

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 349 OF 1999

Shri Ganapat Bhimrao Patil
Bldg. No. D 30/303, 3rd floor,
Golukdham, J. Arunkumar Vaidya
Marg, Goregaon (East),
Mumbai 400 063.

.. Petitioner

Vs.

The Bombay Electricity Supply and
Transport Undertaking through
its General Manger having their
office at Electricity House,
Colaba, Mumbai 400 001.

.. Respondent

Ms. Neeta P. Karnik, for the Petitioner.
Mr.S.K.Talsania, Sr. Advocate with Ms.Kavita Anchan i/b M.V. Kini &
Co., for Respondent.

**CORAM : A.A.SAYED AND
M.S.KARNIK, JJ.**

**RESERVED ON : 12th JULY, 2017
PRONOUNCED ON : 31st JULY, 2017**

JUDGMENT (PER : M.S.KARNIK, J.)

. By this Petition under Article 226 of the Constitution of India, the petitioner is challenging the order dated 16/01/1998 passed by the Disciplinary Authority dismissing him from the services of the respondent. The petitioner has also challenged the Appellate

orders passed by the First and Second Appellate Authority dated 25/03/1998 and 04/09/1998 respectively.

2. The petitioner joined the services of the respondent in 1984 as an Assistant Foreman and worked for 12 years in the said post. The petitioner was promoted as Charge Engineer with the Erection Department of the respondent undertaking.

3. On receipt of certain information, Shri R.D.Kamble, Senior Vigilance Officer along with security staff raided the premises of Dharam Palace Co-operative Housing Society Ltd., 117, Hughes Road, Mumbai 400 007 at 12.00 hours on 01/12/1996. It was noticed that Shri Arvind Narayan Poyekar, Deputy Chief Engineer, Erection (North) Department along with Shri A.L.M. Shaikh Lighter St. Ltg. Department, Shri T.K. Choudhary, Nowghany, Erection (North) Department and Shri V.T. Satham (Casual Labourer) were engaged in carrying electrical work of providing earthing to the new service laid recently. Further investigation by Shri R.D.Kamble revealed that Shri Poyekar had undertaken contract work in the name of Sameet Electricals, Engineers and Contractors at estimated cost of Rs.1,62,000/-. Requisition No. 402190 dated 13/08/1996

was then submitted to the commercial department of the respondent in the name of Surgems, 605, 'Dharam Palace', Nyayamurti Sitaram Patkar Marg, Mumbai and signed by Shri R.S.Mehta (Partner) as applicant. The requisition pertaining to this work was accepted for registration by the Assistant Engineer, Commercial South (s) Shri E.S.Chowdhary. The test report has the same date as the requisition by Shri E.S.Chowdhary.

4. Upon submitting the requisition the work was started by Shri Poyekar on 29/09/1996 by engaging casual labourer, Nowghany working under him at Sewree chowkey. The work involved excavation, laying PVC pipes, fixing clamps, providing earthing plates etc.

5. On 29/09/1996 which was a Sunday and non-working day, Shri Poyekar accompanied by Mr.Mhaprolkar & Shri Bhagat visited Sewree chowkey and took a cledge hammer for Dharam Palace works site without making entry in material out going book. Thereafter the work was continued till 01/12/1996 when the premises were raided by the security staff. When Shri Kamble, Senior Vigilance Officer started the scrutiny of the related official

record/documents it was observed that the requisition No. 402190 dated 13/08/1996 was handwritten by Shri Poyekar himself. The job sheets of the casual labourer who had worked at Dharam Palace and whose official place of work was at Sewree Chowkey were certified by Shri Poyekar, Deputy Charge Engineer, Shri R.B. Ghatge, Sub-Engineer and Shri C.Sasheendran, Deputy Engineer of Sewree Chowkey.

6. On scrutiny of the time card of Shri Poyekar it was noticed that he was marked present by Shri C.Sasheendran from 8.00 hrs. to 17.00 hrs. on 1st, 3rd, 4th October & 1st, 23rd and 30th November for his work at Sewree chowkey. During the said dates and duty hours he was found at Dharam Palace site.

