

**ODISHA ELECTRICITY REGULATORY COMMISSION
PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021**

*** ** **

**Present: Shri U. N. Behera, Chairperson
 Shri S. K. Parhi, Member
 Shri G. Mohaptra, Member**

Case No. 87/2020

Nikhila Odisha Bidyut Sramika Mahasangha & Others Petitioners

Vrs.

CEO, M/s. TPCODL & Others
Respondents

In the matter of: Application as per order dated 07.12.2020 of the Hon'ble High Court in W.P.(C). No. 32357/2020.

AND

In the matter of: Application under Section 142 read with Sections 128 & 129 of the Electricity Act, 2003 for violation of the vesting order of the Commission passed in Case No.11/2020 by M/s. TPCL and TPCODL which is affecting the service conditions of the employees of the then CESU.

For Petitioner: Shri Bikash Jena, Advocate.

For Respondent: Shri Iswar Mohanty, Advocate, Shri Sajan Poovayya, Sr. Advocate on behalf of M/s. Tata Power Company Ltd., Shri L. N. Mohapatra, Sr. Advocate on behalf of GRIDCO Ltd., Shri Vidyadhar Wagle, Head (RA), TPCODL along with Shri Ananda Shrivastava, Advocate.
Nobody is present on behalf of DoE, GoO.

ORDER

Date of hearing: 22.06.2020

Date of order: 01.09.2021

1. This petition is filed by Association/Union representing the employees/ engineers of the power sector of the State of Odisha including the central distribution area under TPCODL (erstwhile CESU Utility).
2. Petitioners have stated that the Commission by order dated 26/05/2020 in Case No. 11/2020 in para 48 had directed as follows:-

48(c) - "TPCL is directed to submit the names and profile of the Senior management team proposed to be deployed in TPCODL on or before 30.05.2020. TPCODL shall satisfy the Commission that the profile submitted are in line with the profiles committed in the Bid.

48(h) - "TPCODL shall be required to inform the commission "during recruitment or replacement of the resources forming part of Senior Management Team. The deployment of such resources will be subject to the satisfaction of the commission."

48(i) - "Within 45 days of the effective date, TPCODL shall submit a detailed management structure and staff deployment plan as per Para 48(i) of this order."

48(j) - "TPCODL shall be required to seek Commission's approval on the staff deployment plan from time to time as per the directives of the commission."

3. Petitioners submitted that TPCODL is not working within the framework of the Commission's order and within the ambit of Odisha Electricity Reforms Act and subsequent re-organisation of the electricity sector including Electricity Act 2003, rather working as an independent unregulated company only. The employees of erstwhile CESU are not in a position to know as no communication or order to that effect, has ever been made or issued by TPCODL regarding Senior Management structure of TPCODL or detailed employee structure of TPCODL and related approval of TPCODL Board of Directors in this regard. On the other hand, it is observed that outsiders have been posted in almost all departments of TPCODL and are functioning as department /unit heads in utter violation of the Commission's order.
4. Petitioners submitted that it is also not specified as to how such outsiders have been recruited and by following which standards and procedures of the recruitment process. Their qualification, experience & salary as well as their job description are also not known. It is also not known whether TPCODL has obtained the Commission's approval in this regard to deploy/ appoint such huge number of officers in senior position as required in the order dated 26.05.2020. TPCODL has got no authority and mandate by virtue of the vesting order to override and ignore the entire senior & middle management of erstwhile CESU and relegate them to second /third rung position.
5. Petitioners submitted that the Respondent No.1 has issued several office orders, where almost all senior management team of erstwhile CESU is forced to report to chiefs of all the departments headed by the outside officers and even to pretty juniors whose qualification, experience, 'rank & expertise' are unknown thereby affecting the morale of the pre-existing senior officers of CESU.
6. Petitioners submitted that TPCODL has issued public notices between 27.06.2020 to 29.06.2020 for recruitment of human resources without divulging details of

requirements, rank, grade, pay scales, numbers of post in each rank etc. in violation of Commission's order dated 26.05.2020.

