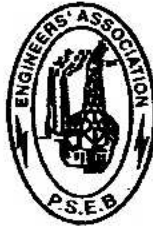


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To

S. Parkash Singh Badal

Hon'ble Chief Minister, Punjab

Subject: Unbundling of PSEB: Order of Appellate Tribunal

Sir

Many SEBs in the country have been restructured in to different generation, transmission and distribution companies under the impression that it is mandatory to unbundle SEB as per Electricity Act 2003. Impression is also being created that unbundling would automatically result in efficiency gains leading to reforms in the sector.

However in a landmark judgement, Appellate Tribunal for Electricity, the highest dispute redressal forum for electricity laws in its order dated 15th July 2009 has held that it is not mandatory to unbundle State Electricity Boards in to separate distribution, Generation and transmission companies as per Act 2003. This vindicated the stand of PSEB Engineers' Association that PSEB can continue as a bundled utility by separating trading functions to satisfy provisions of Act 2003.

The dispute arose when Chhattisgarh State Power Transmission Company objected to grant of transmission licence by State Regulatory Commission to a private company already engaged in the business of distribution. The main objection was that

- A) A transmission licence cannot be granted to a distribution licensee in view of the bar contained in the last proviso to section 41 of the Act.
- B) The impugned grant of licence violates the scheme of restructuring of integrated utilities like the appellant Board contained in Part-III of the Act requiring segregation of the transmission activities from other activities particularly distribution activity while the licence permits

integrating distribution, transmission, trading and generation in one hand.

- C) The scheme of restructuring is aimed at bringing to an end the then existing monopoly of the Boards and ushering in competition so that a competitive regime is established for the benefit of the consumers. This scheme cannot be disturbed by permitting the private company to distribute as well as transmit electricity.
- D) The impugned licence is discriminatory towards the integrated utilities like the appellant Board which has been asked to unbundle while allowing private player to combine several activities.

The Appellate Tribunal in its order held that

- the main objective of the Act does not seem to be elimination of State Electricity Boards or their unbundling into separate entities of generation, transmission, distribution and trading.
- Unbundling of the State Electricity Boards is only an enabling provision in the Act as the Statement of Objectives and Reasons itself says that the core features of the previous Acts have to be maintained except for "mandatory existence" of the State Electricity Boards.
- It was further held that as per section 131 of the Act, the State Governments have not been given the mandate for unbundling the State Electricity Boards, although the steps to be taken, if such unbundling is undertaken, have been provided for. Sub-section (1) of 131 the statement of objectives and reasons where it says in so many words that ***the State Governments have the option of continuing with the State Electricity Boards which under the new scheme of things would be distribution licensee and State Transmission Utility.***
- Unbundling of the State Electricity Boards does not naturally lead to competition. If the State Electricity Boards are unbundled into three or four companies performing different functions without there being other players in the market, the newly formed companies would again become monopolies in their own fields. Competition has to be understood in the context of private sector entering the market. Only when the private sector participates in

generation, transmission and distribution is the concept of competition relevant.

- Section 41 of the Act prohibits the transmission licensee from engaging in trading in electricity but consciously omits to include the function of distribution. So all the three functions of Generation, transmission and distribution can be combined together by separating trading.

IMPLICATIONS OF THE ORDER ON PSEB RESTRUCTURING

The judgement of Appellate Tribunal for Electricity as discussed and quoted above has established the following:-

- i) It is not mandated under the act to split up the functions of generation, transmission and distribution in to separate companies/ organizations
- ii) It is permissible under the Act to retain generation, transmission and distribution under one composite company.
- iii) For the purpose of trading only a separate company would be required.
- iv) It is not at all mandated or compulsory for a State Govt. to unbundle its vertically integrated SEB. Only if the State Govt. exercises its option/ choice to go in for unbundling in that case the section 131 of the Act would apply. In case the State Govt. exercises its choice/ option to retain the functions of generation, transmission and distribution under one organization, it is perfectly permissible under the Act and there is no compulsion on the State Govt. to unbundle the SEB.
- v) The argument given by Ministry of Power to various States to the effect that the Electricity Act 2003 makes it mandatory to unbundle the SEB is a misconception, incorrect interpretation of the Act as has been conclusively established by the Appellate Tribunal for Electricity in its judgement of 15.7.2009.

Different studies conducted on the effect of unbundling of SEBs on their performance including that conducted by MOP/GOI has established beyond doubt that unbundling of SEBs have failed to improve the overall performance of these unbundled utilities. The law point that PSEB can continue as a single entity by separating trading function has now been settled, it is therefore

requested that further action in this regard may please be taken only after wider consultations with all stakeholders including PSEB Engineers' Association.

Yours sincerely,


(Er. Bhupinder Singh)
General Secretary

CC:

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2. **S. Daljit Singh Cheema**
Advisor to Chief Minister, Punjab
3. **Chief Secretary, Govt. of Punjab**
4. **Secretary / Power, Govt. of Punjab**
5. **Chairman /PSEB**
6. **All Members of the Board**