7. The scrutiny of the test report No. 16799 dated 13/08/1996 from B.K. Electricals & Engineers, M.G.No. 4905 & M.S.No. 16277, led to a different line of investigation. The report of Shri R.D.Kamble states that on scrutiny of the address mentioned in the test report, it was revealed that the Licence Electrical Contractor ('LEC' for short) Shri P. J. Pawar was not staying at the said address, but had shifted to Pune long back.

8. On 23/12/1996 Shri P. J. Pawar LEC, alongwith one wireman Shri Riyaz Ismail Dimtikar came to the security and Vigilance Department. Shri Pawar disclosed that he was proprietor of B.K. Electricals and Engineers and doing his business at Pune. Shri Ganpati Bhimrao Patil (petitioner herein), Charge Engineer used to come to his residence at Pune to take xerox copy of the paper of renewal of the government licence. On the strength of this xerox copy, the petitioner used to collect T.R. Books from the undertaking on behalf of B.K. Electricals and Engineers and used the same for his business. Shri Riyaz disclosed that he used to collect the signed blank test report from the petitioner and used the same whenever required. Shri Riyaz further disclosed that he used to pay Rs.300/- to Rs.400/- for the said test report book to the petitioner and the petitioner used to give signed blank test report to Shri Riyaz Dimtikar.

9. On 01/01/1997, the Vigilance Officer recorded a statement of the petitioner in which he has admitted as having signed as Shri P. J. Pawar on test report. He further admitted that other test report books were also collected by him and then handed over to Shri Riyaz for monetary gains. The petitioner was served

with charge-sheet dated 13/05/1997. During the course of Inquiry statement of Shri R.D. Kamble, Senior Vigilance Officer came to be recorded some time in August 1997. The statement of Shri Riyaz was also recorded on 24/09/1997. Shri Kamble was duly cross examined at the instance of the petitioner. The report which was submitted against the petitioner by Shri R.D. Kamble was based on the following documentary evidence.

“Shri G.B.Patil, Charge Engineer, Er(N) Ch. No. 211532.

The report submitted against Shri G.B.Patil by Shri R.D.Kamble is based on following documentary evidence.

1. Written Statement of Shri G.B.Patil, dtd. 1.1.97 (C-45).
2. Written Statement of Shri P. J. Pawar (Outsider).
3. Written Statement of Shri Faiyaz (Riyaz) Ismail Dimtimkar (Outsider).
4. Xerox copy of Test Report No. 19209 dtd. 15.3.93 which is issued for Approval delicacies and other blank Test Reports Sr. No.35768 to 35776.
5. The application form for Test Report.
6. Xerox copy from the register of the undertaking showing the receipt of test report books.
7. Blank Letter Head of B.K. Electricals & Engineers (C-113).
8. Eight blank test report bearing No. 35768 to 35776 (C-117 to C-131).”

10. The Disciplinary Authority by order dated 16/01/1998 held the charges levelled against the petitioner as proved and took a serious view of the misconduct committed by the petitioner. The petitioner came to be dismissed from the services of the undertaking with effect from 17/01/1998. First and Second Appeals filed by the

petitioner before the Appellate Authority came to be rejected. Learned Counsel for the petitioner invited our attention to the statement of the petitioner recorded by the Vigilance Officer. She also took us through the relevant portions of the evidence of Shri Riyaz, Senior Vigilance Officer Shri Kamble and the Disciplinary Authority's report. According to her, findings recorded by the Disciplinary Authority are perverse based on no evidence. She contends that the statement of the petitioner was recorded by the Senior Vigilance Officer under threat and coercion. The findings of the Disciplinary Authority holding the petitioner guilty of misconduct is completely based on the statement of the petitioner made to the Vigilance Officer. In fact, in her submission, the Vigilance Officer has himself written the question and answers and obtained signature of the petitioner in order to falsely implicate him. There is no other material apart from this to establish the charge. In the submission of the learned Counsel for the petitioner statement which is in the nature of confessional statement obtained under threat and coercion cannot be used against the petitioner.

11. Learned Counsel for the petitioner further submits that Shri P. J. Pawar was a material witness who has not appeared during

the enquiry though he was called. According to her, Shri P. J. Pawar LEC has given a false statement against the petitioner to the Vigilance Officer only because he bore animosity towards the petitioner. She submits that Shri Riyaz with a view to escape liability has put the blame on the petitioner. According to her, Senior Vigilance Officer Shri Kamble was duly cross examined on the aspect of petitioner's forcible statement recorded by him. In the submission of the learned Counsel for the petitioner false story has been cooked up. She has argued at length contending that appreciation of evidence by the Disciplinary Authority does not meet standard of proof expected in disciplinary proceedings. According to her, the evidence in the form of statement recorded before the Vigilance Officer has to be discarded. There is no evidence to support the findings of the Disciplinary Authority.

