

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 1170/2000
% **29th January, 2015**

R.P.DHIMAN Petitioners

Through: Mr. R.K.Saini, Adv.

versus

NORTH DELHI POWER LTD. (NDPL) & ANR. Respondents

Through: Mr. Vikram Nandrajog and Mr. Sushil
Jaswal, Adv. for R/NDPL.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition under Article 226 of the Constitution of India is filed by the petitioner who was the employee of respondent no.1/Delhi Vidyut Board (now Tata Power Delhi Distribution Limited) impugning the enquiry officer's report dated 28.4.1997 and the consequential penalty order imposed by the disciplinary authority dated 18.9.1998 of the petitioner being visited with penalty of reduction by three stages in the present scale of pay for a period of three years with cumulative effect and during which period

the petitioner was not to earn any increment and the petitioner's future increments were to be accordingly postponed. The appellate authority vide its order dated 1/25-6-99 upheld the order of the disciplinary authority with respect to the penalty imposed upon the petitioner.

2. The charge against the petitioner was that petitioner was instrumental in energizing the domestic connection of one Sh. Pale Ram Chauhan in Village Bakhtawar Pur of Delhi by giving a false report that there was no commercial activity/shops being run in the premises of Sh. Pale Ram Chauhan. Putting it in different words, the charge against the petitioner is that a domestic connection could not have been granted with respect to the premises of Sh. Pale Ram Chauhan wherein two shops i.e commercial activity existed.

3. The facts of the case are that the consumer Sh. Pale Ram Chauhan sought a domestic connection with respect to his premises in Village Bakhtawarpur and these premises were inspected by one Sh. M.G.Singhal on 15.11.1988 and Sh. M.G.Singhal reported that two shops were existing in the premises of Sh. Pale Ram Chauhan. The consumer thereafter represented that the DESU official Sh. M.G.Singhal had wrongly inspected the premises of another person and that in the premises of the

consumer there were no shops and therefore the consumer requested for re-inspection. The re-inspection was done by the petitioner on 25.1.1989 reporting that there was no commercial activity at the site when he visited the site/property of Sh. Pale Ram Chauhan on 25.1.1989 and therefore petitioner recommended energization of the connection. On the basis of the report given by Sh. R.P.Dhiman the AE (Power Supply) of Narela vide his document being I.R.No. 215416 dated 20.2.1989 ordered for energization of the connection subject to the condition that there was no shop at the site. Sh. M.G.Singhal thereafter energized the connection on 1.3.1989. After about one year and three months, in June 1990, an inspection by the vigilance department was conducted of the subject premises/connection and which showed that the domestic connection was being misused with respect to a shop premises. Petitioner was hence charged of giving of false site inspection report dated 25.1.1989 that in the premises of Sh. Pale Ram Chauhan no commercial activity was being carried out, and on the basis of which report, the connection was energized on 1.3.1989.

4. Let me at this stage refer to the relevant para 7 of the enquiry officer's report dated 28.4.1997 and which pertains to the evidence which is

led on behalf of the management/prosecution, and which para reads as under:-

“7. PROSECUTION EVIDENCE:

PW-1, Sh. M.G.Singhal, Inspector deposed that Ex.S-7 in his Statement recorded in Vigilance Department in the presence of Sh. Nikka Ram and confirmed that contents of the same. On the test report of K.No. 517-120017(Ex.S-1) he deposed that meter number E-14089.87 was installed against the said K.No. and was energized by him on 1.3.89. He also confirmed his signatures as well as Sh. R.P.Dhiman's signatures dt. 6.3.89 thereon on I.R.No. 174434 dt. 27.12.89 placed in K.No. file 517-120017(Ex.S-5) he confirmed that the remarks & “Joint Inspection is required please “were written by him and the I.R.was marked to A.E.(Zone 517). The I.R. No. 477523 dated 15.11.88 (in file Ex.S-5) was also written by him to A.E.Zone-517 and he confirmed his remarks “reply vide I.R.No. 477523 dated 15.11.88 and job completed pl.” dated 21.2.89 marked to A.E.Zone 517 on the Progress Card (Ex.S-4).

