

(1971) 11 SC CK 0038

In the Supreme Court Of India

Case No : Civil Appeal No's. 2018 of 1970 and 634 of 1971

The State of Punjab and Others

APPELLANT

Vs

Bakhtawar Singh and Others

RESPONDENT

Date of Decision : 19-11-1971

Acts Referred:

Constitution of India, 1950 — Article 225
Electricity (Supply) Act, 1948 — Section 10, 5, 9

Citation : AIR 1972 SC 2083 : (1972) 4 SCC 730 : (1972) 4 UJ 244

Hon'ble Judges : K. S. Hegde, J; A. N. Grover, J

Bench : Division Bench

Advocate : Bishan Narain, S.S. Sabharwal, Ravinder Sethi and Lily Thomas, for the Appellant; A.K. Sen, Hardev Singh and K.P. Bhandari, K.C. Sharma, M.S. Gupta, M. Rajagopalan, for the Respondent

Final Decision : Allowed

Judgement

1. These are appeals by special leave. In both these appeals we are concerned with the validity of the removal from office of the concerned respondents u/s 10(1)(e)(iv) of the Electricity (Supply) Act, 1948 (which will hereinafter be referred to as the Act).

2. We shall first take up the case of the respondent Shri Bakhtawar Singh. He was appointed as a member of the Punjab State Electricity Board, Patiala by the Punjab Government on April 29, 1967 for a period of five years u/s 5 of the Act. After giving him a show cause notice and obtaining his reply thereto the Punjab Government removed him from the membership of the Electricity Board on April 25, 1969 in purported exercise of its powers u/s 10(1)(e)(iv) of the Act. He challenged the validity of the order removing him from office by means of a writ petition under Article 225 of the Constitution before the High Court of Punjab and Haryana on various grounds. The High Court of Punjab and Haryana has accepted his writ petition and quashed the order complained of.

3. Now coming to the case of the respondent Shri Rajinder pal Abrol, he was

appointed as a member of the Punjab State Electricity Board, Patiala by the Punjab Government on April 29, 1967 for a period of five years u/s 5 of the Act. After giving him a show cause notice and obtaining his reply thereto, he was removed from the membership of the Board on April 25, 1969. The Government purported to remove him u/s 10(1)(e)(iv) of the Act. He also challenged the validity of the order removing him before the High Court of Punjab and Haryana. His petition was also accepted and the impugned order struck down.

4. Aggrieved by the judgments of the High Court, the State Govt. has brought up these appeals.

5. Before proceeding to discuss the issues arising for decision, we may mention that so far as Shri Baktawar Singh was concerned, he was initially appointed on a salary of Rs. 1200/-per month but later on his salary was raised to Rs. 1800/-per month. Shri Rajinder Pal Abrol was appointed as an honorary member. He was not entitled to any salary. One further fact that needs to be mentioned at this stage is that both Shri Baktawar Singh and Shri Rajinder Pal Abrol were appointed by Shri Lachhman Singh Gill when he was the Minister for Electricity. As the time of their appointments, Shri Lachhman Singh Gill was a member of the Ministry headed by Shri Gurnam Singh. Later on there was a rift between Shri Gurnam Singh and Shri Lachhman Singh Gill as a result of which Shri Gurnam Singh's Ministry fell and a new Ministry was formed by Shri Lachhman Singh Gill. That ministry also fell at a later stage and the same was followed up by President's rule. Thereafter there was a fresh election and after the election, Shri Gurnam Singh formed a fresh ministry. Shri Baktawar Singh and Shri Rajinder Pal Abrol were removed from their membership when the ministry of Shri Gurnam Singh was in office after the elections. It is seen from the material on record that Shri Baktawar Singh as well as Shri Rajinder Pal Abrol were friends of Shri Lachhman Singh Gill.

6. Various grounds were taken by Shri Baktawar Singh and Shri Rajinder Pal Abrol in challenging the validity of the impugned orders. We have not thought it necessary to go into all those grounds as we are of opinion that the impugned orders are vitiated for the reasons to be mentioned hereinafter.

