

(2006) 11 BOM CK 0098

In the Bombay High Court

Case No : Writ Petition No. 1045 of 2001

Vasant Raghunath Tupekar

APPELLANT

Vs

Maharashtra State Electricity Board

RESPONDENT

Date of Decision : 29-11-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Electricity (Supply) Act, 1948 — Section 79
Maharashtra State Electricity Board Employees Service Regulations, 1995 —
Regulation 86, 87, 88, 89, 90

Citation : (2007) 1 ALLMR 524 : (2007) 1 BomCR 862

Hon'ble Judges : R.M. Savant, J;P.V. Hardas, J

Bench : Division Bench

Advocate : S.C. Bora, for the Appellant; R.P. Powar, for the Respondent

Final Decision : Allowed

Judgement

R.M. Savant, J.—This Petition filed under Article 226 of the Constitution of India impugns the order dated 12.3.2001 passed by the Chairman of the Maharashtra State Electricity Board (hereinafter referred to as the State Board) reverting the Petitioner from the post of Chief Engineer to that of Superintending Engineer.

2. The facts necessary for adjudication of the issues raised in the Petition are narrated hereinunder:

The Petitioner joined the services of the Respondent No. 1 i.e. State Board in August, 1965 as Junior Engineer. The Petitioner in due course was promoted to the post of Assistant Engineer, thereafter to the post of Deputy Executive Engineer, Executive Engineer and to the post of Superintending Engineer in the year 1995 and thereafter to the post of Chief Engineer in the year 1999 and was at the relevant time working as Chief Engineer, Aurangabad Zonal Office, Aurangabad. The Petitioner therefore reached the highest echelon in service. It is the case of the Petitioner that all along he had a clean and unblemished service record. The Petitioner was to superannuate on 31.3.2001.

The Petitioner while serving as Chief Engineer at Zonal Office at Aurangabad was issued a show cause notice as regards certain alleged irregularities and misconducts committed by the Petitioner during his tenure as Superintending Engineer, Ahmednagar between the period March, 1995 to 24.2.1999. The gravamen of the allegations in the said show cause notice are reproduced hereinunder:

A new high-tension connection was sanctioned by the Circle office Ahmednagar to M/s. Abhinav Alloys Pvt. Ltd. at F-3 MIDC Ahmednagar (Consumer No. 16201-900126-1) with contract demand of 280 KVA and connected load of 300 KW. The connection was released on 13th April 1994. On 29th June 1996, an inspection was carried out by the Dy. Executive Engineer (Testing) Shri V.M. Shelke and Jr. Engr. Shri S.D. Kulkarni in the presence of the Dy.E.E. and J.E. (MIDC) and the representative of the firm Shri Pitale. In this inspection, wrong grouping of cables in CTPT secondary terminal box was discovered. The same was rectified and report bearing letter No. 411 dated 10th July, 1996 was sent to the Executive Engineer as well as to you as the Superintending Engineer Ahmednagar. In this letter a request was made to check the present consumption and make an assessment for the past. You as Superintending Engineer, Circle Office made certain queries on this report under your letter No. 411 dated 23rd August 1996 and the same were complied with by the Executive Engineer (Testing) in his confidential letter No. 22 dated 5th October 1996.

Due to wrong grouping of cables, the meter was showing substantially lower consumption. On receipt of the report dated 5th October, 96 from the E.E. (Testing) an office note is said to have been prepared on 20th December 1996 by the E.E. (Office), Circle Office Ahmednagar seeking approval to issue a bill of Rs. 16,35,466/-for the period of under billing. The note was said to have been audited by Shri B.B. Wani, Accounts Officer. The note requested that responsibility may be fixed for making wrong connections. It appears you as S.E. did nothing on this note till 22nd December 1998 (i.e. for two years, although being the Superintending Engineer for the Circle, you yourself were responsible for HT billing). The E.E. (Office), Shri Mutha and Shri Wani, A.O. retired on 31st July 97 and 30th April 98 respectively. In December 1998, on receipt of a complaint the Dy. Director (V & S) visited your office to enquire about the revised bill. According to your admission dated 8th December 1999, you then undertook a search to enquire as to why the assessed bill had not been issued even after a lapse of two years. Approval was thereafter given by you on 22nd December 1998 and a bill was issued to the consumer on 30th December 1998. The consumer, instead of paying the bill approached the Electrical Inspector, Ahmednagar pointing out that the bill was wrong and arbitrary and refused to pay. The Board is likely to suffer a loss of revenue, because part of the bill may be held to be time barred.

