

North Eastern Electricity Supply vs Unknown on 13 July, 2011

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2. The brief facts are stated herein :

[The PC Act](#), 1947 was amended in 1964 on the recommendations made by the **Santhanam Committee**. The statement of objects and reasons of the said Act is to make the anticorruption laws more effectively "widening the scope of definition of the expression "public servant", incorporation of offences under [Sections 161](#) to [165A](#) of the Indian Penal Code. The terms of reference of the **Committee** were to "suggest measures calculated to provide a social climate both amongst public servants and in the general public in which bribery and corruption may not flourish." The relevant passage from the recommendations made by the **Santhanam Committee**, placed by the petitioner is extracted hereunder :

(iii) Sub-rule (7) of Rule 4 of the Rules, 1998 provides that The existing conditions of the service and the service regulations of Gridco shall apply mutatis mutandis to the Specified Personnel transferred to the Distcos, till the Distcos (Distribution Companies) frame the service regulation subject however to the conditions specified in Sub-rule (1).

8. It is contended by the learned counsel for the petitioner-company that the electricity distribution business in the State was thus transferred to the petitioner in the area of license granted to it by the Commission. It is further contended that pursuant to the letter dated 6.11.2010 addressed to the DSP, Vigilance, Bhubaneswar Division, Bhubaneswar (Annexure-3), petitioner raised objection to the decision of bringing the petitioner under the provisions of the [PC Act](#). It is contended that the petitioner- company is a licensee and does not discharge the public duty in terms of [section 2\(b\)](#) of the PC Act or its employees are not the public servant in terms of [section 2\(c\)](#) of the PC Act. Therefore, the impugned

order passed by the opposite party no.1 holding that the employees of the petitioner-company are discharging public duties in terms of [section 2\(b\)](#) of the PC Act and are falling within the definition of "Public Servants" under [Section 2\(c\)](#) of the PC Act is not correct since the definition "Public Servants" does not include the employees of private entity. Further under [Section 2\(c\)\(viii\)](#) of the PC Act public servants, inter alia, means 'any person' 'any person' who holds an office by virtue of which is authorised and required to perform any public duty. The petitioner is not a person who holds an office. To come to a conclusion that a person "holds an office", there must be a duty so assigned to such person either by statute or by an executive order. Petitioner who is a licensee can not be said to be a holder of office as there is no duty cast upon it in either of the form. Further it is urged that the petitioner-company cannot be said to have been authorised or required to perform public duties. Therefore, passing the impugned order applying the provisions of [PC Act](#) to the employees is wholly improper in law and further as per section 14 of the OERC Act corresponding the provisions of the [Electricity Act, 2003](#), the license granted in favour of the company is to engage itself in the distribution of electricity in its assigned area. If the petitioner is "authorised or required" to "perform a public duty", then it is so authorised by Commission and not by the Government. A plain look at the sub-section suggests that words "by the Government" are what the sub-section seeks to convey. There is no express or implied authorisation or requirement by the Government for the petitioner to perform a public duty so as to bring it under the definition of sub-section (c) of [Section 2](#) of the PC Act. Further it is contended that the statement of objects and reasons of the [PC Act](#) clearly envisage that the same is intended to cover the employees who have nexus with the Government which may be established either by way of master servant relationship or by way of command-obedience relationship. The relationship between the Government and the petitioner is not that of master-servant and, therefore, the petitioner cannot be brought under the purview of the [PC Act](#). From the terms of reference and the recommendation made by **Santhanam Committee**, it is manifestly clear that the **Committee** was required to suggest measures for curbing corruption in the Government and amongst its servants. The recommendation of the **Committee**, that was responsible for the enactment of the [PC Act](#), did not intend to cover the employees of the private sector. It is further contended that if parameters like

management, control and funding are looked at, then also petitioner does not come under the purview of the [PC Act](#). The management of the petitioner-company, as per its Articles of Association, is done by a Board comprising persons of the BSES and Government has no role in it. Control of the Government over the petitioner is completely absent. There is no funding by the Government in so far as the business of petitioner is concerned. It is, therefore, evident that petitioner has no nexus with the Government so as to bring it under the definition of 'public servant' to apply the provision of [PC Act](#). In the petitioner-company BSES has 51%, the Employees Trust has 10% and the Gridco has 9% equity. However, this equity is not same as that of funding and in any case, Gridco is not same as that of Government.