

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

WRIT PETITION NO.6201 OF 2013

MUNJA S/O SOPANRAO ARGADE
VERSUS
MAHARASHTRA STATE ELECTRICITY DISTRIBUTIO
COMPANY LIMITED AND ANOTHER.

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WITH

WRIT PETITION NO. 6205 OF 2013

VIJAY SURATRAM RAJPUT
VERSUS
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION
COMPANY LTD. AND ANOTHER

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Advocate for Petitioner : Mr A S Deshpande
Advocate for Respondents : Mr A S Bajaj

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CORAM : S V GANGAPURWALA & V.K. JADHAV, JJ.

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Reserved on : September 08, 2016

Decided on : September 20, 2016

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COMMON ORDER :- (Per V.K.Jadhav, J.)

1. Both these petitions are challenging the show cause notice dated 3.7.2013 calling upon the petitioners as to why they should not be dismissed from service.

2. Brief facts, giving rise to both the writ petitions are as follows :-

a] The petitioner Vijay Rajput in Writ Petition No.6205/2013 came to be appointed as sub-Engineer under the erstwhile M.S.E.B. Subsequently, M.S.E.B came to be trifurcated and three distinct companies came to be constituted. Incidentally services of the petitioner Vijay Rajput came to be allocated to Maharashtra State Electricity Distribution Company Limited. In the year 2008 petitioner Vijay Rajput came to be promoted as Executive Engineer on the establishment of respondent No.1. Respondent No.1 posted him to work at Jalna Division No.1 where the alleged delinquencies have been occurred.

b] Petitioner Munja Argade in writ petition No.6201/2013 came to be appointed as a Junior Engineer under the erstwhile M.S.E.B. and incidentally, his services came to be allocated to Maharashtra State Electricity Distribution Company Limited. In the year 2007 petitioner Munja Argade came to be promoted as Assistant Engineer on the establishment of respondent no.1 and respondent no.1 posted him to work at Jafrabad Sub-Division where the alleged delinquencies

have been occurred.

3. There are three wings in the respondent company. One is infrastructure (Infra), Operation and Maintenance (O & M) and Vigilance. Vigilance wing does not come in picture in the instant petitions. Both the petitioners are serving on their respective posts attached to O & M wing.

4. The Chief Engineer (Distribution), Head Office, Mumbai had floated a tender "Turn-key-contract' No.T-36-infrastructure Plan -Phase II sometime in the year 2009 and said tender came to be allotted to M/s Ashok Buildcon Limited, Nashik. The Chief Engineer (Infra), Head Office, Mumbai provided a tentative mile stone chart alongwith a Letter of Award dated 2.3.2009 to M/s Ashok Buildcon company Limited. According to the petitioners, so far as construction of sub-stations and laying high tension lines are concerned, minute details of locations are provided in a model mile stone chart in the Letter of Award dated 2.3.2009. However, in so far as Distribution Transformer Centers i.e. DTCs are

concerned, locations are tentative, indicating the names of villages and not fixed, depending upon geographical situations. Both the petitioners claims that they have absolutely no role to play in determination of the exact locations of the DTCs.

5. On this background, both the petitioners came to be placed under suspension by an order dated 26.3.2012 pending an inquiry under Regulation 88 of Maharashtra State Electricity Distribution Company Limited Employees Service Regulations, 2005. Thereafter, under a communication of respondent no.2 dated 2.7.2012 the petitioners came to be served with a charge sheet. Respondent No.2 appointed Superintending Engineer (Infra), Aurangbaad as an inquiry officer into the matter to conduct the inquiry into the allegations. Allegations in the charge sheet are mainly relating to (1) change in locations for installation of DTCs without permission of the competent authority, thereby allowing Agency to erect DTCs in connivance with it for the purpose of financial benefits, (2) installing 100 KVA DTCs than sanctioned 63 KVA DTC's in the 8

villages, (3) there was a lack of control over the Engineers in Sub Division and works done by the Agency, (4) as against work of laying HT and LT lines of 20.42 and 8.047 Kms respectively, the Agency has submitted excess bill which the petitioners failed to verify and sanctioned the same and thus connived with the Agency, resulting in causing loss to the company and (5) by conniving with M/s Ashok Buildcon company for their own benefits, the capacity and locations of the DTCs have been changed by accepting money from local Agriculturists, and this is how the image of the company has been maligned in the esteem of the common people.