7. Petitioners submitted that a bare reading of the recruitment advertisements reveals that personnel of varied experience (with 2 to 8 years) have been called upon to apply for the posts (unspecified). This means the personnel recruited shall be for different ranks & grades and shall be given lateral entry to each cadre or shall be kept in parallel cadre. This violates the executive and non-executive service regulation of erstwhile CESU, which permits recruitments only at base level of each cadre. This type of recruitment by TPCODL is in clear misinterpretation of the liberty granted to the TPCODL relating to operational flexibility to design the organisational structure, which clearly violates the protection given by the Commission in para 49(c) of the order dated 26.05.2020 as quoted hereunder:-

49(c)- "All such staffs shall form a part of TPCODL and shall be governed by the terms of their appointment. The terms and conditions of appointment of these employees in TPCODL shall not be made inferior to their existing service conditions in any manner. TPCODL shall have the operational flexibility to design the organisational structure to ensure efficiency in operation and staff deployment."

8. Petitioners submitted that the order dated 26.05.2020 of the Commission in Para 49(c) as in consonance with the mandate of law under section 133 of the Electricity Act, 2003, which secures the terms and conditions of service of employees in the event of any vesting of the utility. However, the Respondents in utter disregard to the directions contained in the vesting order dated 26.05.2020, have resorted to whimsical and illegal action in seeking/making fresh recruitments.
9. Petitioners submitted that the present recruitments made/sought to be made by the Respondents without approval of this Commission, would be huge liability on the consumers of the State as it would adversely affect the tariff.
10. Petitioners submitted that the Respondent No.2 (GRIDCO) in spite of being a 49% share holder (as per vesting order) of the Respondent No.1 Company has not objected to such illegal activities of the Respondent No.1 and rather has preferred to remain silent and thereby consented to the actions of the Respondent No.1. As such, the Respondent No.2 is also equally liable to be tried for violation of the order of the Commission.

11. Petitioners stated that the above mentioned acts on the part of the Respondents amount to deliberate and intentional violation of the order dated 26.05.2020, have also made it necessary for an investigation into the affairs of the TPCODL by the Commission under Section 128 of Electricity Act, 2003 and for passing of necessary orders under Section 139 of the Act, 2003 for securing compliance of the said order.
12. Petitioners therefore have prayed as follows:
- (i) Directing the Respondents to comply with the order dated 26.05.2020 passed in Case No.11/2020 so far as the directions contained in Para 48 & 49 of the said order;
 - (ii) Direct TPCODL to withdraw all outside officers from key posts appointed in contravention of order dated 26.05.2020 of the Commission.
 - (iii) Direct TPCODL to cancel all advertisements for recruitment of new personnel and to issue fresh advertisements for induction against base level vacant posts of each cadre as per erstwhile CESU officers and Employees Service Regulation after obtaining due approval from TPCODL Board of Directors and this Commission.
 - (iv) Direct TPCODL to devise and formulate a new man power / organisational structure of TPCODL within two months specifying cadre wise and grade wise posts for Engineering, IT, HR and Finance.
 - (v) Direct TPCODL to issue notifications for adoption of erstwhile CESU officers and Employees Service Regulations and all other Rules & Regulations of erstwhile CESU' in TPCODL mutatis and mutandis,
 - (vi) Direct TPCODL not to change any employee /officer service regulation of erstwhile CESU or make any new regulation in TPCODL without the concurrence of Engineers / Officers Association and Employees Unions.
 - (vii) Direct TPCODL to immediately fill up all vacant posts of each cadre by conducting DPC as per the service regulation and also conduct regular DPCs in future.
 - (viii) Direct TPCODL to desist from creating any sort of parallel cadre in the organisation but to create any required posts within the principal cadres of Engineering, Finance, HR and IT.
13. TPCODL has stated that the allegation that TPCODL has not adequately informed the erstwhile CESU employees on the detailed management structure of TPCODL has no

basis. TPCODL in this regard has submitted that the structure of the Management is flexible and dynamic and posting of personnel is as per the priorities of requirements, resource optimisation as also to provide diverse growth opportunities to employees. There is no communication gap between the employees and the management in this matter and the same is discussed transparently with the unions and employee associations frequently in the regular meetings held with them. In fact, soon after commencement of their operations on 1st June 2020, office orders have been issued explaining the organisational structure and reporting.