In his cross examination, he deposed that he visited the site of the consumer Sh. Pale Ram, Vill. Bakhtawarpur initially on 15.11.88 and reported vide S.No.7 of Ex.S-5 that two shops were still there. The progress card of K.No.(Ex.S-4) was returned to AE(PS), Distt. NRL through A.E.(z-517). The Ex.S-4 was received back alongwith I.R.No. 215416 dt. 20.2.89 wherein the AE (PS) had advised to execute the job if there was no shop with the premises at that time. A.E.(Zone) could inspect the site himself and it was not necessary to associate the inspector, who had already given the site inspection report, when he energized the connection, there was no commercial activity and there was no shop. I energised the connection duly complying the advice of AE(PS) i.e. “Pl. execute the case of there is no shop” on Ex.D-1 on officer order containing GM(E)'s decision issued with the AGM(T)'s approval by Addl. Chief Engineer (Comml.) on the subject “Grant of connection in cases of Apprehension of Misuse or supply” he deposed that as per this officer order the connection to Sh. Pale Ram of village Bakhtawarpur could

not have been refused merely on the basis of apprehension of misuse of supply at a later stage. It also provides that an Affidavit on Rs.2/- non-judicial paper in the format already circulated shall be obtained from the consumer affirming that he would not misuse the supply etc.

PW-2, Sh. B.R.Bharti, AE (PS) (D) NRL deposed that Ex.S-3 is his statement dated 24.9.90 recorded in the Vigilance Deptt.in the presence of Shri Nikka Ram, Vig. Asstt. and confirmed its contents as well as his signatures thereon. I.R.No. 215416 dt. 20.2.89 in Ex.S-5 (S.No.12 of K.No. file of 517-120017) in respect of Sh. Pale Ram Chauhan of Vill. Bakhtawarpur was written by him to AE (Zone-517) and he confirmed the contents of the same as well as his signatures thereon. A note dated 20.2.89 available at page 10 of the K.No. file (Ex.S-5) contained his signatures dated 20.2.89 the contents and his signatures thereon were also confirmed by him.

In his cross examination, he deposed on S.No.3 of Ex.S-5 that it is a Lal Dora certificate issued by Pradhan, Gramsabha, Bakhtawarpur that the premises of Shri Pale Ram Chauhan is located in Lal Dora and he is the resident of the village Bakhtawarpur. On S.No.5(Ex.S-5) he deposed that it is an application from Shri Pale Ram stating that his premises was not correctly inspected as it is wrongly declared shops, therefore, the premises be got reinspected through a senior officer. On S.No.8 (Ex.S-5) he confirmed that the premises be got reinspected through a senior officer. On Sl. No. (Ex.S-5) he confirmed that the Charged Official was the only senior officer who could revisit and verify the correctness of the report earlier submitted by the Inspector vide I.R.No. 477523 dated 15.11.88 (S.No. 7 Ex.S-5). He also deposed that S.No.8 (Ex.S-5) is an I.R.No.174434 dt. 27.12.88 sent by CS(D) NRL to AE(Z-517) regarding the party's representation disputing that there was no shop in his premises. The site was accordingly required to be revisited. The Charged Official being the senior officer in the Zone was competent to revisit the site and verify the correctness of site report given by the Inspector. He (the CO) after visiting the site had given the report on the I.R.itself stating that there was no commercial activity at the site and returned the same to CS(D) NRL. In the Commercial Deptt. on Affidavit from the applicant Sh. Pale Ram was accepted wherein he had solemnly affirmed that the electric supply and other apparatus in the above premises owned by him will not be misused and the same shall be used for domestic

purposes. The consumer had also undertaken that DESU shall be every right to disconnect supply without any notice to him if the supply was found misused at a later stage. The affidavit is at S.No.9 of Ex.S-5. On Ex.D-2 (Office order No. COII/Com.26/86-87/8 dt. 17.7.86) has deposed that as per clause (a) and (b) of the office order, it had been ordered that domestic connection in rural areas shall continue to be granted on the basis of certificate issued by Pradhan of Vill. Panchayat or others. On Ex.D-1 (office order No. COII/26/88-89/4 dt. 1.6.88) he deposed that as per this office order, domestic connection cannot be refused in cases of apprehension of misuse of supply and an Affidavit on Rs.2/- non-judicial paper should be obtained. On para 14 of Ex.D-3, he deposed that the onus of giving factual status of the area where the premises is situated shall be entirely of the applicant.

PW-3 Sh. O.P.Bhanu, Inspector deposed that while working in Zone 517 joint inspection of the premises of Shri Pale Ram was carried by him on 13.8.90 alongwith Sh. Nikka Ram, Vig. Asstt. and report was prepared on I.R.No.241233 dt. 13.6.90 (Ex.S-6). He confirmed the contents/observations recorded thereon as well as his signatures thereon.

In his cross examination, he reaffirmed that the subject premises was jointly inspected by him alongwith Sh. Nikka Ram, on 13.6.90. He did not enquire from other residents in the area as to since when those shops were existing. He did not make any visit of the said premises except on 13.6.90. He also did not ask Shri Jeet Ram S/o Shri Mithal, who was the neighbour of the consumer as to when the two shops found there were existing.”

