
(2008) 09 AP CK 0069

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 2970 and 19714 of 2007

Md. Naziruddin

APPELLANT

Vs

The Vice Chairman and Managing Director, Non-Conventional Energy Development Corporation of Andhra Pradesh Limited

 D. Yadagiri Vs The Vice Chairman and Managing Director, Non-Conventional Energy Development Corporation of Andhra Pradesh Limited and The Chairman, Non-Conventional Energy Development Corporation of Andhra Pradesh Limited

RESPONDENT

Date of Decision : 04-09-2008

Acts Referred:

Citation : (2008) 6 ALD 684 : (2009) 1 SLR 546

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P.V. Krishnaiah, for the Appellant; G. Bhaskar, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioners, in this batch of writ petitions, were employed as Field Officers in the Non-Conventional Energy Development Corporation of Andhra Pradesh Limited (for short "the Corporation"). All of them were issued individual charge memos dated 27-04-2005, alleging irregularities, in the matter of implementation of Biogas Programme, during the years 1999-2000 to 2003-2004. It was alleged that the petitioners did not verify the implementation of programmes, correctly, and on the basis of certifications made by them, huge sums of subsidy were mis-utilised, in the form of a) non-construction of biogas plants, b) making double claims for the plants, c) non-traceability of the plants, said to have been constructed, and d) partial construction of the plants. The number of instances, under the four heads, attributed to the petitioners varied. The mis-utilisation of the amounts attributed to the petitioners in W.P. Nos. 2970 and 19714 of 2007, and 6770, 6910 of 2008 are Rs. 1,26,700/-, 2,33,350/-, 2,24,850/- and 4,06,900/-, respectively.

2. Petitioners submitted explanations, mainly contending that they figure somewhere in the middle, in the entire set up, and the authority, to release the amounts for various beneficiaries, is the District Manager, of the concerned Branch. Other grounds have also been pleaded.

3. Not satisfied with the explanation offered by the petitioners, the Disciplinary Authority, the Vice-Chairman and Managing Director, the 1st respondent herein, ordered departmental inquiry. The Inquiry Officer submitted report, holding that the charges against the petitioners are proved. Thereupon, show cause notices, proposing the punishment of removal from service, were issued. The petitioners submitted their explanations. The 1st respondent issued separate proceedings dated 02-11-2006, imposing the punishment of dismissal, from service, against the petitioners. He has also directed the punishment of recovery of 50% of the amount, said to have been misappropriated by the petitioners. It was observed that the District Manager of the Unit, was held equally responsible, and that the manner of recovery of the balance 50% would be determined, depending on the outcome of the disciplinary proceedings, initiated against the District Manager. Feeling aggrieved by the orders of punishment, dated 02-11-2006, the petitioners presented Appeals before the Chairman, the 2nd respondent. The appeals were rejected vide separate orders dated 31-08-2007. Hence, these writ petitions.

4. The petitioners submit that the allegations made against them, in the charge-sheets, is, that the subsidy, sanctioned to various beneficiaries, was mis-utilised, and that no allegation was made against them, to the effect that they have misappropriated the amounts. They contend that though the sanctioning authority of the subsidy amounts is the District Manager, and the Disciplinary proceedings were initiated against him; also the 1st respondent acted in a discriminatory manner.

5. Counter-affidavits are filed on behalf of the respondents. It is stated that the petitioners were entrusted with the duty of making field inspection and ensure proper utilization of the amounts, sanctioned to the beneficiaries. It is stated that the amounts of subsidy were released only on the basis of the certificates issued by the petitioners, and the charges, framed against them, were proved.

6. Sri P.V. Krishnaiah, learned Counsel for the petitioners, submits that the findings and observations in the disciplinary proceedings against the petitioners were contrary to the contents of the charge-sheets. He submits that there is not even an iota of allegation, that the petitioners have misappropriated the amounts, mentioned in the charge-sheets, and they were only accused of being negligent in discharge of duties. He submits that the report of the Inquiry Officer discloses that all the components of the charge, against the individual petitioners, are not proved, and still the 1st respondent proceeded, as though the charges are proved, in their entirety. He pleads that the conclusions arrived by the 1st respondent are contrary to record as well as the charge-sheets. Learned Counsel submits that the Appellate Authority did not appreciate the

matters from the correct perspective.