14. TPCODL submits that the Vesting Order merely prescribes that intimation needs to be provided to the Commission and it should satisfy the Commission that profiles submitted are in line with the profiles committed in the Bid. The Commission in its order dated 26th May 2020 ("Vesting Order") has observed as follows:

48. Management Structure and Staff deployment plan of TPCODL.

(c) TPCL is directed to submit the names and profiles of Senior Management Team proposed to be deployed in TPCODL on or before 30.05.2020. TPCL should satisfy the Commission that the profiles submitted are in line with the profiles committed in the Bid.

(h) TPCODL shall be required to inform the Commission during recruitment or replacement of the resources forming part of Senior Management Team. The deployment of such resources will be subject to the satisfaction of the Commission.

(i) Within 45 days of the Effective Date, TPCODL shall submit a detailed management structure and staff deployment plan as per para 48 of this order.

(j) TPCODL shall be required to seek Commission's approval on the staff deployment plan from time to time as per the directions of the Commission.

15. TPCODL has submitted that in line with the above directions, it has submitted the names and profiles of the Senior Management Team proposed to be deployed to the Commission on 30.05.2020 and also submitted these details as a part of the Annual Business Plan submitted to the Commission. In such submissions, TPCODL has explained the organizational structure to the Commission, additional manpower recruitment and deployment plan along with the costs. The Commission had passed Business Plan Order in Case No. 41/2020 on 16.11.2020 in this matter.
16. TPCODL has further added that the allegation that TPCODL has not specified the number of outsiders recruited and their qualification/experience and salaries including

OERC approval for such recruitment is not based on facts. The recruitment by TPCODL is made in a transparent manner through issue of advertisements in the newspapers to give wide publicity to the process. In addition, third party agencies are engaged for independent screening and evaluation of candidates. In order to ensure competency in the person, minimum educational and marks criteria are specified. TPCODL submits that neither the Vesting Order, nor any rules/regulations of any authority make it mandatory to make the above information desired by the petitioner public. Hence TPCODL has not flouted any rules or regulations. The flexibility to recruit the candidates at different grades has been given in the vesting order.

17. TPCODL submits that it is making recruitments and assigning roles as per the organizational requirement and available talent. The compensation structure is based on the experience of the candidate and is also based on the industry norms. The OERC in its order dated 16th November 2020 had observed the following:

30. *In view of the above Regulations, the wages and salaries shall be determined on the basis of Basic pay and Grade pay in the structured pay scale. Other allowances are also linked to the pay scales which are allowed as per the Government of Odisha rates. In the present context however, the wages and salaries proposed for the new induction will not be based on such pay scales but as per the industry norms to be decided by the TPCODL.*

31. *In view of such a scenario wherein the salary, wages and allowances for the new induction is decided by the operating company the Commission allows such induction in order to provide operational flexibility to TPCODL to design the organizational structure in order to ensure efficiency in operation and staff deployment. The Commission in its vesting order at para 49(c) have provided such operational flexibility to the operating company.*

18. On the issue of Senior Management personnel of erstwhile CESU, TPCODL submits that the averment of the petitioner is a generalised statement which is without any substance or merit. There is no discrimination or differentiation amongst the employees and all are collectively contributing to achieve the goals and objectives. It is relevant to submit that out of thirty-seven (37) personnel in the Senior Management Team, there are nineteen (19) numbers of Chiefs/Sr. GMs/ GMs/ Heads who are from the erstwhile CESU employees and the balance is from TPCL/TPDDL. Hence the representation in the Senior Management grade by erstwhile CESU employee is in equal number.

19. On the issue of applicability of Section 133 of the Electricity Act, 2003 TPCODL submits that Section 133 of the Electricity Act, 2003 is not applicable under this situation since it deals with vesting of the property of the erstwhile Electricity Board and that the Vesting of CESU utility in TPCODL is under Section 21 of the Electricity Act, 2003. The Vesting Order has however stipulated the following conditions for the existing employee which is as follows:

49. Treatment of existing employees

(a) As per the terms of RFP, all the existing staff/employees of CESU as on the Effective Date shall be transferred to TPCODL excluding personnel on deputation from the State Government of Odisha.

(b) CESU has on its rolls, 4,917(Four thousand nine hundred and seventeen) number of regular employees and 435 (Four hundred thirty-five) number of contractual employees as of 31.05.2020.