12. Learned Senior Counsel for the respondent on the other hand supported the order of dismissal and orders passed by the Appellate Authority. In his submission, the Disciplinary Authority considered the entire material on record and then arrived at finding of fact that charges levelled against the petitioner are proved. In his submission even the Appellate Authorities have concurrently found

against the petitioner. He further pointed out that the petitioner's submission was recorded by the Vigilance Officer on 01/01/1997. Even that part of the statement which is written by the Vigilance officer finds signature of the petitioner below the statement. The charge-sheet was filed on 13/05/1997. It is only in September 1997 during the course of the Inquiry for the first time the petitioner has alleged that his statement was obtained by coercion. This according to the learned Counsel is nothing but after an thought. In the submission of the learned Counsel there is evidence before the Disciplinary Authority in the form of the petitioner's statement recorded by the Vigilance Officer in which he has admitted to have signed as Shri P. J. Pawar LEC on the test report. He has also admitted to the test report books collected by him and then handed over to Shri Riyaz for monetary gains. In the submission of the learned Senior Counsel, Shri R.D. Kamble Senior Vigilance Officer who recorded the statement was examined during the course of enquiry and even has been cross examined by the petitioner. To support his contention that the statement made by the petitioner to the Vigilance Officer can be relied upon, learned Senior Counsel has placed reliance on the decisions of the Apex Court reported in **Kuldip Singh Vs. State of Punjab and ors. (1996) 10 Supreme Court**

Cases 659 which was later followed in the case of **Commissioner of Police, New Delhi Vs. Narender Singh (2006) 4 Supreme Court Cases 265**. Learned Senior Counsel has also relied upon the decision of the Apex Court in the case of **State of Haryana and anr. Vs. Rattan Singh AIR 1977 Supreme Court 1512** to contend that when there is some evidence which had relevance to the charge against the delinquent, the employer is well justified in imposing appropriate punishment on employee.

13. We have considered the rival submissions advanced by learned Counsel for the parties. Shri P.J. Pawar LEC in his statement made before the Vigilance Officer - Shri R.D.Kamble has stated that the petitioner used to go to his residence at Pune to take xerox copy of paper of renewal of the government licence. In the statement before the Vigilance Officer, Shri P. J.Pawar stated that he did not take any test report book from BEST and he has not signed on any book or any copy after he left Bombay in the year 1989-90. In his statement, he has further stated that the petitioner never told him that he used test report book for the work of BEST after he had left for Pune. It is on the strength of the xerox copy of the licence, the petitioner used to collect test report books from the undertaking on

behalf of B.K. Electricals and Engineers of which Shri P. J.Pawar is the proprietor and used the same for his business. Further Shri Riyaz the wireman disclosed that he used to collect the signed blank test report from the petitioner and used the same whenever required. It is also disclosed by Shri Riyaz that he used to pay Rs.300 to 400/- for the said test report book to the petitioner and the petitioner gave signed blank test report to Shri Riyaz. The petitioner in his statement admitted as having signed as P.J. Pawar on the test report.

14. We find that even the statement of Shri Riyaz recorded by the Vigilance Officer where he has categorically stated that the address given of B.K. Electricals and Engineers is that of the shop which belongs to Riyaz. The letterheads needed for this work bear the address of his shop and the letterheads were made by the petitioner. Shri Riyaz has stated these letterheads are used for the purpose of giving bills to parties or to BEST. The test reports which were found in the purse were taken from the petitioner with the signature of Shri P.J.Pawar as per the statement of Riyaz.

