

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.737 OF 2014

Kirtichandra Bhalchandra Kale,
Age 44 years, Occ: Service as Asstt.Engineer,
MSEDCL - Presently under suspension, r/o
Kalamnuri, Dist.Hingoli.

...PETITIONER

VERSUS

1. Maharashtra State Electricity,
Distribution Company Ltd. (MSEDCL)
Having its office at 'Prakashgad'
6th Floor, Station Road, Bandra (East),
Mumbai 400 051
Through its Managing Director.
2. The Regional Executive Director-II
MSEDCL Office, Building No.2, Flat No.1 & 2,
Officer's Colony, Ganesh Khind Road,
Pune 411 016.

...RESPONDENTS

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Mr. A.S.Deshpande, Adv., for petitioner.
Mr. A.M.Gaikwad, Advocate for respondent no.1.
Respondent no.2 served.

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CORAM: S.S.SHINDE

AND

P.R.BORA, JJ.

Date: April 30th, 2015

Date of reserving
the judgment: **23/4/2015**
Date of pronouncing
the judgment: **30/4/2015**

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JUDGMENT (PER P.R.BORA, J.) :-

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of the parties.

2. The petitioner is an Assistant Engineer working with respondent no.1. Vide order passed on 14.12.2012, he has been placed under suspension. Vide the aforesaid order he has been suspended for the reason that an offense under Section 7, 13 (1) (d) read with Section 13 (2) of the Prevention of corruption Act, 1988 has been registered against him at Police Station, Kalamnuri, vide Crime No.3060/2012, and further that, in the said crime, the petitioner was arrested and subsequently was released on bail.

3. The petitioner has filed the present petition with following prayers :-

"A) Writ Petition may kindly be allowed.

B) Service Regulation 88(a)(iii) of MSEDCL Service Regulation, 2005, may kindly be quashed and set aside to the extent it puts an upper limit of 50 % on payment of subsistence allowance, notwithstanding continuance of the period of suspension even more than one year, being illegal, contrary to the statutory provisions, so also opposed to public policy.

C) By appropriate writ, order or direction, this Hon'ble Court, may be pleased to direct the respondents to make payment of subsistence allowance @ 75 % of basic pay and admissible allowances thereon after initial period of three months and 100 % pay and allowances after expiry of total period of 6 months of suspension.

D) The order of suspension dated 14.12.2012, placing the petitioner under suspension w.e.f. 7.12.2012 at Exh. 'G' may kindly be quashed and set aside.

E) Pending hearing and final disposal of this petition, the respondents may kindly be directed to make payment of subsistence allowance at least @ 75 % of the salary and admissible allowances thereon having regard to the

fact that, the petitioner has been under suspension for last more than a year.

F) Costs of this petition may kindly be awarded to the petitioner.

G) Any other suitable and equitable relief, to which the petitioner is entitled to, and this Hon'ble Court deems fit, may kindly be granted in his favour. "

However, when the matter was finally heard, the petitioner has not pressed all other prayers except prayer at prayer clause (D).

4. Shri Deshpande, learned Counsel appearing for the petitioner submitted that totally false case has been registered against the petitioner for the offenses under Prevention of Corruption Act. Learned Counsel submitted that the complainant, on whose complaint, the trap was laid and the petitioner has been implicated in the offenses under Prevention of Corruption Act, was, in fact, noticed by the present petitioner committing theft of electricity, and the petitioner has also initiated action against the said complainant in that regard. Being enraged with the action so initiated against him, and just to give counter-blast to the same, the said complainant has intentionally, and with ulterior motive, falsely implicated present petitioner in an offense under the provisions of Prevention of Corruption Act, by making all false allegations. Learned counsel invited our attention to the contents of the FIR on the basis of which an offense has been registered against the petitioner under Prevention of Corruption Act, to urge that the contents of the FIR do not even remotely reveal that any demand of bribe was made by the petitioner, and that any such bribe was, in fact, accepted by the petitioner. Learned Counsel submitted that, on the basis of such FIR, in fact, no

