**(1999) 11 KAR CK 0062**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 4598 of 1998

Shivalingaiah APPELLANT

Vs

Superintendent Engineer (Electrical) and Chairman, K.E.B., House Allotment Committee, Bangalore RESPONDENT

**Date of Decision :** 23-11-1999

**Acts Referred:**

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 2 (2), 5, 79 (c)

**Citation :** (2000) 5 KarLJ 405

**Hon'ble Judges :** V. Gopala Gowda, J

**Bench :** Single Bench

**Advocate :** Sri S. Siddappa, for the Appellant; Sri B.C. Prabhakar, for the Respondent

# Judgement

1. The petitioner who is a Karnataka Electricity Board Employee has filed this writ petition seeking for issuance of a writ of certiorari to quash the notice dated 22-1-1998 Annexure-D and further sought for issuance of a writ of mandamus to the respondent to collect the normal rent as per the rules and further direction to the respondent to refund the penal rent recovered from the petitioner urging various facts and legal contentions.

2. The petitioner is working as Junior Engineer (Electrical) at Banasavadi MUSS of the respondent-Board. He was allotted a quarters for his occupation and he has been residing in the said quarters along with his aged parents and two unemployed brothers and a son. On 26-6-1995 he has been transferred to Kaggalipura Section Office from Banasavadi office of the respondent-Board. It is his case that the quarters situated at Kaggalipura was not suitable for him and his family occupation. Therefore, he represented to the Assistant Executive Engineer vide his letter dated 8-2-1997 and also enclosed another letter to the Executive Engineer, K.E.B. Rural Division, Bangalore South, K.R. Circle, Bangalore on 8-2-1997 requesting them to permit in the quarters till May 1998. The petitioner was informed vide letter dated 8-2-1997 issued by the Executive

Engineer, K.E.B. Rural Division, Bangalore South refer- ring to Paras 38.01 and 38.02 of the K.E.B. Accounts Manual, Volume 1 stating that he has failed to vacate the quarters allotted to him on his transfer, hence he is liable to pay penal rent at 20% of the gross salary for the period from February 1997 to April 1997 and 50% of the gross salary from May 1997 shall be recovered from him besides initiating disciplinary action against him as per the provisions of K.E.B. Employees (CDC and A) Regulations, 1987. The petitioner represented to his official superiors stating his difficulties for not occupying the quarters at Kaggalipura and not vacating the quarters at Banasavadi. Therefore, he has submitted representation to the Assistant Executive Engineer, Rural Division, South vide his letter dated 20-9- 1997 and also addressed to the Executive Engineer, K.E.B., Rural Division South, giving 2 alternatives by him as per his letter stating that either he may be permitted to continue in the quarters at Banasavadi till May 1998 or transfer him to any place in Bangalore vide Annexure-B. In turn, the said Executive Engineer addressed a letter to the Superintendent Engineer (Electrical), Bangalore Circle-I, recommending the request of the petitioner to continue him in the residential quarters in Banasavadrat normal rent upto the end of the academic year vide Annexure-C.

3. When the facts stood thus the petitioner has received a letter from the Chairman, House Allotment Committee who is also the Superintendent Engineer of Bangalore Circle-II, calling upon the petitioner to vacate the quarters immediately, failing which the disciplinary action as per K.E.B. Employees C.D.C. Regulations, 1987 will be initiated against him, besides imposing the penal rent as per the Board Rules. It is alleged in the petition by the petitioner that the Chairman of the House Allotment Committee was biased towards the petitioner, therefore he has not considered the recommendations made by the Executive Engineer to him for continuing the petitioner in the premises till May 1998 and further stated though there are several precedents of not vacating the quarters by other similarly placed employees of the Board who have been continuing in occupation, against them either disciplinary action was taken or penal rent was recovered from them by the Board. He has given instances of such cases. Mr. Balakrishna, employee of the Board who has vacated the quarters after 7 years after he has retired from his services in the year 1990, no penal interest is recovered from him though he has called upon to do so, which was occupied by him during 19S9. Similarly, another employer R.H. Lakshmipathy, J E O & M (3) was also transferred in the year 1990 continued to occupy the quarters of the Board without penal rent till 31-7-1997 vide Annexure-F. Whereas in the case of the petitioner, the respondent-Board recovered the penal rent as could be noticed from his salary slip for the month of December 1997 and January 1998 at the rate of 50% of the gross salary i.e., 3,236/-per month. Therefore, it is contended that the action of the respondent is not only discriminatory in nature and also violative of Article 14 of the Constitution of India, and the action of the respondent is not based on either Regulations or Rules of the Board which are required to be framed by the Board in exercise of its power u/s 79(c) of the