6. The inquiry officer has held five out of seven charges proved against the petitioners under his report, copy of the same has been served upon the petitioners alongwith show cause notice dated 3.7.2012 served on the petitioners on 24.7.2012 calling upon the petitioners as to why they should not be dismissed from the services. Both the petitioners have been called upon to furnish their explanation within seven days, failing

which it will be presumed that they are nothing to say and further action would be taken. Thus, both the petitioners seeks to approach this Court by filing these two separate writ petitions.

7. Learned counsel for the petitioners submits that, nature of the duties of infrastructure wing can be seen from a communication at page 61 (Exh.H) dated 28.7.2011 and according to it Construction/Erection, Supervision, Quality Control, Bill Recording etc., is to be looked after and taken care of by Infra wing. Especially, having regard to the nature of the contract I.e “Turn Key Contract” it is only after construction of DTCs is complete and made operational, O & M wings comes into picture. The only exception is regarding preparing Single Line Diagram (SLD) in which O & M wing plays a role. Learned counsel submits that, charge regarding change in location of the DTCs in connivance with the agency is devoid of any substance. There were continuous instructions for undertaking DTC construction work in the VIP list on top priority. The DTC locations recommended by the VIP’s were directly

addressed by the S.E. to the Agency and the petitioners were no way involved in the same.

8. Learned counsel for the petitioners further submits that, there were total 700 DTCs constructed within the jurisdiction of the petitioners, out of which first advertisement was published on 13.8.2010 publishing 487 locations and second advertisement was published on 18.2.2012. At least 101 locations were never published in the newspaper. Out of these 700 DTCs construction of 207 DTCs was complete at least on 2.8.2010 and 40 DTCs were under progress. Similarly, Agency was given work order (Letter of Award) on 2.3.2009 itself and thereafter the company started construction of DTCs. The learned counsel submits that, it is on this background, charge regarding change in locations of DTCs was unsustainable. However, Enquiry Officer has held that said charge have been proved against the petitioners. So far as the other charges pertaining to installing DTC of certain capacity, basically installation is not within the realm of the petitioners and it is entirely under the domain of Infra

Wing. Second charge is also not proved against the petitioners. However, the Enquiry Officer has stated in his report that said charge is proved against the petitioners which thus liable to be held as perverse. Similarly, other charges are also not proved including charge no.5 which pertains to accepting amounts from agriculturists for changing locations of DTCS.

9. The learned counsel for the petitioners further submits that, Disciplinary Authority directed the Enquiry Officer to resubmit Enquiry report vide Exh.M (page 104, 105) dated 20.5.2013 which is against the basic principles of conducting Departmental Enquiry. At the material time, Shri A.N.Sonwane was S.E. (Infra), who supposed to monitor and regulate the construction of DTCS, was appointed as enquiry officer. He was in fact responsible for determining the locations and ensuring construction of DTCS thereon.

10. The learned counsel for the petitioners further submits that S.E. (O & M) Shri A.J. Navghare was supposed to seek permission for change in locations of

DTCs, as per the final show cause notice issued to him and even as per the order of punishment. Shri P.B.Jadhav, Junior Engineer who also accused of similar charges as that of Shri Navghare and the petitioners herein. S.E. Shri Navghare as well as Junior Engineer Shri Jadhav were issued final show cause notice of recovery of gross salary and the petitioners, however, have been served with the show cause notice of dismissal, which indeed offends equality principle as enshrined under Article 14. The present petitions revolves around perversity of findings and discrimination being exercised by the respondents in regard to the proposed punishment sought to be inflicted upon the petitioners vis-a-vis show cause notices issued to S.E. Shri Navghare and Junior Engineer Shri P.B.Jadhav. So far as show cause notice issued against said Junior Engineer Shri P.B.Jadhav is concerned, notice itself makes it abundantly clear that during the departmental enquiry all charges levelled against him are proved.