5. On the basis of the aforesaid evidence which was led by the Management/DVB, the enquiry officer has given findings of the guilt against the petitioner by observing as under:-

"10. FINDINGS:

From the deposition of PW.1, Shri M.G.Singhal, PW.2. Shri V.R.Bharti, A.E. (PS), PW.3, Shri O.P.Bhannu, Inspector and documentary evidence produced by Presenting Officer and charged official, the charged leveled against Shri R.P.Dhiman, A.E.(Zone) vide Memo No. VC-23-24/91/Vig./SKJ/410 dt. 10.1.92 stands proved in toto on the following grounds:-

Shri M.G.Singhal, P.W.1 who is also a co-accused in this case has confirmed the contents of I.R.No. 477523 dt. 15.11.88 placed in the K.No. file which is marked as Ex.S-5 written by Shri Dhiman, A.E.(Zone). Shri M.G.Singhal, P.W.1 has reported to A.E., Shri R.P.Dhiman, charged official that two shops were existing (P-5). On the representation of the consumer, the Commercial Deptt. again referred the case to A.E.(Zone) for reconnecting the facts vide I.R.No. 174434 dt. 27.12.88 placed in the K.No. file in Ex.S-5. Shri R.P.Dhiman marked the case to Shri M.G.Singhal, returned the case on 2.1.89 to Shri R.P.Dhiman, charged official with the remarks dt. 2.1.89 on the said I.R. No. 174434 placed in K.No. file in Ex.S-5 that a joint inspection of the premises of the consumer, Shri Pale Ram Chauhan was required. P.W.1 had confirmed these remarks on the said I.R. in his examination-in-chief. He has also confirmed the remarks of Shri R.P.Dhiman, C.O.made on I.R.No.174434 on 25.1.89 informing that there is no commercial activity at site as he has visited the site personally.

During the joint inspection of the site by the Vigilance and Zonal Staff on 13.6.90, the contents of which have been confirmed by Shri O.P.Bhannu, Inspector, P.W.3 and the contents have also not been denied by Shri R.P.Dhiman, charged official, it was found that two shops with shutters were existing in the premises and there was no residential portion in the said premises. PW.I, Shri M.G.Singhal has also confirmed that the contents recorded in the statements Ex.S.7. The said statements dt. 14.9.90 clearly states that he was not asked by A.E., Shri R.P. Dhiman, charged official on 25.1.89 to accompany him for inspecting the premises of Shri Pale Ram Chauhan, Village Bhaktavarpur despite his remarks on 2.1.89 on the I.R. that a joint inspection is required in this case.

On the basis of documentary evidence and oral testimony of witnesses it has been established that Shri R.P.Dhiman, charged official

submitted a false site inspection report in respect of K.No. 517-120017 at the premises of Shri Pale Ram Chauhan, S/o Shri Dewan Singh of Village Bakhtawarpur, Delhi with a view to extend undue favour to the consumer with malafide intention.”

6. A reading of the aforesaid findings shows that the findings most perversely ignore two very vital aspects. The first aspect is that even as per the evidence led by the Management/respondent no.1 itself it is shown that on the date of energization viz 1.3.1989 there was no commercial activity of a shop being run and which is in view of the report of Sh. M.G.Singhal who deposed as prosecution witness as PW-1. The second aspect is that the circular of the respondent no.1 Ex.D-1, being the office order dated 1.6.1988, clearly stated that a domestic connection cannot be refused in case of apprehension of misuse and in case of apprehension of misuse only an affidavit has to be taken from the consumer that he will not misuse the domestic connection for non-domestic purposes. The above two aspects have to be read with the fact that a report with respect to misuse of the connection for non-domestic purposes has been found not in around the time of energization of the connection in March, 1989 but much later in June 1990, and on the basis of the facts found on inspection of June 1990 the petitioner is charged with giving a false report in January 1989.

7. No doubt, courts do not interfere with the findings and conclusions of the departmental authorities if two views are possible as per the evidence led because a fact is proved as per the preponderance of probabilities, however, if on the admitted facts only one view is possible, but the departmental authorities take another view, taking of the another view clearly amounts to perversity and this is so held by a catena of judgments of the Supreme Court. Perversity arises because no reasonable man can arrive at the findings and conclusions which are arrived at by the departmental authorities.