 

Electricity Supply Act, 1948 (in short ''Act, 1948''). This legal ground is not urged in the petition but the learned Counsel at the time of advancing arguments has urged this legal ground. Therefore, the learned Counsel for the petitioner submits that the impugned notice issued by the respondent is without authority of law. Hence, the learned Counsel for the petitioner has prayed for grant of the reliefs prayed in this petition.

3-A. Per contra, the Board has filed a detailed counter-statement justifying its action and produced the three documents namely, the Board Order dated 7-9-1988 and the Notification No. KEB/B16/7552/87-88, dated 24-4-1989 to show that the Internal Management Administration Committee of the Board has framed the relevant regulation which is incorporated as Paragraphs 38.01 and 38.02 to the Karnataka Electricity Board Accounts Manual, Volume I empowering the Board for recovery of the penal rent from its employees who have been continued in occupation either on their transfer or termination of their services either on account of attaining the age of superannuation or termination of their services for any reason whatsoever. The Internal Management Administration of the Board was empowered to frame such regulations by it in pursuant to the Board Resolution No. 627/18548/16-12-1993 delegating its power to frame regulations regarding internal administration of the Board and No. 629/18590/11-1-1994 and further the learned Counsel Sri B.C. Prabhakar, placed reliance on the unreported judgments of this Court in K.T. Nagaraj v Karnataka Electricity Board and in Sadashiva and Another v Karnataka Electricity Board and Others. Wherein the notification dated 24-4-1989 issued by the KEB framing the regulation regarding imposition of penal rent and initiating disciplinary proceeding in default of vacating the quarters, the said paragraphs were included in the Accounts Manual, Volume I conferring the power upon the Board at Paragraphs 38.01 and 38.02 for levy of penal rates of rent in cases where the official do not vacate the quarters on their transfer or termination of their services by attaining the age of superannuation or for whatsoever reasons etc. Therefore, the learned Counsel for the Board submits that the Board has got power for issue of demand notice for recovery of the penal rent front the petitioner for his overstayed period in the quarters, hence the petition is liable to be dismissed as there is no merit in the contentions urged by the petitioner''s Counsel in this case.

4. This matter was heard at length on several hearing dates on merits including the legality of the clauses at Paragraphs 38.01 and 38.02 in the Accounts Manual, Volume I. The question that would arise for consideration in this case is as to whether the regulation in terms of 79(c) of Act, 1948 is framed by the Board for recovery of penal rent from its employees and whether the alleged regulation is framed at Paragraphs 38.01 and 38.02 in pursuant to the resolution of I.M.A. dated 7-9-1988 and the issuance of the notification dated 24-4-1989 publishing the said regulation under the guise of its delegated power and incorporating the same to the Accounts Manual, Volume I is in conformity with the Elec- tricity (Supply) Act, 1948 is the question required to be considered and

 

answered in this case.

5. To consider this legal question the definition of Board and its constitution are as defined under Sections 2(2) and 5 of the Electricity Supply Act of 1948 are extracted as hereunder:

" "Board" means a State Electricity Board constituted u/s 5. Section 5 of the Act reads thus.-

''The State Government shall as soon as may be after the issue of notification sub-section 4(1) constitute by notification in the Official Gazette a State Electricity Board under such name as shall be specified in the notification''".

