

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8088 OF 2016

Bhagvat Sukdev Dhekale,
Age-60 years, Occu-Retired,
R/o Plot No.17, Sagar Nagar,
Old Khedi Road, Jalgaon,
Tal. And Dist. Jalgaon – PETITIONER

VERSUS

Competent Authority and Executive Engineer,
Jalgaon Mandal, Maharashtra State
Electricity Distribution Company Ltd.,
Vidyut Bhavan, Old MIDC,
Ajantha Road, Jalgaon,
Dist. Jalgaon. – RESPONDENT

WITH
WRIT PETITION NO.8927 OF 2016

The Maharashtra Electricity Distribution
Company Limited, Through its,
Superintending Engineer, MSEDCL,
Vidyut Bhawan, Old MIDC,
Ajanta Road, Jalgaon,
Tq. and Dist. Jalgaon – PETITIONER

VERSUS

Bhagwat Sukdev Dhekale,
Age-60 years, Occu-Retired,
R/o Plot No.17, Sagar Nagar,
Old Khedi Road, Jalgaon,
Tal. And Dist. Jalgaon – RESPONDENT

Mr.V.A.Pawar, Advocate for the petitioner/employee.
Mr.S.M.Godsay, Advocate for the respondent/employer.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 24/08/2016

ORAL JUDGMENT :

1. Rule in both these matters and Rule is made returnable forthwith by the consent of the parties.

2. The petitioner in the first petition is the employee and the respondent is the employer. Considering the submissions of the employee, this Court had passed an order on 04/08/2016 as under :-

“1 The Petitioners / Employees are aggrieved by the orders dated 12.04.2016 passed by the Industrial Court below applications Exhibits C-14 in Complaint (ULP) Nos.83/2015 and 06/2014 by which the Industrial Court has permitted the Respondent/ Management to conduct an enquiry for proving the misconduct alleged to have been committed by the Petitioners.

2 Shri Pawar, learned Advocate for the Petitioners, has strenuously criticized the impugned orders on the ground that, firstly, the orders dated 02.03.2016 thereby setting aside the summary enquiry under Regulation 90, have not been challenged by the Respondent- Management and secondly, that the Respondent could not have sought permission to conduct an enquiry unless it has reserved its right in the Written Statement to do so.

3 Shri Pawar has placed reliance upon the judgment of the Honourable Supreme Court (five judges Bench) in the matter of Karnataka State Road Transport Corporation vs. Smt.Lakshmiddevamma, **AIR 2001 SC 2090 : 2001(2) CLR 640**. He has also placed reliance on the judgment of the Honourable Supreme Court (three judges Bench) in the matter of Balwant Rai Saluja vs. AIR India Ltd., **2014 (III) CLR 751**.

4 Notwithstanding the strenuous submissions of Shri Pawar and reliance placed on the above referred reports, the facts of this case need to be considered as they appear to be peculiar.

5 The Respondent is the Maharashtra State Electricity Distribution Company Limited, Jalgaon. A summary proceeding under Regulation 90 ("ka" and "kha") of it's Regulations was conducted. It is not disputed that though it is termed as a summary enquiry, in fact it is neither a summary enquiry, nor a regular departmental enquiry. The Regulation 90 ("ka" and "kha") deals with a summary proceeding undertaken by the said Department. A regular departmental enquiry is provided under Regulation 88.

6 It is, therefore, apparent that by resorting to a summary proceeding which was preceded by a formal charge-sheet without conducting an enquiry, Regulation 90 was relied upon by the Respondent and after concluding the summary

proceedings in which the Employees were only heard and no oral and documentary evidence was recorded, the orders of punishment were passed against these Petitioners- Employees.