15. The Disciplinary Authority took into consideration the documentary evidence on record. He found that the document at

serial No. 5 is the application form for the test report books which is signed by the petitioner as Shri P. J. Pawar. Even the copy of the register from the BEST undertaking of receipt regarding the test report books shows that in some of the columns, the same is signed as Shri P.J. Pawar, in some of the columns as Shri G.B. Patil (petitioner) and in some of the columns as Shri Riyaz Dimtikar. The documentary evidence at serial No.8 are blank test reports which are signed as P. J. Pawar in LEC column and also supervisors column. Shri R.D. Kamble - Senior Vigilance Officer was duly examined and he deposed that Shri P.J. Pawar who was the proprietor of the firm B.K. Electricals & Engineers, had shifted long back to Pune and he also stated that the petitioner used to go to the residence of Shri P. J. Pawar for renewal of the licence on the strength of which the petitioner obtained blank test report books on behalf of B.K. Electricals and Engineers and sold it to Shri Riyaz after signing as P. J. Pawar on the blank test report. Shri R.D. Kamble stated that the statement in fact was given by the petitioner which he recorded. He also recorded the statement of Shri P. J.Pawar and that of Riyaz Dimtikar. Shri Riyaz was also examined. Though official letter was sent to Shri P.J. Pawar at his Pune residence calling him for deposition before the enquiry, he however did not turn up.

16. The Disciplinary Authority has observed that in the cross examination of Shri Riyaz, he admitted that he was introduced to Shri P.J.Pawar by the petitioner somewhere in the year 1989. The petitioner used to sell blank but signed test report books to Shri Riyaz. On the instructions of the petitioner, Shri Riyaz used to obtain blank report books from undertaking after submitting application form which was signed by the petitioner as P J. Pawar. The Disciplinary Authority has taken into consideration the evidence on record which shows that 2 books at serial nos. 39 & 96 were collected from the undertaking where the petitioner has signed as received. The Disciplinary Authority has found that evidence on record shows that there were monetary benefits in selling test report to the petitioner.

17. Learned Counsel for the petitioner vehemently submitted that second part of the petitioner's statement recorded before the Vigilance Officer was in fact in the handwriting of the Vigilance Officer and therefore the same cannot be used against him. We however find that before the Disciplinary Authority, Shri R.D. Kamble - Vigilance Officer confirmed that the petitioner had signed as G.B.Patil in the presence of witness Shri Suryavanshi. Shri

Suryavanshi is also cross examined by the petitioner.

18. The Disciplinary Authority has found that Shri P.J. Pawar had discontinued the business with BEST undertaking. It was continued by the petitioner without knowledge of either Shri P.J.Pawar or undertaking by making bogus signatures. We find no merit in the submission of the learned Counsel for the petitioner that statement of the petitioner was recorded under pressure and coercion. Though the statement of the petitioner was recorded on 01/01/1997, the contention that the same is under coercion and pressure is raised for the first time sometime in September during the course of enquiry. The Disciplinary Authority found that the petitioner's statement is based on documentary evidence and is well supported by the evidence of witness viz. Shri Suryavanshi. Based on the materials on record, the Disciplinary Authority came to the conclusion that the petitioner being a member of the staff of undertaking was unauthorisedly involved in the business of selling the test reports. The test reports are submitted to the undertaking after completion of electrical installation work by the licenced electrical contractor and hence, the charge of "breach of Indian Electricity Rules" has been proved. The Disciplinary Authority also

came to the conclusion based on material on record that the petitioner was involved in the business of selling the test reports and therefore, the charge “engaging in other employment whilst still in service of the undertaking without previous permission of the General Manager” stands proved. Furthermore the Disciplinary Authority came to the conclusion that the petitioner used to sign on test reports as P. J. Pawar LEC and then sell the same to Riyaz for monetary gains. Thus, the Disciplinary Authority concluded that charge of fraud and dishonesty with business of undertaking is proved.

19. In our opinion, the Disciplinary Authority based on the material on record has come to the conclusion that the charges against the petitioner stand proved. The petitioner has been given adequate opportunity to represent himself during the course of the enquiry and the enquiry is conducted in accordance with the principles of natural justice. We find that on the basis of the evidence on record, Disciplinary Authority has come to the conclusion that the charges are proved and in exercise of our writ jurisdiction under Article 226 of the Constitution, it is not open for us to re-appreciate the evidence on record. We do not find any infirmity with the

findings so recorded. In our opinion, the findings cannot be said to be perverse so as to warrant interference. The Appellate Authorities have also considered the Appeals on merit thereby confirming the order passed by the Disciplinary Authority. In this view of the matter, we see no reason to interfere with the impugned orders. Writ Petition is accordingly dismissed with no order as to costs. Rule is discharged.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)