The learned Counsel for the Board submits that u/s 5 of the Act of 1948 Board has been constituted by issuing a notification by the State Government, in the Official Gazette as per the said notification there are 7 Board members of the Karnataka Electricity Board. It is an undisputed fact as could be noticed from the draft proceedings of IMCA from 39th to 81st meeting. In the Resolution Book I have perused the resolution passed regarding Subject No. 10 regarding non-vacation of the Board Quarters by the Employees. The IMC Administration consisting of the Chairman, Finance Member and the Secretary of the Board have signed the proceedings on 16-8-1988 and the same have ordered by the Board vide its Order No. KEB/B-16/7552/87-88, dated 7-9-1988. The relevant proceedings of the IMC (Administration) pertaining to the subject in question is extracted as hereunder:

"It was decided that penal rent may be imposed for non-vacation of Board quarters by the employees. Three months'' time may ordinarily be granted for vacation of quarters to such of the officers/employees who either own houses at the place where they are posted or who are transferred out of station where a Board quarters has been allotted to them or legal heirs of employee who has been allotted a quarter and dies while in service. During this 3 months'' time, normal rent shall be recovered from the employee or the legal heirs of the employee. For the next 3 months, if the employee or the legal heirs of the employee fails/fail to vacate the quarters, 20% of the gross salary of the employee (last gross salary drawn in the case of deceased employee) shall be recovered as penal rent. After six months, i.e., 3 months grace period at normal rent plug 3 months extended period at 20% of the gross salary if the employee fails to vacate the quarter, then 50% of gross salary shall be recovered as penal rent.

In addition, the employee shall be liable for institution of disciplinary enquiry proceedings for misconduct".

Admittedly, as on the date of IMC Administration passed the resolution on 16-8-1988 to frame the regulation in terms of Section 79(c) of the Act, 1948 as clause Nos. at Paragraph Nos. 38.01 and 38.02 in the Accounts Manual, Volume I of the Board regarding recovery of penal rent from its employees for not vacating the quarters on transfer or etc., and to initiate disciplinary proceedings against such employees under the provisions of K.E.B. Employees (CD and C) Rules, 1987. There was no Board Resolution delegating its power to the said IMC (Admn.) delegating the power of the Board in its favour as could be noticed from the resolution produced by the Board''s Counsel before this Court today, the Order No. KEB/SA-III/6125/93-94, dated 8-2-1994 in which order the Hoard Resolution Nos. 2195/83-84 and 627/18548/16-12-1993 and 629/18590/11-1-1994 are referred and the Board has in exercise of its power u/s 79(c) of the Act, 1948, has delegated its powers to the Internal Management Committee (Administration). IMC (Tech.) Purchase Committee to frame the regulations are given in respect of the matters referred to in the resolutions referred to in the order dated 8-2-1994. By reading the said resolutions the delegation of the powers of the Board to the IMC (Administration) for framing the regulations pertaining to Internal Management has been given effect from the date of the resolutions dated 26-10-1983, 16-12-1993 which will have prospective effect from the date referred to above. Though the Board has passed the resolution dated 26-10-1983, regarding creation of Internal Management Committee (Admn.) and Purchase Committee. The copy of the resolution was not produced. But I have perused the original Resolution Book in relation to the Resolution No. 627/18548/16-12-1993, delegating the powers of the Board to the IMC (Admn.).

6. The learned Counsel for the petitioner has placed reliance on the Resolution No. 627/18548, dated 16-12-1993 and 629/18590/11-1-1994 in respect of the delegation of power of the Board in favour of the IMC (Administration). Admittedly, the resolution referred to above has empowered the IMC (Admn.) to frame the regulations at Paragraphs 38.01 and 38.02 to the Accounts Manual, Volume I referred to above. But the IMC (Admn.) has passed the resolution dated 16-8-1988 i.e., much prior to the delegation of power delegated to the IMC (Admn.) by the Board. Therefore, the notification dated 24-4-1989 issued by the Board in pursuant to the resolution dated 16-8-1988 for incorporating the regulation paragraphs referred to above for imposition of penalty upon the employees for not delivering vacant possession to the Board is not in conformity with the Sections 5 and 79(c) of the ES Act, 1948 read with Regulation 22 of the Karnataka Electricity Supply Regulations. Further, it is an undisputed fact that under the K.E.B. Employees (Conduct, Discipline, Control and Appeal) Regulations, 1987 (CDC and A) providing of quarters to its employees is not a condition of service incorporated to the regulations referred to above in exercise of its power u/s 79(c) of Act, 1948, if the quarters which are allotted in favour of its employees are not vacated and delivered the vacant possession to the Board by the employees when they are transferred or terminated the services of its employees for whatsoever reasons etc., failing to vacate the same they are liable to pay the penal rent as per the regulation Paragraphs 38.01 and 38.02 of the Accounts Manual, Volume I. u/s 79(c) of the Act, 1948, the Board is empowered to frame regulations with regard to the duties of officers and employees of the