11. The petitioner Vijay Rajput placed on record the Additional affidavit submitting additional facts as follows :-

“So far as S.E. Shri A.J. Navghare is concerned, no departmental enquiry was conducted against him. In case of the petitioner, was ever conducted. Charge sheet itself was summary charge sheet under S.R. 90 of Service Regulations, 2005. Upon perusal of the documents and reply to the charge sheet submitted by SE Shri Navghare, Disciplinary Authority has issued a final show cause notice to him. The petitioners have been discriminated viz-a-viz Shri A.J.Navghare SE in issuing final show cause notice.”

12. The learned counsel for the petitioners in order to substantiate his contentions places reliance on following judgments :-

i] **K.K.Kanjlia Vs. Union of India and others in Civil Misc. Writ Petition No.40396/2011** (Allahabad High Court).

ii] M/s Siemens Ltd., Vs. State of Maharashtra reported in **2006 AIR SCW 6380**.

13. The learned counsel for respondents submits that, after considering the reply submitted to the show cause

notice, the concerned officer/authorities has to take a decision in the matter and the petitioners may challenge the said order if it is adverse to them in appeal provided to the Managing Director and a further second appeal is also provided against the same decision to the Company. However, both the petitioners have directly approached this Court and thereby prevented the authorities from exercising their jurisdiction and as such writ petitions are liable to be dismissed on this ground alone.

14. The learned counsel for respondents submits that, locations of DTCs is finalized after observing technical feasibility, low voltage pockets and road of ways and it is false to say that determination of location of the DTCs are predominantly governed by local pressure groups, political interest and willingness of land owners. In fact, the DTCs would be constructed where there is requirement for the same. Learned counsel submits that erection of DTC at a particular place is within the competence of the Superintending Engineer (infra), the pinpointing location of the DTC is the work of the concerned O & M officer. Learned counsel submits

that, it is not correct that representative of the people of the area persuade or dissuade the Authorities from erecting DTCs at a particular location.

15. Learned counsel for respondents further submits that, petitioners have been charged for changing location of 38 DTC's out of 124 DTC's in Jafrabad Taluka and enquiry was restricted and conducted for changing location of those 38 DTC in Jafrabad Taluka published on 13.8.2010. Learned counsel submits that the petitioners have given some other details which are unwarranted and uncalled for.

16. The learned counsel for respondents submits that the Superintending Engineer (O & M), Chief Engineer, Aurangabad need data to fix the location of DTC and data for fixing of such location is provided to Superintending Engineer (O & M), Chief Engineer, Aurangabad by the various officers of the O & M which are namely Section Officer, Sub Divisional officer, Divisional Executive Engineer in the form of SLD which is a single line diagram alongwith justification as to why

DTC is required at a particular location. It cannot be said that the petitioners have no role to play in fixing the locations of the DTCs.

17. The learned counsel for respondents further submits that, full fledged inquiry was conducted and the petitioners were given all opportunities to present their case and while conducting inquiry, all the rules of natural justice were followed by the respondents. No fault could be found with the procedure adopted for conducting of an inquiry and as such challenge put forth is ill-conceived. Inquiry officer, on due consideration of the record, has held that charges were proved against the petitioners.

18. Learned counsel for respondents submits that, the Superintending Engineer (S.E.) had instructed the SDO's to comply the work of DTC in the VIP list on top priority and this does not mean that location of the DTCs can be changed as per request of the representative of the People. Even, the superintending Engineer (O & M) cannot and could not have directed

the SDO's to carry out the work of DTC other than those which were freezed or published in the newspaper. Even the Sub Engineer (O & M) was also given charge sheet in the same manner and enquiry was also conducted. Learned counsel further submits that, for determining the location of the DTC, there has to be a requirement from the lowest level and for that purpose, the requirement at times is given by the Section Office or Sub Division Office to the Division Office and then the Division Office forwards the same to the Circle office. The petitioner Vijay Rajput being Executive Engineer is a Divisional Head and all communication to the Superintending Engineer (O & M) is routed through him and he had full knowledge of the same. Thus, in this particular matter, full chain of the officers i.e. Junior Engineer (O&M), Assistant Engineer (O&M), Executive Engineer (O&M) and Superintending Engineer (O&M) were charge sheeted for lapses on their part.

