.



For the Petitioners : Mr. M.S. Anwar, Sr. Advocate
Mr. Ramit Satender, Advocate
For the Respondents : Mr. Anil Kumar Sinha, A.G.
Mr. Delip Jerath, Advocate

PRESENT
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TAPEN SEN

C.A.V. on 24.02.2004

Pronounced on 15/03/2004

P.K. Balasubramanyan, C.J. This writ petition is filed by the Jharkhand State Electricity Supply Workers' Union and the Jharkhand Power Engineers Service Association, both consisting of the employees of Jharkhand State Electricity Board. The writ petition is filed challenging the tariff determination made by the Jharkhand State Electricity Regulatory Commission notified as the Tariff Order 2003-04. This writ petition, said to be in public



interest, strangely seeks to challenge the fixation of the tariff or the revision of the tariff, on the ground that the revision should have been higher or the tariff should have been fixed at a higher rate than the ones now adopted by the Regulatory Commission. There is also a prayer for the issue of a direction to the State to fill up the vacant posts in the Jharkhand State Electricity Board on the plea that more number of workers are needed for attending to the work of the Board. The further prayer is for the issue of a direction that more power should be purchased from the Damodar Valley Corporation than from the Tenughat Vidyut Nigam Limited as has now been suggested by the Tariff Commission. We asked learned counsel for the petitioner how public interest was subserved by this writ petition and whether this was not a writ petition by the Union seeking the improvement of the service conditions of the workmen or increase in employment opportunities? We also asked counsel a question as to how the prayer for fixing tariff at a higher rate would benefit the common man or the consumer? The answer was that by not fixing the rates at a higher figure, the workers would be considerably affected since there could be no increase in their emoluments and there would also be difficulty in meeting the obligation to pay their salaries and perquisites and this approach was adopted with a view to slowly privatize electric generation and transmission and to do away with the Board. It was also contended that the Regulatory Commission was not properly constituted under the Electricity Regulatory Commissions Act, 1998 since only a Chairman has been appointed without any member and that the recommendation of



such a Regulatory Commission was, therefore, void in law. It was also submitted that the Electricity Board was expected to make some profit, though not substantial profits, even while serving the need of the State and that of the citizens by generation and supply and the economic aspect has been lost sight of by the Regulatory Commission while fixing the tariff. It is also submitted that the rates payable by the industrial consumers have been reduced from what they were obliged to pay earlier and increase in the case of non-industrial consumer was so marginal that it amounts to no increase at all and this results in the increasing needs of the Board not being taken care of. It is thus submitted that the writ petition is filed in public interest, since it is necessary for the Board to survive so that the generation and supply of electrical energy could be properly attended to by a Board, served by an adequate and qualified staff.

2. As regards establishment of State Electricity Regulatory Commission, Section 17(4) of the Electricity Regulatory Commissions, 1998 was referred to. Section 17(4) provides: - "State Commission shall consist of not more than 3 members, including the chairperson". Here, only the chairperson was named and no members were named. Since, the State Commission was to consist of not more than 3 (three) members including the chairperson, the State Commission would be complete only if at least the chairperson and a member were nominated. Section 82(4) of the Electricity Act, 2003 which has repealed the Regulatory Commissions Act was also referred to. That provision also provides that the State Commission shall

consist of not more than 3 (three) persons including a chairperson. Black's Law Dictionary was referred to explain the meaning of the expression 'including' to argue that, that indicated that at least one member had to be nominated along with the chairperson to constitute a Commission. We find considerable difficulty in accepting the submission. The relevant provision in both the enactments only says that the State Commission shall consist of not more than three members including the chairperson. It does not insist that there should be 3 (three) members to constitute the State Commission. We may now contrast Section 17(3) of the Regulatory Commissions Act with Section 3(4) of the Regulatory Commissions Act relating to the establishment and incorporation of the Central Commission. The said provision reads:-

- (4) *The Central Commission shall consist of the following members namely: -*
 - (a) *a Chairperson and three other members;*
 - (b) *the Chairman of the Central Electrical Authority appointed under sub-section(3) of Section 3 of the Electricity Supply Act, 1948, who shall be the Member, ex officio.*

The difference between the two provisions are obvious. Whereas for the constitution of the Central Commission a chairperson and three other members are mandatory, for constitution of the State Commission, the provision is only that it shall consist of not more than 3 (three) members, including the chairperson. There is no insistence that there should be three members including the chairperson to constitute the State Commission. When we come to the Electricity Act, 2003, this



distinction between the Constitution of the Central Commission and that of the State Commission is maintained. Whereas Section 76(5) of the Electricity Act, 2003 insists that Central Commission shall consist of chairperson and three other members, Section 82(4) only provides that the State Commission shall consist of not more than 3 (three) members, including the chairperson. It, therefore, appears to us that as far as the State Commission is concerned, it will be enough if the chairman is named, though it may be open to the State Government concerned to have a State Commission consisting of three members, including the chairperson. Therefore, merely because only the chairperson was notified by the State of Jharkhand, it could not be said that the State Regulatory Commission under the Regulatory Commissions Act was not properly constituted or that the tariff recommended by it is void or unenforceable.

3. As we have noticed, the complaint is that the tariff favours consumers and the rates fixed should have been higher. This prayer in our view cannot be said to subserve public interest. Public interest here is necessarily that of the consumers who should be provided with adequate power at reasonable rates and not the interests of the employees of the Electricity Board looking for more pay or more opportunities for employment. Incidentally, we may notice that the State Electricity Boards themselves would stand wound up on the expiry of one year from the coming into force of the Electricity Act, 2003 on 10.06.2003. Therefore, this part of the prayer for filling up of the posts in the Electricity Board before it has its statutory death, cannot be said to be in public interest. At best, this is some sort of a dispute

which the Union can raise at the appropriate level under the aegis of the Industrial Disputes Act, 1947.

4. Similarly, the argument that more power should be purchased from the Damodar Valley Corporation and less energy should be purchased from the Tenughat Vidyut Nigam Limited, concerns policy and it is not for this Court to direct the Government as to from which source it should purchase power or from which source it should purchase more power. We must also remember that we are not sitting in appeal over the decision of the Regulatory Commission in a writ petition of this nature. Since we find no illegality attached to the constitution of the State Commission which was the main plank of challenge by learned counsel for the petitioner, we are not satisfied that this writ petition deserves to be admitted as a public interest litigation. After all, as and when any consumer comes forward complaining of the tariff fixed, this court can examine the same within the confines of Article 226 of the Constitution of India. We do not think that an occasion for directing the hiking up of tariff rates at the instance of the petitioner-Union has arisen or is warranted in this writ petition.

We dismiss the writ petition.

sd/- P. K. Baksubramanyan, C.J.

sd/- Tapen Sen, J.