offense could have been registered against the petitioner. Learned Counsel further submitted that, the respondents should not have ordered suspension on the basis of such vague and vexatious complaint. Learned Counsel submitted that the petitioner is under suspension for last more than three years. Learned Counsel invited our attention to the MSEDCL Employees' Service Regulations, 2005 (hereinafter, for the sake of brevity referred to as "Regulations, 2005") and more particularly to clause 88 of the said Regulations. Learned Counsel submitted that, as per clause 88 of the Regulations, 2005, the period of suspension shall not exceed six months. Learned Counsel further submitted that though period of three years has lapsed, departmental action has not yet been initiated against the petitioner; neither hearing in criminal case has been commenced. Learned Counsel submitted that there are settled guidelines that only in exceptional circumstances the employee is to be suspended. According to learned Counsel, no such circumstance was available in case of the petitioner so as to put him under suspension. Learned Counsel, therefore, prayed for quashment of the order of suspension dated 14.12.2012.

5. Learned Counsel appearing for respondents vehemently opposed the submissions advanced on behalf of the petitioner. Learned Counsel submitted that the Regulations, 2005, provided suspension in case an offense has been registered against an employee under the provisions of Prevention of Corruption Act. Learned counsel for the respondents further submitted that departmental action has not been completed against the petitioner for the reason that the petitioner himself has obtained stay for the departmental

proceedings in Writ Petition No.375 of 2013. Learned Counsel submitted that the order of suspension has been rightly passed and no case is made out by the petitioner for its revocation.

6. We have carefully considered the submissions made on behalf of the learned Counsel for the respective parties. On perusal of the order of suspension dated 14.12.2012, it is quite evident that the offense registered against the petitioner under Sections 7, 13(1)(d) read with Section 13(1)(2) of the Prevention of Corruption Act by the Police Station at Kalamnuri, vide Crime No.3060/2012, has resulted in suspension of the petitioner.

7. We have carefully perused clause 88 of the Regulations, 2005, wherein a detailed procedure has been provided for dealing with the acts of misconduct; sub-clause (a) of which deals with suspension. SR 88(a)(i) provides that an employee charged for an act of misconduct or against whom a case in respect of criminal offence is under investigation, enquiry or trial is liable to be suspended by the Competent Authority if his continuance in the post held by him or in the office in which he is working is likely to vitiate the enquiry or to become otherwise detrimental to the proceedings or to the interest of the Organisation.

SR 88(a) (ii) provides that in case, where employee is suspended as provided under SR 88(a)(i), the Competent Authority, who ordered suspension shall revoke the suspension, if preliminary enquiries instituted against him are completed and also disciplinary action completed within a period of six months.

SR 88(a)(ii) (b) provides that in case, where the preliminary enquiries are not completed and disciplinary action is yet to start and the suspension of an employee is continued beyond six months, then the case shall be referred to the next higher authority of the Suspending Authority with a detailed report giving the reasons for delay, if any, together with specific recommendations of the Suspending Authority or review of suspension. It further provides that on receipt of such report, the next higher authority of the Suspending Authority shall consider the matter and take the appropriate decision as to whether suspension is to be continued or revoked.

It further provides that where the disciplinary action is completed and final decision is taken then the Competent Authority itself may revoke the suspension even though the period of suspension exceeds six months without referring to the next higher authority, however, exception is made of anti corruption case pending against the employee.

Clause 88(a)(ii)(c) provides that in case of employees facing investigation by Anti Corruption Bureau and / or criminal charge, the power to review and revoke suspension of employees under suspension for a period exceeding six months shall vest with the following Committees:-

A For employees in pay Gr.I,II and II in Statewise Seniority

1	Director (Operation)	Chairperson
2	Executive Director (HR)	Member
3	Chief General Manager (Personnel)	Member
4	Chief General Manager (F & A)	Member
5	Chief General Manager (Tech.Esstt.)	Member
6	General Manager (DC)	Member
7	Assistant Director HQ (V & S)	Member