19. The learned counsel submits that inquiry officer has sent a report to the competent authority, however, competent authority has sent back the inquiry report

with the observations that it is not clear from the report as to which charges are proved and which charges are not proved. The competent authority has sent inquiry report back without taking any decision. The inquiry officer has thereafter sent inquiry report to the competent authority clarifying outcome of the inquiry report which is quite just and proper. All the rules of the natural justice were followed to the utmost request and all documents during the inquiry were supplied to them. Identical charge sheets were given to all four employees including the present petitioners irrespective of the status being enjoyed by them.

20. The petitioners have challenged the final show cause notice on the grounds that as per the nature of the duties assigned to infrastructure wing of the department and having regard to the nature of the contract i.e. 'Turn Key Contract', it is only after the construction of DTC is complete and is made operational, O & M wing comes into picture. The petitioners also contend that, the charge regarding change in the locations of the DTCs in connivance with

the Agency is devoid of any substance. The DTC location recommended by the VIP's were directly addressed by the S.E. to the Agency and the petitioners were no way involved in the same. The concerned Agency was given work order (Letter of Award) on 2.3.2009 itself and the construction work of DTC was thereafter started. According to the petitioners, it is on this background charge regarding change in the location of the DTC is liable to be outrightly held to be unsustainable. According to the petitioners, the charges levelled and proved against them were exactly identical and substantially similar against the co-delinquents. However, S.E. (O & M) Shri A G Navghare and one Shri Jadhav, Junior Engineer were issued final show cause notice of recovery of gross salary, however, petitioners have been served with show cause notice of dismissal.

21. According to the respondents, location of the DTCs finalized after observing technical feasibility, low voltage pockets and road ways. It is submitted that, location of the DTC cannot be determined by local pressure groups, political interests and willingness of the land owners.

Same is also not left to the discretion of the implementing agency or in consultation with the concerned O & M officers. It has specifically asserted that though erection of DTC at a particular place is within the competence of Superintending Engineer (infra) is in pinpointing location of the DTC is work of the concerned O & M officers. Respondent submits that, inquiry of the petitioners conducted for changing location of 38 DTC in Jafrabad Taluka only. It has also submitted by the respondents that superintending engineer (O&M), Chief Engineer, Aurangabad need data to fix the location of the DTC and data for fixing such location is provided to superintending Engineer (O&M), Chief Engineer Aurangabad by various officers of the O & M wing namely Section officer, Sub Divisional Officer, Divisional Executive Engineer in the form of SLD i.e. Single Line Diagram alongwith justification as to why DTC is required at a particular line. It is accordingly submitted that in the instant matter, full chain of officers i.e. Junior Engineer (O&M), Executive Engineer (O&M), and S.E. (O&M) were charge sheeted for lapses

and lapses on their part in this case. Finally, it is submitted that after considering the reply to the show cause notice, concerned officer/authorities has to take decision in the matter and the appeal is provided against the said order to the Managing Director and Second Appeal to the Company.

22. It is well settled that advisability, desirability or propriety, as case may be, in regard to the Departmental Inquiry has to be determined in each case taking into consideration all facts and circumstances of the case. The purpose of the departmental inquiry is to maintain discipline in the service and efficiency of public service. By now, it is well settled principle of law that judicial review is not against the decision rendered in the departmental enquiry, but, it is against the decision making process. In the instant case, there are no allegations of procedural irregularities/illegalities and also there are no allegations of violation of principles of natural justice.