7 *Sequence of events in these matters assume significance. In the first case, the charge sheet is dated 26.05.2011 and in the second case, it is 27.01.2011. The order of punishment in the first case is 11.08.2011 and in the second case it is 20.12.2012.*

8 *The learned Division Bench of this Court, in the matter of Sudhakar Shankar Chapke vs. The Maharashtra State Electricity Distribution Company Limited, **2013(1) ALL MR 564**, has concluded that Regulation 90 is invalid and the summary proceedings pursuant to the charge sheet under Regulation 90 are unsustainable.*

9 *Shri Pawar, therefore, submits that considering that the Respondent was relying upon the enquiry notwithstanding that it was not a regular enquiry under Regulation 88, but a summary proceeding under Regulation 90, it was required to reserve a right to conduct a de-novo enquiry in view of Lakshmidevamma judgment (supra). He submits that reliance placed by the Respondent on the judgment of the Honourable Supreme Court in the matter of Divyash Pandit vs. Management N.C.C.B.M., **2005(2) SCC 684 : AIR 2006 SC 92** concluding that the Labour Court can always give an opportunity to the Employer to conduct a de-novo enquiry without reserving a right*

in the Written Statement, has been wrongly followed by the Industrial Court.

10 *Shri Pawar submits that as on date, the Petitioners have not received any notice with regard to any challenge posed by the Respondent/ Management as against the orders dated 02.03.2016 passed by the Industrial Court by which the summary proceedings have been set aside.*

11 *In the light of the above, issue notice to the Respondents. Shri Godse, learned Advocate, appears and waives service on behalf of the Respondent-Management in both these petitions and prays for a short accommodation.*

12 *By consent of the parties, stand over to 11.08.2016 as part-heard. The matter to appear in the supplementary board.*

13 *Considering the above and the fact that the Petitioners have raised an arguable point, until further orders in this matter, the Industrial Court, Jalgaon shall not proceed with Complaint (ULP) Nos.83/2015 and 06/2014."*

3. In the second petition, the petitioner/employer is aggrieved by the order dated 02/03/2016, by which the enquiry conducted by the employer under Regulation 90 of the MSEDCL Employees Service Regulations, 2005 has been set aside only on the ground that the

enquiry stands vitiated since this Court has struck down Regulation 90.

4. Having considered the strenuous submissions of the learned Advocates, I am not required to advert to their entire submissions since the effect of the striking down of Regulation 90 has been considered by this Court in the case of Prakash Narayan Shinde Vs. the MSEDCL, WP NO.5778/2015 and connected writ petitions by judgment dated 29/03/2016, wherein this Court has held that the declaration that Regulation 90 is invalid shall be prospectively made applicable.

5. Considering the law as above, the 2nd petition filed by the petitioner needs to be decided first as the result of the said petition would affect the outcome of the first petition filed by the employee.

6. Learned Advocates have fairly and jointly submitted that the reliance placed by the Industrial Court on Sudhakar Shankar Chapke Vs. MSEDCL and another, 2013(1) ALL MR 564 was misplaced because the issue in the Sudhakar Chapke case (supra) was as to whether the employer had rightly invoked Regulation 90 in the facts of the case. The legality of Regulation 90 was not subject

matter of the Sudhakar Chapke case (supra) and in fact was a subject matter of the WP No.3126/2011 filed by Praveen Prabhakar Rao Jawale Vs. M.S.E.D.C.L. and another. The Sudhakar Chapke case (supra) was decided on 22/08/2013 in which Regulation 90 was not declared as being invalid. This Court, in the Praveen Jawale case (supra) delivered a judgment on 22/08/2013 declaring Regulation 90 as being invalid.

7. Considering the above, it needs mention that the employer had invoked Regulation 90 in this case by charge sheet dated 26/05/2011, recorded the reply of the employee on 04/06/2011, recorded his statement on 07/07/2011 and then passed an order of punishment on 11/08/2011, which is prior to the judgment in the Praveen Jawale case (supra).

8. As such, in my view the Industrial Court has erred in placing reliance on the Sudhakar Chapke case (supra) while passing the impugned order. Consequentially, WP No.8927/2016 is partly allowed. The impugned order dated 02/03/2016 is quashed and set aside and the Industrial Court is directed to decide preliminary issue Nos. 1 and 2 afresh by considering the judgment in the Praveen Jawale case (supra) and the judgment dated 29/03/2016 passed by

this Court in the Prakash Narayan Shinde case (supra). Rule is made partly absolute in the above terms.

9. Consequentially, the order dated 12/04/2016 delivered by the Industrial Court on application Exh.C-14 in Complaint (ULP) No.83/2015 does not survive and stands set aside. WP No.8088/2016 is, therefore, rendered infructuous and is disposed of. Rule is discharged.

(RAVINDRA V. GHUGE, J.)