(c) All such staff shall form a part of TPCODL and shall be governed by the terms of their appointment. The terms and conditions of employment of these employees in TPCODL shall not be made inferior to their existing service conditions in any manner. TPCODL shall have the operational flexibility to design the organization structure to ensure efficiency in operations and staff deployment.

20. TPCODL has strictly followed the above provisions of the vesting order. The Commission is aware that a Share Holder's Agreement (SHA) has been signed between TPCL (the bidder) and GRIDCO where the responsibilities of TPCL, TPCODL and GRIDCO have been delineated. As per the SHA, recruitment, which a day to day activity of TPCODL is left to the CEO of TPCODL and GRIDCO does not have any role in this matter.
21. The Respondent GRIDCO states that GRIDCO being a minority share holder holding 49% equity shares on behalf of the Govt., has no administrative powers on the majority share holder-TPCL nor the TPCODL is required to seek concurrence of GRIDCO in each and every matter of its employees/manpower placement or requirement. The Petitioner cannot bring in any allegation against GRIDCO on the conduct of the Respondent No.1-TPCODL. The present petition is not maintainable against GRIDCO.
22. GRIDCO further submits the following in this regard:

- i. The entire power sector in Odisha comprising generation, transmission and distribution/ supply of electricity was unified in the hands of former Orissa State Electricity Board (OSEB) prior to 1996.
- ii. By enforcement of the Orissa Electricity Reform Act, 1995, the activities of OSEB were transferred and vested in other independent bodies for generation while for Transmission and Distribution it came to be vested in GRIDCO w.e.f. 01.04.1996. In pursuance to Section 24 of the OER Act, 1995 and sub-clause (2) the service condition of employees is statutorily secured. The State Government through OER (Transfer of Undertakings, Assets, Liabilities, Proceedings and Personnel) Scheme Rules, 1996 had also secured the conditions of service of erstwhile employees of OSEB.
- iii. In a subsequent scheme of Transfer of the employees from GRIDCO to respective distribution companies of four zones viz CESCO/ NESCO/ WESCO & SOUTHCO the same assurance has also been secured vide Rule 4(1)(a) of the OER (Transfer of Assets, Liabilities, Proceedings and Personnel of GRIDCO to Distribution Companies) Rules, 1998.
- iv. The sale of the Utility of CESU (formerly CESCO) under Section 20 of the Act, 2003 and its vesting in TPCODL under Section 21 of the Electricity Act, 2003 does not envisage any unregulated freedom to TPCODL to follow and adopt its own method of employees arrangement without regard to the legacy of law which has been keeping on its force.
- v. The Order dated 26.05. 2020 passed in Case No. 11/2020 has taken its effect from 01.06.2020. As per para 48 of the said Order the Petitioner- TPCODL was required to submit within 45 days from 01.06.2020 a detailed management structure and staff deployment plan which was required to be pre-approved by the Commission before its implementation. Hence, TPCODL is not entitled to resort to recruitment of any such personnel on its own without prior approval of the Commission.
- ix. The provision in Para- 49 of the Order dt.26.05.2020 though assures the security of conditions of service of employees of CESU, yet it does not mean that such staff of CESU to be an isolated entity by itself without being in the

hierarchy of the management positions envisaged under para 48 of the said Order.

23. GRIDCO submits further that the Commission has allowed TPCODL operational flexibility to design the organizational structure to ensure efficiency in operation and staff deployment vide para 48 (c) and has powers to look into the whole aspect of the matter before granting concurrence to the scheme of staff management of TPCODL.
24. In its rejoinder the Petitioners submit that although there have been discussions between the management of TPCODL and the employees' Union/ Associations, a numbers of times, but these were based on various issues raised by the said Unions/ Associations. No discussion has been held regarding organizational / cadre restructuring.
25. Petitioners further submit that in various meetings the petitioners have demanded that recruitment should be made at the base level only, instead of making any lateral entry in higher grade which will very well affect the service condition of the transferred employees and would make the service condition less favorable. On the other hand, the petitioners have severally appealed to make organization restructuring first in order to find out the manpower requirement at different cadres and then to go for filling of the base level post. It was further urged by the Unions/ Associations to induct the existing and experienced contractual or outsource personnel in the organization (TPCODL) before going for any outside recruitment. On the other hand, without restructuring, the TPCODL management has arbitrarily made advertisement for recruitment of outsiders. In violation of the terms of advertisement some outsiders having experience more than seven years have been given lateral entry in higher cadre post in violation of the vesting order.
26. Petitioners have submitted that the Commission has approved the business plan in Case No. 4I/2020 on 16.11.2020. TPCOOL without any prior approval of the Commission had gone for the advertisement in the month of July-2020 which is in clear violation of the vesting order. The Petitioners have further submitted that the recent advertisement made by TPCODL on 11.04.2021 to regularize the contractual personnel engaged through Business Associates (BA) of TPCODL with a stipulation of 55% mark as well as the maximum age limit of 45 years clearly proves the intention of the management to deprive the contractual employees of erstwhile CESU from being permanently absorbed in service.