7. Learned Standing Counsel for the respondents, on the other hand, submits that the charge-sheets served on the individual petitioners are comprehensive in nature, where not only the lapses on the part of the petitioners, but also the resultant loss was also indicated. The learned Counsel contends that the respondents have discussed the matter objectively, duly giving opportunity to the petitioners, and that no illegality has crept into the orders.

8. The 1st respondent issued charge memos dated 27-04-2005 to the individual petitioners. Except for the number and amount involved, the allegations against them are same viz., that they committed irregularities in implementation of Biogas programme during the years 1999-2000 to 2003-2004. The charge, and the basis thereof, against the petitioners, reads as under:

Statement of Articles of Charge Framed Against Sri Md. Nazeeruddin, Technician.
Charge.

Sri Md Nazeeruddin the then Technician, Nalgonda has committed serious irregularities in implementation of biogas programme during the years 1999-2000 to 2003-04 and also observed that large number of demolition, not fed, partially constructed plants are existing at field level and also recommended for release of subsidy for not constructed plants against the Head Office guidelines, thus Sri Md. Nazeeruddin, Technician is held responsible for misappropriation of Biogas subsidy amount as detailed below:

Basis of The Charge

During the Physical Verification conducted by PV team for the year 1999-2000 to 2003-04 in Nalgonda district, the above mentioned irregularities are noticed. As per Head Office guidelines, the subsidy have to be recommended/released after completion/commission of biogas plants, whereas the subsidy was released by deviating the Head Office guidelines.

[(NB) The only variation is, as to the number of plants and the amount of subsidy.]

9. From a perusal of this, it is evident that the allegation against the petitioners is, that they are responsible for misappropriation of Biogas subsidy, as distinguished from misappropriation of any amount. Nowhere in the departmental inquiry it was alleged that the petitioners have misappropriated the amounts. The Inquiry Officer submitted a detailed report. In fact, with the permission of the disciplinary authority, he made personal inspection of the biogas plants in question. The individual reports submitted by the Inquiry Officer are to the effect that the charges were not proved, in their entirety. For instance, in the case of petitioner in W.P. No. 2970 of 2007, the Inquiry Officer held that, as against the allegation that, four plants were not constructed, it was found that two plants were constructed. Similarly, he noticed that, though the allegation in

that 13 plants are said to have been not traced, 9 are in existence. The plea of the petitioners was that, the District Manager had insisted on them, to certify the plants, constructed by individuals, other than the concerned beneficiaries. The Inquiry Officer made the following observations, in his report:

30. The position after re-verification is as follows:

As against 43 plants not constructed 11 plants were found duly constructed. Therefore the 1st charge is partly proved to the extent of 32 plants not constructed and partly not proved so far as 11 plants are constructed. Similarly the Second charge in regard to double claim in regard to 2 plants is concerned is proved. Third charge pertaining to 13 plants not traced is concerned is proved to the extent of 11 plants and not proved to the extent of two plants.

31. The fourth charge about one plant is concerned it is alleged to have been partially constructed is proved to the extent of one plant partially constructed.

32. Before parting the enquiry report in this case also, I would like to reiterate that it is common ground urged by all the accused employees who have been charge-sheeted in the Nalgonda's district that they have acted under the instructions of the D.M. Nalgonda under threat and coercion, therefore, they plead that they are not per se-guilty of the charges, since they have not committed any act or omission deliberately and wilfully violation of the instruction of the Head Office, in the matters of release of subsidy amounts it is the D.M. Sri K. Venkateshwarulu, who is really guilty being incharge of the whole district and the accused officer being subordinate, had to act as per the instructions of the D.M., be it oral, as it did happen in these cases.

33. I am of the opinion, that this plea though appears to be plausible, but difficult for any reasonable acceptance inasmuch as the subordinate could have immediately disobeyed the oral instructions of the D.M. when they can find that the oral instructions are not in conformity with the written circulars issued by the management periodically.

