

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Writ Petition No.15722 of 2014

% 11-3-2015

P.Babu Rao

... Petitioner

Vs.

\$ SPDCTL, Rep. by its Chairman & MD,
Mint Compound, Hyderabad; and 2 others

... Respondents

! Counsel for the Petitioner: Sri A.K.Jayaprakash Rao

Counsel for Respondents 1 to 3: Sri P.Laxma Reddy,

Standing Counsel.

< Gist:

> Head Note:

? Cases referred:

Nil.

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.15722 of 2014

Date: 11-3-2015

Between

P.Babu Rao

... Petitioner

and

SPDCTL,

Rep. by its Chairman & MD,

Mint Compound, Hyderabad;

and 2 others

... Respondents

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.15722 of 2014

Order:

Heard Sri A.K.Jayaprakash Rao, learned counsel appearing for the petitioner and Sri P.Laxma Reddy, learned Standing Counsel for the respondents 1 to 3.

2. The petitioner is a Lineman in the 1st respondent-Southern Power Distribution Company of Telangana Limited, Hyderabad (the Company, for short). He is the active member of the Union APEEU 1104, which is

a recognised Union. On the date of suspension, he was working in Munagala Sub Division and he used to represent the grievances of the employees. It is submitted that the

2nd respondent for obvious reasons developed grudge against the members of the Union APEEU 1104 and was harassing the members of the Union by implicating them in some false charges. He was summoning the employees who are the members of the Union and was intimidating them to quit the Union. Because of the said threats, it is said that several employees had quit the recognised Union.

It is further submitted that the Union submitted

a complaint to the respondents 1 and 3 and an enquiry was also ordered against the 2nd respondent. Because of lodging the said complaint against him, the 2nd respondent developed grouse against the members of the Union APEEU 1104 and suspended one Sammaiah and K.Anjaiah on false charges. They approached this Court by filing writ petitions and the suspension orders were revoked by this Court.

3. Nextly, it is submitted that the 2nd respondent nourished grudge against Sammaiah, who approached this Court earlier and on a particular day, Sammaiah was badly assaulted by some persons and was admitted in Global Hospital. Sammaiah and his family members lodged

a report with the Police against the 2nd respondent alleging that on his instigation only Sammaiah was assaulted.

4. It is submitted that the 2nd respondent passed an order suspending the petitioner on the ground that he had erected and charged 3 numbers of 11 KV Transformers in the field of Timmareddy Veeraraghava Reddy of Timmareddy Gudem and issued power supply to the transformers for unauthorised use and caused loss to the 1st respondent-Company.

5. According to the petitioner, as a lineman he has no authority or power to erect any transformers in the field of any consumer and that the Assistant Engineer K.Siva Durga Prasad submitted a report to the Assistant Divisional Engineer, Kodad on 23-5-2014 bringing to his notice that Timmareddy Saidamma, wife of Veera Raghava Reddy, and 3 others who registered 5 HP motors for agricultural wells. It is submitted by the petitioner that under Tatkal Scheme, the motors were installed in the agricultural wells with the permission of the authorities on 06-9-2013. It is further submitted that the said work was done after due estimation and it was executed through a contractor

on account of the grievance expressed by the farmers whose wells were being dried up due to non-availability of water. They made a representation to the Honourable Minister and the Honourable Minister, in turn, issued directions to make alternative arrangements to help the farmers.

6. It is further submitted by the petitioner that the Assistant Engineer also categorically stated in his report that he instructed the petitioner and in pursuance of the instructions, he participated in the erection of transformers. It is further submitted that the allegations made against him are self-contradictory as on one hand, it is alleged that he erected the transformers without safety measures and on the other it is alleged that on his own he erected the transformers.

7. Nextly, it is submitted that he was not in charge of any transformers and the transformers were kept in SPM Shed and they were in the custody of the Assistant Engineer and on the instructions of the Assistant Engineer, the transformers were erected in the fields of Timmareddy Veera Raghava Reddy by the contractor and therefore, the petitioner is no way concerned with the erection of the transformers.

8. It is further submitted that the consumers also submitted a petition to the Department stating that the petitioner is not involved in the erection of the transformers and that the consumers also deposited the amount directed by the 1st respondent-Company which estimated the cost at Rs.2,05,251=90 ps., and the said proceedings were signed by the 2nd respondent and 4 other consumers also deposited Demand Drafts for Rs.5,450/-each and the sanction orders were issued by the Assistant Divisional Engineer, Munagala. Thus, the contention of the petitioner is that it is only at the instance of the farmers,

who submitted petitions to the Assistant Engineer seeking power supply on the ground that their crops were being faded away the transformers were erected and the

2nd respondent with a *mala fide* intention to wreak vengeance against the petitioner and the members of the Union APEEU 1104 resorted to suspend the petitioner and others, and therefore, the action being illegal is liable to be set aside in the present writ petition. It is on the aforementioned grounds, the petitioner filed the present writ petition questioning the impugned action of the 2nd respondent suspending the petitioner.