27. Petitioners have stated that the workers who have been engaged by erstwhile CESU through different agency/ service providers/ labour contractors like 1785 nos. of 33/11 KV structure workers, about 30 nos. of customer care workers, 39 nos. of clerical workers and 121 nos. of maintenance workers are waiting for regularization of service after regularization of 295 nos. of such workers in the year 2009-2010.
28. Petitioners further submit that there is no provision in the vesting order not to disclose the salary structure of the newly recruited employees by TPCODL. It is worth mentioning here that, TPCODL being a joint venture company of TPCL and GRIDCO (State Govt.) is practically functioning out of the funds/revenue collected from the consumers /public and hence, it is obliged to make all these information public. Salary of the officers placed in TPCODL under deputation scheme from other entities of TPCL should be disclosed in order to maintain transparency.
29. Petitioners have submitted in its rejoinder that for any public service in the state of Odisha, the knowledge of Odia language (i.e. above 7th standard) is a must in order to have a proper communication with the public. But it is surprised to note that, non-odia officers have been posted even at the base (section office) level without compliance of the above requirement which is detrimental to public interest. Petitioners state that no officers of erstwhile CESU has been appointed in the rank of Chief of a department. Those posts have been filled up through outsiders deputed from TPCL/TPDDL.
30. Petitioners submit that the transferred employees of erstwhile OSEB/GRIDCO are protected under Odisha Reforms Act, 1995 and the rules framed there under and hence the vesting order dated 26.05.20220 has been made in consonance with Section-133 of the Electricity Act, 2003. But TPCODL has failed to follow the guidelines of the vesting order that safeguards the terms and conditions of service of the transferred employees.
31. Heard the parties at length. This petition has been filed by petitioner association/union representing the employees/ engineers of the power sector of the State of Odisha including the central distribution area under TPCODL (erstwhile CESU Utility). The crux of the allegations of the Petitioners is that TPCODL has violated the employee related provisions as mentioned in para 48 and 49 of the order of the Commission in Case No. 11/2020 the dated 26/05/2020 after its taking over of CESU.

32. Therefore, in the present case the allegations of the petitioner need to be analysed in terms of the para 48 and 49 of the vesting order dated 26.05.2020 and order dated 16.11.2020 in Case No.41/2020 relating to approval of business plan of TPCODL for FY 2020-21 which also arises from the above said vesting order. For sake of convenience we reproduce those two paras below:

“48. *Management structure and staff deployment plan of TPCODL*

- (a) *As part of the Bid, TPCL has provided a staff deployment plan for TPCODL taking into consideration the existing employees of CESU. This is as shown in table below:*

Table 1 : Staff Deployment Plan for TPCODL

Sr.	Department Area/Category	Full Time	Part Time	Total
1	Corporate Head Office /Management	39	5	44
2	Chief Operation Officer Function	4,441	111	4,552
3	Consumer Service, Legal & Regulatory	457	15	472
4	Technology	74	13	87
5	Technical Services	443	17	460
6	Finance	164	7	171
7	HR & Admin	234	11	245
8	Staff of Heads (directly reporting to CEO)	67	9	76
TOTAL		5,919	188	6,107

- (b) *Further, as part of the Bid, TPCL has provided profiles of Senior Management Team comprising of following:*