B	For employees in pay Gr. III (Circlewise Seniority) and Pay Gr.IV (Division Seniority) in Corporate Office and Field
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1	Executive Director (HR)	Chairperson
2	Chief General Manager (Personnel)	Member
3	Chief General Manager (Tech.Esstt.)	Member
4	Chief Engineer (as nominated by Director Operation)	Member
5	General Manager (as nominated by C.G.M. (F & A)	Member
6	Manager (DC)	Member
7	Vigilance Officer HQ	Member

8. It is, thus, evident that an in-house mechanism is provided for revoking the suspension. In the instant matter, though learned Counsel for the petitioner has earnestly urged that there is nothing in the FIR suggesting any overt act on the part of the petitioner, which would make him liable for an offense under Section 7 of the Prevention of Corruption Act, it may not be possible for us, while exercising writ jurisdiction, to make analysis of or record any conclusion in respect of the contents of the FIR. It has come on record that a criminal prosecution has been initiated against the petitioner, and an offense has also been registered against him at Kalamnuri Police Station vide Crime No.3060/2012 for the offences under Prevention of Corruption Act. No further progress in the said matter has been brought to our notice more particularly, whether chargesheet has been filed against the present petitioner or not and, if yes, at what stage the criminal trial is pending. However, it would not be appropriate in this petition to indulge in making any discussion whether the contents of the

FIR make out any offense against the petitioner. It was open for the petitioner to avail appropriate remedy of seeking quashment of the criminal proceedings initiated against him at appropriate forum. An enquiry was made by us to the learned Counsel for the petitioner; whether such remedy has been exhausted by the petitioner, and it was informed that the petitioner has not availed any such remedy and has not sought quashment of the criminal proceedings against him. In such circumstances, it may not be proper on our part to make any comment regarding contents of the FIR and whether it reveals any offense against the petitioner or not while deciding the present petition.

9. Moreover, it appears to us that when an in-house mechanism has been provided, the petitioner ought to have pursued said remedy. The record shows that this Court, vide order passed on 29.9.2014, has made following observations:

"1) Learned counsel for the petitioner states that the petitioner is under suspension vide order dated 14.12.2012 effective from 7.12.2012. According to the learned counsel for the petitioner, the Rules and Regulations provide for an in-house mechanism of revoking the suspension as per Regulation 88(1) & 88(2)

2) In the present matter, the suspension is beyond six months. As such the question of revocation has to be considered by the authority higher than the suspending authority. The suspending authority is the respondent no.2 and the authority higher to the respondent no.2 is the respondent no.1 - committee.

3) The respondent no.1 - committee shall take the decision with regard to the revocation of suspension or otherwise of the petitioner as contemplated under Regulation 88(a)(ii)(c). The committee shall take the decision at the earliest.

- 4) Place the matter on 1.11.2014. By the said date, the respondents shall communicate the Court further steps taken in this regard.
- 5) The question about the challenge to Regulation 88(iii) would also be considered.
- 6) S.O. to 1.11.2014."

10. The record shows that the petitioner has already made such representation on 28.11.2013 to the Regional Executive Director, IInd, Pune, however, no decision seems to have been taken on the said representation. It appears to us that the Committee constituted under SR 88(a)(ii)(c), would be the proper authority to deal with the request made by the present petitioner of seeking revocation of suspension order. It would be that Committee which only will be able to reach to any conclusion or record any finding whether the continuance of the suspension of the petitioner is necessary or not. The said Committee can only decide whether revocation of suspension would have any adverse effect on the criminal case pending against the present petitioner or the departmental proceedings pending against him. In fact, on 29.9.2014 only this Court had directed the Committee to take decision at the earliest, however, no such decision seems to have been taken. There is further nothing on record to show, whether the decision was brought to the notice of the said Committee by the present petitioner. In such circumstances, the only viable remedy so as to redress the grievance of the petitioner raised in the present petition in regard of revocation of the suspension is that petitioner approaches the Committee under Service Regulation 88(a)(ii)(c).

11. We, therefore, direct the petitioner to file an appropriate representation-cum-appeal before the said Committee within two weeks from the date of this order. We hope and expect that the said Committee will take decision on the said representation as expeditiously as possible and preferably, within four weeks after receiving such representation.

With the above directions, we dispose of the present petition. No order as to costs. Rule disposed of.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

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AGP/737-14wp