34. In view of all the above circumstances and plea taken by the accused officer it is for the management to take a decision for awarding any punishment, if they so desire, the guilt has to be properly apportioned among all the functionaries of the Corporation i.e., District Manager, Development Officer and the Technicians, and nobody may be allowed to feel at the cost of others, as in public service the responsibility is joint and has to be shared accordingly

10. In the impugned order itself, the 1st respondent took the view that the District Manager is equally guilty, and proposed to recover 50% of the amount from him.

11. A perusal of the record of this case, discloses that the 1st respondent did not proceed in the matter, objectively. It may be true that he noticed certain irregularities, in the matter of sanction of subsidies for construction of Biogas plants. The petitioners were Field Officers, and they were not vested with the

powers to sanction the scheme to any beneficiaries, or to release the amounts to them. Both the functions, are of the District Manager. The plants were constructed between 1999 and 2004. The charge memo was issued in the year 2005. The allegation made against the petitioners, as to the non-construction, or non-traceability of the plants, was found to be incorrect, at least, to some extent, in the departmental inquiry.

12. The uniform case of the petitioners is that the District Manager himself asked them to issue certificates of completion of plants, constructed by persons, other than the beneficiaries. There may have been lapses on the part of the petitioners in blindly acting upon the direction issued by the District Manager. However, it cannot be said that the petitioners have misappropriated the amount of subsidy. In fact, that was not even the allegation of the respondents. It was pointed out that, on account of their negligence in duties, they became responsible for misappropriation. When the petitioners are neither the beneficiaries, nor the sanctioning authority, heavy burden rested upon the 1st respondent to prove the allegation of misappropriation. The emphasis in the departmental proceedings was only upon verification of the Biogas plants, certified by the petitioners. Neither any witness, examined by the Corporation, nor any beneficiary; have deposed to the effect that the petitioners have received, or were paid any amount. Further, it is not a case where the allegations against the petitioners were found proved, in their totality or entirety. The individual reports, in fact, are that, while some facets of the charge were not proved, against the petitioners, at all, others were proved, partially.

13. The 1st respondent did not differ with the findings of the Inquiry Officers, or the observations made by the latter, to the effect that the responsibility for mis-utilisation of the subsidy rested upon the District Manager. Still, the 1st respondent proceeded mechanically and dismissed the petitioners from service, apart from directing recovery of 50% of the amount, said to have been misappropriated by them.

14. Very strong case is needed to dismiss an employee from service. It must not be forgotten, that over the years, an employee makes contribution for his future benefits, and in fact, commences a process of creating an estate for him, so that he and his family can reap the benefits of his service, on retirement. Dismissal of an employee from service denies him, not only of the rest of the service, but also the fruits of the years, and decades of service, rendered, up to the date of dismissal. Such an extreme step cannot be based on a whimsical exercise of power. The disciplinary authority is required to be objective, reasonable, and fair in his approach.

15. It is not uncommon that, as and when financial irregularities, of a fairly large volume, are noticed, against the employees, the disciplinary authorities tend to become trigger happy, particularly when many are involved. Howsoever justified the temptation in this regard may be, the career of an employee, and the livelihood of his family, cannot be put to peril. In matters of this nature, it is

always dangerous to bundle number of employees, and extend them the same treatment, irrespective of their involvement, and the role, that can legitimately be attributed to them.

16. This Court is of the view, that the respondents did not examine the matter dispassionately. At any rate, the punishment of dismissal from service is unwarranted, in view of the findings recorded by the Inquiry Officer, against the petitioners. At the most, it may be a case of imposition of a minor punishment, for the lapses attributed to the petitioners.

For the foregoing reasons, the writ petitions are allowed, and the 1st respondent shall reinstate the petitioners into service. The petitioners shall be entitled to continuity of service, but not back-wages. It shall be open to the 1st respondent to impose any minor punishment, depending upon the nature of findings, in the Inquiry report, against the individual petitioners.

17. There shall be no order as to costs.