Board and their salaries, allowances and other conditions of service. Such regulations can be incorporated to the K.E.B. Employees (CDC and A) Regulations framed by the Board. Admittedly, the imposition of penal rent upon its employees as provided under regulations contained at Paragraphs 38.01 and 38.02 in the Accounts Manual, Volume I cannot be called as conditions of service to the employees of the Board as enumerated u/s 79(c) of the Act, 1948. Therefore, on this ground also the exercise of power under Rule 79(c) by the IMC Administration, but not by the Board as defined u/s 2(2) and as established u/s 5 of the Act. Therefore, the submission of the learned Counsel appearing for the petitioner that issuance of the impugned notice at Annexure-D is without authority of law for the reason that the regulations at Paragraphs 38.01 and 38.02 incorporated to the Accounts Manual, Volume I are not either preceded by a valid resolution passed by the KEB which is duly constituted as contemplated u/s 5 of the Act or as on the date of the regulations referred to above were framed and incorporated to the Accounts Manual, Volume No. I there was no resolution passed by the KEB delegating its power to IMC to frame the regulations, for recovery of penal rent as stated in the regulations referred above. Therefore, the notification issued by the KEB incorporating the relevant paragraphs to the Accounts Manual as stated above is not legal and valid. Hence the same cannot be enforced against the employees, as the same are not framed in terms of Section 79(c) of the Act, 1948.

7. Further, the reliance placed on the unreported judgments of this Court by the learned Counsel for the respondent referred to above in the preceding paragraphs of this judgment are also considered by this Court and holds that the said judgments are distinguishable for the following reasons. No doubt, the very same notification was questioned by the employees of the Board in the said writ petitions, its legality and validity was upheld by this Court in the said case. The legality and validity of the issuance of the notification referred to above with reference to the provisions of Sections 2(2), 5 and 79(c) of the ES Act, 1948 has not been examined by this Court in those cases. Therefore, this Court has considered the legality of the regulations framed at Paragraphs 38.01 and 38.02 to the Accounts Manual, Volume I with reference to the various provisions of the ES Act, 1948 and the resolutions of IMC (Admn.) (CDC and A) Regulations referred to above. This Court has recorded its findings with reasons and held that the notification issued by the Board with regard to the regulations referred to above arc not valid in law and the same have no statutory force, therefore the same are not binding upon the employees of the Board.

8. For the reasons stated supra, I have already recorded a finding holding that framing of the regulations as stated supra for imposition of penal rent against its employees when they fail to vacate and deliver the vacant possession of the quarters which are in their occupation after their transfer etc., in the Accounts Manual, Volume I was not preceded by a valid Board resolution as the same was not passed by the Board as required u/s 79(c) of the ES Act, 1948, the notification was issued by the Board on the basis of resolutions of 1993-94,

 

which are referred to above in detail. Further, the delegation of powers of the Board in favour of the I.M.C. (Admn.) was given in the year 1994. Therefore, the delegation of power of the Board given to the I.M.C. (Admn.) to frame regulations in respect of some matters will be prospective but not retrospective view of the matter the resolution passed by the I.M.C. (Admn.) on 16-8-1988 is not legal and valid as it had no power at that point of time to pass the resolution to frame the regulations for the reason that as on that date there was no Board''s resolution delegating its power to the I.M.C. (Admn.) to frame the regulations regarding the Internal Administration of the Board. These legal aspects have not raised and gone into by this Court in the aforesaid unreported decisions rendered in the writ petitions referred to above. Hence, those cases are distinguishable from the facts of this case and therefore the said decisions are not applicable to the present case.

9. For the reasons stated above, the petitioner must succeed in this case and the submissions made on behalf of the Board by the learned Counsel Sri B.C. Prabhakar, is not well-founded, hence the same cannot be accepted by this Court. Accordingly, I pass the following order:

The writ petition is allowed. Issued rule and made absolute. The impugned Notice at Annexure-D is hereby quashed for the reason that the regulations at Paragraphs 38.01 and 38.02 to the Accounts Manual, Volume I are not valid in law. Since the notice is quashed, the respondent-Board is directed to refund the amount of penal rent deducted out of his salary to him within two weeks from the date of receipt of this order.

In the circumstances of the case no costs.