8. In the present case, it could have been possible that the consumer Sh. Pale Ram Chauhan may have intended to use the domestic connection for commercial purposes and there may have been shops when Sh. M.G.Singhal first inspected the premises on 15.11.1988 but the consumer realizing that existence of a shop would deny him a connection, he would have in fact closed the shops, simultaneously also noting that the case of the consumer was that the inspector Sh. M.G.Singhal on the first occasion/inspection on 15.11.1988 had not inspected the premises of Sh. Pale Ram Chauhan but of another person. Even this aspect of Sh. M.G.Singhal inspecting a wrong premises on 15.11.1988 cannot be said to

be without any basis because of the peculiar conditions which exist with respect to urban villages in Delhi. Urban villages in Delhi are totally unplanned. There are no specific areas of the plots. There are no specific shapes of the plots. There are no specific running numbers given in the plots and plot numbers and constructions can drastically vary although they are even adjacent. It therefore cannot be said beyond doubt that Sh. M.G.Singhal when he inspected the premises on 15.11.1988 had definitely and only inspected the premises of Sh. Pale Ram Chauhan and not of any other person.

9. Also this aspect has to be understood in the context that the respondent no.1/DVB itself had realized that when a domestic connection is taken, there may be possibility of a future misuse, and therefore, vide its order Ex.D-1 dated 1.6.1988 it had ordered that the citizen should not be denied an electricity connection merely on the ground of appreciation of future misuse and the only requirement was to take an affidavit from the consumer that he will not misuse the connection, and which affidavit was taken by the petitioner Sh. R.P.Dhiman.

10. The most important aspect required to be noted is that the connection was energized on 1.3.1989, not by the petitioner, but by Sh.

M.G.Singhal/PW-1, and who could have done so in terms of the order of A.E.(Power Supply) Narela, only if there was no commercial activity of a shop being found at the site. The fact that Sh. M.G.Singhal/PW-1, energized the connection on 1.3.1989, and he did not report that any commercial activity was being carried out at the site so that he could not energize the connection on 1.3.1989, in my opinion is conclusive of the fact that as on the date of energization of the connection no activity in the nature of a shop existed in the premises of the consumer Sh. Pale Ram Chauhan. Also as already stated above, the misuse of domestic connection by Sh. Pale Ram Chauhan has not been found within a few days or weeks or even months of energization of the connection, inasmuch as, the connection was energized on 1.3.1989 and the misuse has been found much later in June 1990. The misuse found in June 1990 cannot be fastened as a misuse of a date much prior in March 1989 in the facts of the present case.

11. Learned counsel for the respondent no.1 did seek very passionately to argue that the facts of the present case showed that Sh. M.G.Singhal could not have disobeyed his superiors for grant of connection, however, this argument has no substance for the reason that the order with respect to energization of connection was not given by the petitioner but was

given by A.E. (Power Supply) Narela viz a different person than the petitioner, and who had for the purpose of energization of connection specifically required that the connection should be energized only if there are no shops in the premises. Once Sh. M.G.Singhal/PW-1, energized the connection on 1.3.1989 implicit in the same is the fact that there was no commercial activity/shop at the premises and which was the endorsement of A.E.(Power Supply) Narela.

12. Learned counsel for respondent no.1 also argued that petitioner went for the fresh re-inspection alone although Sh. M.G.Singhal/PW-1 had required a joint inspection, however, the argument lacks merit because there is no dispute that there is no circular or direction or rule of the respondent no.1 that an inspection conducted has to be a joint inspection and the inspection could not have been carried out by the petitioner on his own. Once there are no rules or guidelines or circulars requiring joint inspection, no illegality can be fastened on to the actions of the petitioner in conducting the inspection singly on 25.1.1989. This argument of the respondent no.1 is therefore rejected.

13. In view of the fact that no reasonable man can on the preponderance of probabilities come to the conclusion that a misuse of a

domestic connection existed on 1.3.1989 when the domestic connection of Sh. Pale Ram Chauhan was energized, the departmental proceedings have therefore clearly given wholly perverse findings and conclusions to hold the petitioner guilty.

14. In view of the above, this petition is allowed. The impugned enquiry officer's report dated 28.4.1997 and the orders of the disciplinary authority and the appellate authority dated 18.9.1998 and 1/25.6.1999 are therefore set aside. Petitioner would stand exonerated of the charges which he was accused of in terms of the memorandum of charges dated 10.1.1992.

15. Since the impugned orders against the petitioner are set aside, the respondent no.1 within a period of three months is now required to re-calculate the monetary benefits which would have to be paid to the petitioner, but which were not paid in view of the impugned orders of the departmental authorities. Petitioner shall be paid all the monetary benefits on account of the impugned orders being set aside within a period of four months from today. Parties are left to bear their own costs.

JANUARY 29, 2015
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VALMIKI J. MEHTA, J.