It was alleged against the Petitioner that on account of the said misconduct committed by the Petitioner the said Board had suffered a revenue loss to the

tune of Rs. 16,35,466/-. The Petitioner was called upon to reply to the said show cause notice within a period of 7 days from the receipt of the same. The Petitioner vide his letter dated 25.1.2001 sought for extension of time to reply to the said notice upto 20.2.2001 as he was not available in his office upto 12.2.2001. It appears from the record that the said request of the Petitioner was turned down and the Petitioner came to be served with chargesheet on 8.2.2001. The statement of allegations and imputations are virtually the same as in the show cause notice. By the said chargesheet following charges came to be alleged against the Petitioner. The said six charges are reproduced hereinunder:

- (i) Collusion with consumer with view to deprive the Board of its revenues. (Sr.No. 4 of Schedule "B" appended to MSEB Employees" Service Regulations)
- (ii) Gross negligence resulting in loss to the Board. (Sr. No. 6 of Schedule "B" appended to MSEB Employees" Service Regulations)
- (iii) Breach of trust, dishonesty in connection with the affairs of the Board. (Sr. No. 14 of Schedule "B" appended to MSEB Employees" Service Regulations)
- (iv) Acts of disloyalty to the Board. (Sr. No. 15 of Schedule "B" appended to MSEB Employees" Service Regulations)
- (v) Breach of Rules Regulations, Circulars, Orders and instructions. (Sr. No. 22 of Schedule "B" appended to MSEB Employees" Service Regulations)
- (vi) Negligence and neglect of work. (Sr. No. 23 of Schedule "B" appended to MSEB Employees" Service Regulations)

It is also mentioned in the said show cause notice that considering serious acts of misconducts committed by the Petitioner the author of the said chargesheet who is the competent authority pursuant to the powers delegated to him under the Service Rules proposed to revert the Petitioner to the lower post of Superintending Engineer as the Petitioner was responsible for the loss caused to the said Board to the tune of Rs. 16,35,466/-. The Petitioner was called upon to file his Written statement to the said chargesheet to the points mentioned at the bottom of the said chargesheet.

3. The Petitioner vide his letter dated 16.2.2001 replied to the said chargesheet. The Petitioner denied the fact that he was in collusion with the consumer. The Petitioner stated that in fact he was the person who was responsible for initiating the action against the consumer which was triggered by his letter dated 23.6.1996. It would be relevant to reproduce some of the paragraphs of the Petitioner's reply:

It was in December, 1998, when the Dy. Director (Vigilance) has been to my Office. We were taking a review of past cases regarding assessment recoveries. This case came to the notice which was required to be assessed. Immediately, I summoned the concerned Officers in Technical and Account Section wherein a note was shown in the xerox mode and found in the Account Section. Original

note of which the xerox copy was made was not available nor shown to me any time, even at a latter date also. Based on my immediate instructions, a note on working of assessment to be charged for consumers was prepared on the same day by the concerned Account Section and after examining the details and discussions with the Officers in the Technical Section, the final orders were passed on approval of the note put up the me. It is surprising to note that no reminder note has been put by Accounts Officer and Billing Section for two years for the note which is alleged being kept pending by me. Also only xerox mode of note was available which is something unusual and needs to be given serious attention.

It may be mentioned here that bill was issued to the consumer immediately when the papers were made available by the concerned Officers and there is no loss to the Board. The case is pending with Electrical Inspector. The amount can be well recovered through following prescribed proceedings in the matter such as:

1. Decision of the Electrical Inspector
2. Appeal
3. Recovery from Court of Law

The Petitioner concluded by saying that he has not committed any irregularity and therefore does not accept any of the charges levelled against him and also does not accept punishment mentioned in the said chargesheet.

4. At this stage it would be also relevant to reproduce the relevant service regulations. The Respondent No. 1 has framed what are known as Maharashtra State Electricity Board Employees Service Regulations (hereinafter referred to as the said Regulations) which have been framed by the Respondent No. 1 in exercise of the powers conferred on it by Section 79C of the Electricity (Supply) Act, 1948. Regulation 86 deals with the classification of offences which are classified into two categories (a) Minor lapse (b) Acts of misconduct. Regulation 87 deals with the procedure for dealing with minor lapses. Regulation 88 deals with the procedure for dealing with acts of misconduct. Regulation 89 deals with cases which are an exception to the provisions of Regulation 88 and Regulation 90 deals with summary proceedings. Since the Respondent No. 1 has resorted to proceedings against the Petitioner under the said Regulation 90 the same to the extent relevant for the purpose of the Petition is reproduced hereinunder:

90. Summary proceedings

(a) ...