23. In the instant case, the Inquiry was conducted on

the charges levelled against the petitioners and findings/conclusions are based on some evidence. By these petitions, the petitioners are seeking re-appreciation of the evidence and expecting independent finding on the evidence.

24. In a case **Union of India and another Vs. Kunishetty Satyanarayana** reported in **AIR 2007 SC 906**(1) in paragraph Nos. 14 to 16 the Apex Court has made following observations :-

“14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to

have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under [Article 226](#) should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

25. It is well settled by series of decisions of the Apex Court that ordinarily writ petition should not be entertained against a mere show cause notice or charge sheet for the reason that at that stage writ petition may be held to be premature. A mere charge sheet or show cause notice does not give rise to any cause of action, because it does not amount to any adverse order which affects rights of any party unless same has been issued by a person having no jurisdiction to do so.

26. In the instant case, it is quite possible that after considering the reply to the show cause notice, the concerned authorities may not award punishment as

proposed. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed then, said party can be said to have a grievance. In some very rare and exceptional cases this court can quash a charge sheet or a show cause notice if it is found to be without jurisdiction or for some other reason if it is wholly illegal. In the instant case, We do not find any rare and exceptional reasons to quash show cause notice. We do not find that issuance of show cause notice is without jurisdiction or it is wholly illegal.

27. In the instant case we find that, the respondents admit that identical charge sheets were given to the four employees including the petitioners and the said charges involving a single chain of the facts or events which all the four were party. In paragraph no.25 of the affidavit-in-reply submitted on behalf of respondent, it is stated that, the Superintending Engineer Shri A.J. Navghare was on the verge of retirement and if he would have retired or superannuated, the employer-employee relationship would have come to an end and the detail enquiry would have become infructuous. Thus, with

the sole aim not to let him go scott free, a summary charge sheet as per Regulation 90 was given.

28. Further in both the petitions, respondents have submitted a detail affidavit-in-reply and thereby not only controverted the factual matrix, but also justified the stand of the Department almost in every aspect of the act including alleged discrimination while issuing show cause notice to the present petitioners compared to co-delinquents.

29. The petitioners in their re-joinder affidavits also submit that though they have alternate remedy of filing an appeal as provided under Regulation 92 to the Appellate Authority as prescribed under Schedule 'C', however, in comply with the provisions of SR-88 as soon as order of imposing punishment to the employee in writing is communicated it shall become effective forthwith, unless the order is stayed by the Appellate Authority pending the decision in appeal. It is further stated in the said affidavit that once an order imposing punishment is given effect and at the moment it is

communicated to the employee in writing, for all practical purposes there is hardly any scope that would be stayed by the Appellate Authority.

30. We are not inclined to quash and set aside the show cause notice. We find that, the apprehension of the petitioner was not totally unjustified. However, considering the show cause notices given to the present petitioners calling upon them as to why they should not be dismissed from service compared to the show cause notices issued to the co-delinquents proposing lesser punishment, we find it appropriate to grant fortnight protection to the petitioners, in the event a final order imposing punishment of removal or dismissal against the petitioners is passed. Thus, considering the totality of the circumstances and in view of the above discussion, we consider it appropriate to issue certain directives while disposing of the present writ petitions as under. Hence, following order.

ORDER

- I] Prayer to quash and set aside the show cause notice dated 3.7.2013 stands rejected.

- II] The Respondents, after considering the reply to the show cause notice, may pass the appropriate orders on its own merits.
- III] In the event a final order imposing punishment of removal or dismissal against the present petitioners is passed, it shall not be given effect for 15 (Fifteen) days from the date of communication of the said order to the petitioners.
- IV] With these directions Writ Petition Nos. 6201/2013 (Munja Sopanrao Argade Vs. Maharashtra State Electricity Distribution Company Ltd., and another) and 6205/2013 (Vijay Suratram Rajput Vs. Maharashtra State Electricity Distribution Company Ltd., and another) are hereby disposed off. No costs.

Sd/-**(V.K. JADHAV, J.)****sd/-****(S V GANGAPURWALA, J.)**

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