Table 2 : Senior Management Team proposed by TPCL

Departments	Key Function
Corporate Head Office / Management	<ol style="list-style-type: none"> 1. Chief Executive Officer 2. Chief Operating Officer 3. Chief – Regulatory & Legal 4. Chief – Technology 5. Chief – Technical Services 6. Chief Human Resources Officer 7. Chief Finance Officer 8. Head – Corporate Communications, PR & Govt. Affairs 9. Head – Strategy, BE and BPR 10. Company Secretary 11. Head – Safety
Regulatory & Legal	<ol style="list-style-type: none"> 1. Head – Power Management 2. Head – Regulatory 3. Head – Legal & Enforcement Assessment

<i>Operations</i>	1. <i>Head – Customer Service</i> 2. <i>Head Circle – Operation & Commercial</i> 3. <i>Head – Vigilance</i> 4. <i>Head – Energy Audit</i> 5. <i>Head – Materials Management</i> 6. <i>Head – CSR</i>
<i>Technology</i>	1. <i>Head – Information Technology</i> 2. <i>Head – Operation Technology</i>
<i>Technical Services</i>	1. <i>Head – Technical Analysis Group</i> 2. <i>Head – Planning & Performance</i> 3. <i>Head – Engineering</i> 4. <i>Head – Projects & Civil</i> 5. <i>Head – Procurement</i>
<i>HR, L&D & Admin</i>	1. <i>Head – Business HR</i> 2. <i>Head – Strategic HR & L&D</i> 3. <i>Head – IR & Compliances</i> 4. <i>Head – HR Shared Services</i> 5. <i>Head – ES&A</i> 6. <i>Chief Medical Officer</i>
<i>Finance</i>	1. <i>Head – Corporate Finance</i> 2. <i>Head – Expenditure Controls & Payables</i> 3. <i>Head – Revenue Management</i> 4. <i>Head – Internal Audit & Risk</i>

- (c) *TPCL is directed to submit the names and profiles of Senior Management Team proposed to be deployed in TPCODL on or before 30.05.2020. TPCL should satisfy the Commission that the profiles submitted are in line with the profiles committed in the Bid.*
- (a) *TPCODL shall be required to inform the Commission during recruitment or replacement of the resources forming part of Senior Management Team. The deployment of such resources will be subject to the satisfaction of the Commission.*
- (b) *Within 45 days of the Effective Date, TPCODL shall submit a detailed management structure and staff deployment plan as per para 48 of this order.*
- (c) *TPCODL shall be required to seek Commission's approval on the staff deployment plan from time to time as per the directions of the Commission.*
49. *Treatment of existing employees*
- (a) *As per the terms of RFP, all the existing staff/employees of CESU as on the Effective Date shall be transferred to TPCODL excluding personnel on deputation from the State Government of Odisha.*
- (b) *CESU has on its rolls, 4,917 (Four thousand nine hundred and seventeen) number of regular employees and 435 (Four hundred thirty-five) number of contractual employees as of 31.05.2020.*
- (c) *All such staff shall form a part of TPCODL and shall be governed by the terms of their appointment. The terms and conditions of employment of these employees in TPCODL shall not be made inferior to their existing*

service conditions in any manner. TPCODL shall have the operational flexibility to design the organization structure to ensure efficiency in operations and staff deployment.”

