

(2016) 02 KL CK 0057

In the High Court Of Kerala

Case No : W.P. (C) No. 22458 of 2004 (W)

Sosamma N.M.

APPELLANT

Vs

Kerala State Electricity Board and Others

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 02 KL CK 0057

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : G. Sasidharan Chempazhanthiyil, Pearly Jose, S. Vishnu, Manoj Ramaswamy and Viveeja Raveendran, Advocates, for the Appellant; Jose J. Matheikel and P. Santhalingam, SCs, for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—1. The petitioner is aggrieved with Ext.P7 enquiry report and Ext.P9 order of the Chairman, Kerala State Electricity Board (KSEB) directing recovery of an amount of Rs. 75,204/- from the DCRG of the petitioner. The petitioner retired as a Senior Superintendent on 30.05.2002. Prior to her retirement, she was issued with Ext.P1 charge sheet dated 24.08.2000. The charge sheet alleged that the consumption details of consumers above 10 KW was not prepared as per the power cut quota and notice was also not given to the superiors about non-fixing of quota, with respect to five hotels, the consumer numbers of which have been specified in Ext.P1.

2. The admitted facts are that between 7.1.1996 and 31.8.1997, there was a power cut in force in the State and the KSEB, to ensure that no excess power was used, brought in the prescription of a quota for the commercial consumers; the use of power, in excess of which was to be taxed at double the prescribed rate. The order issued with respect to that is produced as Ext.P3 which is B.O. No. 83/96 (Plg.Com.2920/95) dated 11.1.1996. Specifically, certain officers were authorized to fix the monthly quota, who were the Chief Engineer's

(Transmission) with respect to Extra High Tension Consumers, Deputy Chief Engineers (Distribution) with respect to High Tension Consumers and Executive Engineers (Distribution) with respect to Low Tension Consumers. The petitioner, who was a Senior Assistant, during the subject period was not authorized or empowered in the matter of fixing such monthly quota.

3. A show-cause notice was issued at Ext.P6 wherein the petitioner, along with others, were sought to be mulcted with the liability to compensate the Board, for the loss caused due to non fixation of the quota, to five Low Tension consumers. The petitioner was fixed with a liability of Rs. 75,204/-. The petitioner replied to Ext.P6 contending that no enquiry report was supplied to her and through Ext.P7 communication dated 21.8.2003, the enquiry report was furnished. Not satisfied with the objections made, Ext.P9 order was passed by the Chairman approving the apportionment of liability as seen at Ext.P6 show cause notice and mulcting the petitioner with the liability of Rs. 75,204/-.

4. The Chairman being the highest authority, there was no scope for any further appeal by the petitioner and the petitioner has challenged the enquiry report and the order passed before this Court under Article 226 of the Constitution of India. The jurisdiction under Article 226 is trite and need not be reiterated; which is only of a judicial review and not a re-appreciation of facts, assuming an appellate jurisdiction. A reliance on extraneous considerations or a perverse finding would definitely clothe this Court with the power to interfere with the findings, as also the punishment imposed, the latter of which also has to stand the test of proportionality. Herein, there is no specific punishment imposed, since, by the time the enquiry was completed, the petitioner had retired from service. The consequence of the finding of guilt is only recovery of Rs. 75,204/-, which liability has been mulcted on the petitioner and which has been recovered from the DCRG.

5. The petitioner, at the relevant time, was a Senior Assistant working in the Electrical Major Section, Pathanamthitta who was only entrusted with the task of issuing invoices. The fixation of quota on the implementation of the power cut had to be done by the Assistant Engineer, as is seen from Ext.P3 order. The enquiry report, at Ext.P7, also indicates that the first part of the charge, with respect to non preparation of consumption details of consumers, was not found and the petitioner was exonerated from the same. The finding that the charge was partly proved is only with respect to the allegation that the petitioner did not bring it to the notice of the superior officer that the quota was not fixed. When the authorized officer to fix the quota, is the Assistant Engineer, it cannot be said that the subordinate officer should have brought it to the notice of the Assistant Engineer that a quota fixed as directed by the Board, has not been done in the case of the five hotels.

6. The enquiry report also shows that the petitioner's predecessor-in-office has brought the non fixation of quota to the notice of the Senior Superintendent, which is also admitted by the Senior Superintendent in her deposition. The

following paragraph would be relevant in that context.

"Smt. Jameela Beevi in her explanation has clearly stated that the acknowledged copy of the notice fixing quota to the 5 consumers were not received by her and as the quotas were not fixed to them she could not raise penal bill to them. DW1 Smt. Annie Beena has admitted the fact that Smt. Jameela Beevi has brought this fact to her notice and there upon both of them intimated the matter to the AEE and the AEE has informed them that these five consumers are exempted from fixation of power cut quota."

7. Further, it is to be noticed that the power cut commenced on 07.01.1996 and Ext.P3 order came immediately thereafter on 11.1.1996. The petitioner was not in office at that point of time. The petitioner joined the Electrical Major Section, Pathanamthitta as a Senior Assistant only on 23.7.1996 and left the office on transfer on 31.5.1997. As was noticed above, the predecessor-in-office had also informed the higher ups that the fixation of quota was not done in accordance with the Boards instructions.

8. On the basis of the evidence adduced at the enquiry and the specific orders of the Board; no liability can be mulcted on the petitioner. The petitioner, who had been a Senior Assistant, entrusted with the task of drawing up invoices, could not have fixed the quota nor could have the consumers be issued with any penal bills, since her superior officer had defaulted in fixing the quota. The junior officer cannot also be imposed with any liability merely on the finding that the superior officer was not told of his duty and alerted, insofar as carrying on such duties in accordance with the instructions of the Board. The liability is solely on the officer empowered to fix such quota, which was not done. A junior employee cannot be imposed with a punishment or recovery for the default committed by the superior, though the vice-versa may be permissible for supervisory lapses.

9. The order mulcting liability on the petitioner at Ext.P9 has to be set aside. The petitioner shall be refunded the amount of Rs. 75,204/-, deducted from her DCRG, within a period of three months from the date of production of the certified copy of this judgment, failing which the petitioner shall be entitled to 6% interest from 30.6.2002, being one month after her retirement. The Board shall pay such interest and shall also be entitled to fix the liability on any defaulting officer in having not complied with the directions of this Court within the time stipulated.

Writ petition is allowed. No costs.