Section 10 of the Act reads :

(1) The State Government may suspend from office for such period as it thinks fit or remove from office any member of the

Board who

(a) is found to be a lunatic or becomes of unsound mind or

(b) is adjudged insolvent: or

(c) fails to comply with the provisions of Section 9; or

(d) become or seeks to become a member of (Parliament) or any State legislature or any local authority or

(e) in the opinion of the State Government

(i) has refused to act;

(ii) has become incapable of acting; or

(iii) has so abused his position as a member as to render his continuance on the Board detrimental to the interests of the general public;

(iv) is otherwise unfit to continue as a member or

(f) is convicted of an offence involving moral turpitude.

(2) No order of removal shall be made under this section unless the member concerned has been given an opportunity to submit his explanation to the State Government, and when such order is passed the seat of the member removed shall become vacant and another member may be appointed u/s 5 to fill up the vacancy.

7. It is clear from a reading of this section that removal contemplated u/s 10(1)(e)(iv) is as a punishment. That being so natural justice requires that the person complained of should be informed of the charges against him and that he should be given a reasonable opportunity consistent with the charges leveled against him to rebut those charges. We have not thought it necessary in this case to go into the question whether a formal enquiry was necessary while taking action under that provision.

8. In the case of Shri Baktawar Singh, the main allegations against him as that he was trying to win over support from among the M.L. As for the Janta Party of which Shri Lachhman Singh Gill was the leader. There were other minor charges also. He denied those charges, and he wanted an opportunity to cross-examine his accusers. But that opportunity was not made available; to him-Ultimately he was removed from office by the order of the Governor. That order does not disclose any reason for removing him from the office. But that order appears to have been made on the basis of the order made by the Minister in charge. The Minister's order reads thus :

I have carefully considered the whole file, show cause notice and the explanation furnished by Shri Bakhtawar Singh. I have also seen the opinions of our Legal remembrancer and the Advocate-General. I agree, with the Secretary, Irrigation and Power, that this fact is established that Shri Bakhtawar Singh while working as Member of the State Electricity Board, was taking part in politics, as a result whereof the work of the Board was adversely affected. Besides, he did not discharge his duties impartially. For these reasons, I agree with the proposal of the Secretary, Irrigation and Power, that it is not desirable that Shri Bakhtawar Singh should continue as Member of the State Electricity Board. I, therefore, order that Shri Bakhtawar Singh should be removed from membership of the Board u/s 10(1)(e)(iv) of the Act. Before the orders are actually issued, the file should be sent to the Chief Minister as well.

Sd/-Sohan Singh Bassi, 24-4-1969.

9. This order does not show that the Minister found him guilty of any of the charges leveled against him. On the other hand the order gives two reasons for removing Shri Bakhtawar Singh from office. They are (1) that he was taking part in politics and (2) that he did not discharge his duties impartially.

10. It may be noted that Shri Bakhtawar Singh was not charged with having not discharged his duties impartially. None of the charges leveled against him accused him of not discharging his duties impartially. Hence the Minister was not justified in taking into consideration a charge in respect of which the member was not given opportunity to explain his position. Further the finding of the Minister that Shri Bakhtawar Singh was taking part in politics is a vague finding. Politics is a word of wide import. By merely saying that he was taking part in politics nothing concrete is conveyed or established. In view of this conclusion of ours, it is not necessary to go into the other grounds urged on behalf of Shri Bakhtawar Singh.

11. Now coming to Shri Rajinder Pal Abrol, all the charges leveled against him related to alleged acts and omissions prior to his appointments as a member of the Board. That apart, the order of the Minister removing him does not disclose that he had applied his mind to the material on record. That order does not show what charges against Shri Abrol have been established. The order reads:

I have gone through the charges and the explanation furnished by Shri R.P. Abrol. From the material on the file, I am definitely of the opinion that he is not a fit person to be retained as part time member of the Electricity Board. I, therefore, order that Shri Abrol may be removed from membership under Sub-clause (iv) of Clause (e) of Sub-section (1) of Section 10 of the Electricity Supply Act, 1948.

C.M. may kindly See. After C.M. has seen, immediate orders be issued.

Sd/-Sohan Singh Basi, I.P.M. 17-7-1969.

12. This order cannot be said to be a speaking order. It is arbitrary to the core. Such an order cannot be upheld. Hence it is not necessary to go in to the other contentions advanced on behalf of Shri Abrol.

13. For the reasons mentioned above, both these appeals fail and they are dismissed with costs.