33. Pursuance to the vesting order dated 26.05.2020, TPCODL had filed the petition for approval of Annual Business Plan for FY 2020-21 and the Commission after hearing passed the Business Plan order in Case No. 41 of 2020 dated 16.11.2020.
34. In the said order dated 16.11.2020 the Commission with regard to the deployment of the new employees has directed the following:
- “30. *In view of the above Regulations, the wages and salaries shall be determined on the basis of Basic pay and Grade pay in the structured pay scale. Other allowances are also linked to the pay scales which are allowed as per the Government of Odisha rates. In the present context however, the wages and salaries proposed for the new induction will not be based on such pay scales but as per the industry norms to be decided by the TPCODL.*
31. *In view of such a scenario wherein the salary, wages and allowances for the new induction is decided by the operating company the Commission allows such induction in order to provide operational flexibility to TPCODL to design the organizational structure in order to ensure efficiency in operation and staff deployment. The Commission in its vesting order at para 49(c) have provided such operational flexibility to the operating company.*
32. *The Commission however, observes that the induction of 1367 new employees in executive cadre in one year will have a huge impact on the employees cost and consequently on tariff. The Commission is also aware that in the DISCOMs no new significant recruitments have been made during last 10 years and DISCOMs have appreciable shortage of required manpower. The ratio of the employees vrs consumers has also widened over the years and bringing in new employees will bridge this gap for efficient functioning of the DISCOMs. The Commission is not averse to allowing employee cost which is just and as per the present norms of the relevant industry. At the same time, the Commission is not inclined to fill all the required personnel/ vacancies in one year. Such a large scale recruitment in a short period is bound to choke the career growth over the years besides causing tariff shock. Instead, it should be spread over a longer period.*
33. *The Commission now allows 8% of the total proposed manpower in the current year and stipulates that the new recruitments be made as per the operational requirements. The proposed expense on HR operation may also be accordingly adjusted.*
34. *The approval of the new recruitment as above will be assessed by the Commission during the true-up exercise and periodical reviews. The expenses under this head will be allowed only after prudence check.”*
35. The conjoint reading of employee related provisions in vesting order so also in Business Plan order it can be very well inferred that the Commission has given flexibility to TPCODL to induct new personnel at different grades and their salary can

be different from the erstwhile employees of CESU transferred to TPCODL. This has been necessitated to bring about operational efficiency and filling up of the vacant positions continuing in the said DISCOM for years together. Section 133 of the Electricity Act, 2003 deals with re-organisation of the State Electricity Board and has nothing to do with the vesting order issued under Section 21 of the Electricity Act, 2003. Moreover, distribution business is a specialized one and requires highly skilled man power. The Commission in this context also observes that as per the vesting order, TPCL is required to fulfill its commitment with respect to achieving five years AT&C loss reduction trajectory, five year Capex and financing plan, collection of past arrears, human resource plan, customer service, customer engagement, CSR, discharge of employee liabilities, payment security mechanism for the payment of Bulk supply charges, transmission charges, SLDC charges and discharge of current liabilities. For any default in these commitments the vesting order envisages penal provisions such as imposition of penalty, encashment of Bank guarantee and revocation of the License. The Commission therefore in the vesting order dated 26.05.2020 and subsequent order for approval of the annual business plan 16.11.2020 has granted liberty to TPCODL in manpower deployment so that the requirement of vesting order can be met. These newly inducted employees shall not play adversarial role rather they will work together with erstwhile CESU employees as a team to achieve the organizational goal. They will supplement each other.

36. The employee related costs are controllable cost which the Commission monitors during annual tariff proceedings so also during truing up exercise for the relevant years. Therefore, the new entity does not have unbridled authority to recruit man power by incurring unnecessary expenses which is under the scrutiny of the Commission always as per the Regulations. The apprehension of the Petitioners in this regard appears to be unfounded.
37. The salary and wages of transferees in TPCODL shall be governed under their own service conditions which they were enjoying in CESU before such transfer. The same is related to Government of Odisha related salary and wages. The transferred employees in TPCODL should not have grievances in this regard because both by vesting order and Business Plan order their salary, wages and other service conditions are well protected. They are no way connected to the new employees inducted by TPCODL. The Petitioners have failed to point out any specific case where their

service conditions which they were enjoying have been compromised due to new inductees. Their apprehension is only based on supposition and surmises. Therefore, it cannot be accepted.

38. Regarding filling of the post at senior management level we want to clarify that those posts have been created under new management and were not there in the erstwhile CESU official hierarchy. The TPCODL is committed to bring in skilled man power in senior management level as per the bid conditions to take over CESU. Flexibility has been given to TPCODL to fill up those posts which can be either through direct recruitment or through deputation from some other organizations. The Commission has allowed TPCODL in this regard to bring in new skill in TPCODL which was hitherto unavailable in CESU. As per the vesting order TPCODL is required to inform the Commission during recruitment or replacement of the resources forming part of Senior Management Team. The deployment of such resources will be subject to the satisfaction of the Commission. Therefore, as long as the Petitioners are not affected by the new recruits they should not have grievances in this regard.
39. The Commission therefore sees no merit in the present petition and dismisses the same on the grounds that the allegations are devoid of substance or material for any consideration.
40. The case is according disposed of.

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. K. Parhi)
Member

Sd/-
(U. N. Behera)
Chairperson