(b) Where there is obvious evidence of the act of misconduct have been committed or,

(c) Where the misconduct or misbehavior is considered too grave and convincing to warrant or justify the normal procedure to be followed.

(d) ...

Without following the procedure prescribed in Service Regulation 88 and take a decision on the evidence available after charge-sheeting the employee concerned, as prescribed in Annexure 3 and after giving him an opportunity to make a statement. The summary decision may be made effective forthwith unless stayed by the Appellate Authority.

Therefore the reading of the said Regulation reproduced hereinabove makes it clear that in respect of acts of misconduct the normal procedure is that of proceeding against the employee under Regulation 88 wherein an elaborate procedure is prescribed from suspending the employee to passing of the final order of punishment. It is only in exceptional cases that Regulation 90 can be resorted to by the Respondent No. 1 and the class of cases which are covered by the said Regulation 90 are mentioned therein.

5. On behalf of the Respondent an affidavit of one Purushotham Kittanna Shetty Joint Secretary (Board) has been filed. The said affidavit sets out the background to the issuance the show cause notice and the chargesheet against the Petitioner. It is mentioned in the said affidavit that pursuant to the enquiry and report submitted by the Director, Vigilance and Security who is a high ranking Police Officer on Deputation to the Respondent No. 1. It was levelled that five officers including the Petitioner were prima facie involved in the transaction of under billing and showing favouritism to one M/s. Abhinav Alloys Pvt. Ltd., Ahmednagar and thereby causing loss to the tune of Rs. 16,35,466/-. What is relevant to note is that in paragraph 11 of the said affidavit it is categorically mentioned as follows:

11. In the facts and circumstances of the case, the Respondent had the option, either to follow the ordinary and normal procedure as prescribed by Regulation 88 or to adopt the summary procedure prescribed by Regulation 90 of the Regulations in the matter of conducting disciplinary proceedings against the Petitioner. In view of the fact that the Petitioner was due to retire on 31st March 2001, it was considered just and expedient to invoke Regulation 90 of the Regulations and to conduct disciplinary proceedings against the Petitioner.

6. Therefore the reading of the said paragraph makes it absolutely clear that the said summary procedure was followed by the Respondent No. 1 as the Petitioner was to superannuate on 31.3.2001.

7. We have heard learned Counsel for the parties at length. It is the principal contention of Shri Bora, learned Counsel for the Petitioner relying upon the service regulations that Regulation 90 which provides for summary procedure is not attracted at all. It is submitted by Shri Bora that Regulation 90 would come into play only if the conditions mentioned therein are satisfied. In the instant case, Clause (b) and (c) of the said Regulation as the Respondent No. 1 has proceeded against the Petitioner under the said clauses. Shri Bora submitted that the words of significance in the said Regulation 90(c) are " Where the misconduct

or misbehavior is considered too grave and convincing to warrant or justify the normal procedure to be followed." It is the submission of Shri Bora that from the material on record and especially in view of the reply of the Petitioner and the issues raised by him therein it could not be said that insofar as the Petitioner is concerned material against him is convincing so as to enable the Respondent No. 1 to invoke the said summary procedure available under the Regulation 90. It is further the submission of Shri Bora that the said summary procedure has been followed admittedly in view of the fact that the Petitioner is retiring on 31.3.2001 as has been stated in explicit terms in the affidavit in reply. It is lastly submitted by Shri Bora that there are many loose ends insofar as the misconduct alleged against the Petitioner is concerned and therefore the misconduct alleged against the Petitioner cannot be enquired into in such a summary manner and thereafter responsibility fixed on the Petitioner. Shri Bora therefore submitted that the Respondents were obliged to proceed against the Petitioner under the normal procedure available under the Regulation 88 and prove the misconduct against the Petitioner. Deviation from the said procedure is therefore according to Mr. Bora totally arbitrary and violative of Article 14 of the Constitution.