9. Counter affidavit has been filed on behalf of the respondents 1 and 2 contending as follows:

The members of the Union APEEU 1104 have been indulging in anti departmental activities. On 03-9-2013, the 2nd respondent convened a meeting of all the employees of the division to review anti departmental activities and the leaders of APEEU 1104 Union abused all the officers with unparliamentary words and gave a call for lightning strike which went on for 7 days. The said strike was resorted to achieve the unlawful demands of the Union and caused lot of inconvenience to the consumers and also to pressurise the 2nd respondent. But, the 2nd respondent did not yield to their illegal and unlawful demands. The Union members after 7 days, voluntarily and unconditionally joined duties. In fact, Mr. Sammaiah and Anjaiah have been suspended on the allegation of misappropriation of departmental material and corruption charges and also on the ground that they were indulging in anti departmental activities and resorting to insubordination. It is submitted that on receipt of a complaint from the farmers of Thimmareddygudem village, it was understood that they were suffering from depletion of ground water as the petitioner erected banned S-Phase transformers in the fields of Thimmareddy Veera Raghava Reddy of Thimmareddygudem village for unauthorised usage of electricity to agricultural motors and therefore,

the 2nd respondent instructed the Assistant Divisional Engineer (Operation), Kodad to submit preliminary enquiry report on the allegations levelled against the petitioner. On receipt of the preliminary enquiry report from the Assistant Divisional Engineer (Operation), Kodad, and on notice of *prima facie* case against the petitioner and the Assistant Engineer (Operation), Munagala, the 2nd respondent suspended the petitioner from services to conduct detailed enquiry on grave charges. He being not competent authority to take disciplinary action against the Assistant Engineer, the 2nd respondent submitted a report to the higher authorities for initiation of disciplinary proceedings against the Assistant Engineer. According to the respondents, the petitioner as well as the Assistant Engineer (Operation), Munagala, both are guilty of erecting banned transformers for agricultural purpose. It is further submitted that the sanctioned transformers were not erected in the fields of Thimmareddy Veera Raghava Reddy even till today and therefore, the question of withering of crops in the fields of the said individual does not arise. According to the respondents, the consumers gave a complaint against the Enquiry Officer on the instigation of the petitioner.

The petitioner and the Assistant Engineer have been using the names of political persons to conceal their illegal activities.

10. Nextly, it is submitted that issuing of sanction order does not mean that permission to erect unauthorised equipment such as lines and transformers. The Assistant Divisional Engineer (Operation), Kodad was appointed to conduct preliminary enquiry against the petitioner and on receiving the preliminary enquiry report from the Assistant Divisional Engineer (Operation), Kodad and on proof of the allegations levelled against the petitioner, he was placed under suspension by order dated 31-5-2014 pending detailed enquiry into the charges. Contending as above, the respondents sought to dismiss the writ petition.

11. It is submitted by the petitioner in the Reply Affidavit that the 2nd respondent has been creating division among the employees by making false promises and the employees who were frustrated with the attitude of the

2nd respondent resorted to strike. The 2nd respondent unauthorisedly constructed pyramids on the public premises without any authority and by collecting amounts from the employees. The 2nd respondent has been trying to create fear complex among the members of APEEU 1104 Union and creating false evidence by abusing his power and position and intimidating the consumers and obtaining letters from them against the employees. The officers supplied the material and the transformers have been erected by the contractors under the supervision of officials and absolutely there is no truth in the allegation that the petitioner and the Assistant Engineer were responsible for erecting the transformers. In this regard, it is submitted by the petitioner that he acted only on the instructions of the higher officials and if the officials did not supply the equipments, it is not possible to install any material.

It is said that the report submitted by the Assistant Engineer himself shows that the allegations levelled against the petitioner are untenable. Nextly, it is submitted that the 2nd respondent has been trying to create false evidence against the petitioner to implicate him in false charges.

12. From the submissions made on either side, it is evident that there are some disputes between the 2nd respondent and the Union of the petitioner and that the Union of the petitioner went on strike protesting the action of the 2nd respondent. The respondents also mentioned in the counter that the members of APEEU 1104 Union have been resorting to anti

departmental activities. Earlier, two employees belonging to the same Union were suspended by the 2nd respondent and the suspension orders have been revoked by this Court in the writ petitions filed by them. The crucial aspect which requires consideration in the instant case is that it is not possible for the petitioner, who is a Lineman, to erect the transformers without the instructions of the officials of the Department. Even it is the case of the respondents that the Assistant Engineer was also responsible for the erection of the transformers. Therefore, the petitioner alone cannot be blamed for erection of the transformers unauthorisedly. Even though it is mentioned in the counter that the 2nd respondent had sent up a report against the Assistant Engineer, the fact remains that the Assistant Engineer, on whose instructions the transformers were erected, has not been suspended. Normally, this Court will not interfere with the order of suspension pending enquiry. But, in exceptional circumstances i.e. when the suspension order passed is prompted by *mala fides* or is the result of victimisation or when it is passed contrary to the rules, this Court will interfere with the order of suspension pending enquiry.

13. In the instant case, from the submissions made on either side, it is obvious that there are some differences between APEEU 1104 Union and the 2nd respondent.

On account of the said disputes, there is every possibility for the 2nd respondent to resort to vindictive action against the petitioner, who is a Union leader. The facts asserted by the petitioner viz., that the farmers sent applications seeking immediate power supply on the ground that the crops were being withered away and the Assistant Engineer issued instructions to erect the transformers are not denied. Therefore, this Court is of the considered view that the petitioner alone cannot be held responsible for erecting the transformers without the instructions of the officials of the Department.

14. Having regard to the sequence of events which led to the suspension of the petitioner and as the petitioner himself alone cannot be held responsible for the erection of the transformers, this Court is of the view that the order of suspension passed against the petitioner is liable to be revoked in exercise of jurisdiction under Article 226 of the Constitution of India.

15. Consequently, the order of suspension dated 31-5-2014 passed by the 2nd respondent against the petitioner is hereby revoked. However, the respondents are at liberty to proceed with the enquiry against the petitioner. The writ petition is allowed accordingly. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

R.KANTHA RAO, J.

11th March, 2015.

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Note:-

L.R. Copy to be marked.

(B/o)

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