8. On behalf of the Respondent Shri R.P. Pawar learned Counsel justified the order of punishment as also the summary procedure adopted against the Petitioner. It was submitted by Shri Pawar that pursuant to the enquiry carried out by the Vigilance Officer of the Respondent No. 1 there was sufficient material on record to nail the Petitioner. It was the submission of Shri Pawar that the evidence available against the Petitioner is so obvious that it could lead only to one inference that is the guilt of the Petitioner. Therefore according to Shri Pawar the misconduct being of grave nature and the material available against the Petitioner being convincing the Respondent No. 1 was justified in proceeding against the Petitioner by adopting the said summary procedure. Shri Pawar, the learned Counsel relied upon the judgment of the Apex Court reported in Union of India (UOI) Vs. Col. J.N. Sinha and Another, . The said judgment is as regards the observance of the principles of natural justice in the matter of compulsory retirement. Relying upon the said judgment Shri Pawar submitted that it is not in every case that principles of natural justice need be followed.

9. As stated hereinabove the summary procedure can be invoked only in the circumstances mentioned in the said Regulation 90. In the instant case the Respondents have relied upon Clause (b) and (c) of the said Regulation. The said Clauses (b) and (c) can be said to be two sides of the same coin. The words "obvious evidence" and convincing would therefore relate to the material available against the Petitioner. The words of significance are "the misconduct or misbehaviour is considered too grave and convincing." Though it is true that the Respondent have the report of the Director of Vigilance on the basis of which the show cause notice and chargesheet came to be issued against the Petitioner. The Petitioner vide his reply to the chargesheet has raised issues which according to us warrant a full fledged departmental enquiry, the material against the Petitioner therefore cannot be said to be of convincing nature so as to dispense

with the normal procedure under Regulation 88. The Petitioner has disputed that he had kept the office note with him from 1996 to 1998. In fact the said note according to the Petitioner was recovered from the accounts section. The Petitioner has also mentioned that it was he who had in fact initiated the process of taking action against the said consumer. It is also mentioned by the Petitioner in his reply that from the year 1996 to the year 1998 nobody had informed him or brought to his notice that the matter was pending and that a xerox copy of the said note was available which seemed unusual according to the Petitioner.

Petitioner has also mentioned in his reply that he had issued necessary instructions to his subordinates and therefore he could not be directly blamed for it. This we are mentioning to see whether the material on record was convincing to warrant a departure from the normal procedure prescribed under Regulation 88. We have to bear in mind that under the said summary procedure the principles of natural justice are abridged and evidence accepted without going through the usual tests known to law.

10. It would be also useful to refer to the dictionary meaning of the word "Convincing". Meaning of the word convincing in the Oxford Dictionary is "leaving no margin of doubt". In the New Webster's Dictionary the meaning of the word "Convincing" is "having qualities that persuade one of the reality and credibility of something and believable." Even if we go by the meaning of the word in the said dictionaries the material on record to invoke Regulation 90 i.e. the summary procedure should be such that there would be no margin of doubt in the minds of reasonable person about the guilt of an employee so that the normal procedure of enquiry can be dispensed with and the punishment can be meted out to the employee on the basis of the overwhelming and convincing material available on record.

11. In the instant case we are afraid that the material on record is not such as to warrant the conclusion that the material was convincing so that the said summary procedure could be adopted and the Petitioner could be punished on the basis of the said material. We have to bear in mind that the employee is entitled to be punished in accordance with the service regulations applicable to him. The procedure is such that the principles of natural justice are writ large on the said proceedings. Any departure from the said normal procedure would require material of highly convincing nature so that there is no doubt about the guilt of the employee and therefore the employee becomes liable for punishment. Such is not the instant case according to us. The Petitioner in his reply has raised various issues. No doubt that misconduct alleged against the Petitioner is grave. We are not for a moment saying that the material available against the Petitioner is not enough to frame a charge of misconduct against him, however we are only concerned with as to whether the Petitioner could have been proceeded with summary under the said Regulation 90. May be the Respondent No. 1 could have arrived at the same conclusion after holding a full fledged enquiry as contemplated under regulation 88. What we find in the instant matter is that the

Petitioner was to superannuate on 31.3.2001 and the show cause notice came to be issued on 10.2.2001. The Respondent was therefore in a tearing hurry to proceed against the Petitioner and therefore has also stated candidly in its affidavit that it is the reason why it adopted the said summary procedure. Near impending retirement of an employee cannot be the basis for invocation of the said summary procedure prescribed under regulation 90.

12. We therefore find that the action against the Petitioner taken in pursuance to the summary procedure adopted by the Respondent is totally unsustainable. We are of the view that the said summary procedure could not have been invoked by the Respondent in the instant case. Punishment therefore imposed pursuant to the said summary procedure cannot be sustained. The impugned order dated 12.3.2001 is quashed and set aside. The Petition is therefore allowed in terms of prayer Clause (C) of the Petition. The Petitioner would be entitled to the consequential reliefs.