

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 04.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

WEB COPY

W.P(MD)No.7859 of 2010**and****M.P.(MD)No.3 of 2010**

1.S.Balasubramaniam
2.P.Manoharan
3.N.Mohan Raj
4.P.Alagusundaram

... Petitioners

Vs.

1.The Chairman,
Tamil Nadu Electricity Board,
N.P.K.R.R.Maaligai,
144, Anna Salai,
Chennai-600 002.

2.The Inspector General of Police,
Vigilance Cell/TNEB,
N.P.K.R.R.Maaligai,
144, Anna Salai,
Chennai-600 002.

3.The Chief Engineer(Personnel),
Tamil Nadu Electricity Board,
N.P.K.R.R.Maaligai,
144, Anna Salai,
Chennai-600 002.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Declaration to declare the paragraphs 4 (a) and 4m of Part IV (Duties and functions) of TNEB Codified Instructions which are issued in Board Proceedings in Ms(Ch) No.379, dated 30.12.1988 to TNEB Vigilance Cell as null and void and ultra vires of the Constitution to the extent that the said instructions provide arbitrary power to the respondent No.2 to take punitive measures insofar as petitioner's concerned.

For Petitioners ... Mr.T.Lajapathi Roy

For Respondents ... Mr.T.Sakthi Kumaran
Standing Counsel for TNEB

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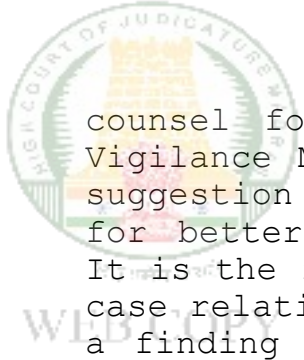
**ORDER**

This writ petition has been filed seeking a writ of Declaration to declare the paragraphs 4(a) and 4m of Part IV (Duties and functions) of TNEB Codified Instructions which are issued in Board Proceedings in Ms(Ch) No.379, dated 30.12.1988 to TNEB Vigilance Cell as null and void and ultra vires the Constitution to the extent that the said instructions provide arbitrary power to the respondent No.2 to take punitive measures.

2. The case of the petitioners is that they are employed in the Tamil Nadu Electricity Board. The grievance of the petitioners is that the Tamil Nadu Electricity Board - Vigilance Cell Procedural Instructions, dated 29.09.1975, particularly, Clause IV(a) and (m) giving the Vigilance Authorities unbridled powers to suggest to the Chairman the transfer of officers and staff, when such transfers are warranted to ensure clean administration is *ultra vires* as it is in violation of principles of natural justice. It is the further grievance of the petitioners that the said clause clothes the Vigilance authorities with absolute power, which will enable them to act arbitrarily with *malafide* intention for suggesting transfer of any employee, which will have a detrimental effect in the efficient functioning of the Board. The transfer orders passed against the petitioners is nothing but an arbitrary and *mala fide* exercise of power by the respondents and, therefore, the above prayer for declaration as above is sought for.

3. Learned Counsel appearing for the petitioner submits that pursuant to the transfer orders, the petitioners have joined in the respective transferred places and subsequently, they have also been retransferred to other places and, therefore, the consequential prayer has become infructuous. However, insofar the impugned procedure, particularly Clause IV(a) and (m) of the Tamil Nadu Electricity Board - Vigilance Cell Procedural Instructions, dated 29.09.1975, is concerned, it is submitted that the said instructions are arbitrary and in violation of the principles of natural justice and without providing any opportunity to the employees, invoking the said procedure, the authorities, at their whims and fancies, could transfer any employee, for extraneous reasons, as had happened in the case of the petitioners and, therefore, the said instructions, should necessarily be interfered with.

4. Per contra, the learned Standing Counsel appearing for the respondents submits that the present writ petition is filed only to scuttle the lawful exercise of the respondents in running an effective administrative setup. The present petition is an attempt on the part of the petitioners to prevent the authorities from effecting transfers in the interest of better administration. It is the further submission of the learned standing counsel for the respondents that no worthwhile grounds have been raised by the petitioners for this Court to interfere in the present writ petition. It is the further submission of the learned standing



counsel for the petitioners that the procedure envisaged in the Vigilance Manual is only to enable the Vigilance Authority to make suggestion to the Chairman for the transfer of officers and staffs for better administration and the power vests with the Chairman. It is the further submission of the respondents that each and every case relating to transfer should be viewed individually to arrive at a finding as to whether the transfer is punitive in nature or is done for better administrative necessities. The petitioners, merely putting forth a hypothetical ground of *mala fides* cannot come before this Court seeking a declaration to declare the instructions as *ultra vires* the Constitution. Accordingly, he prays for dismissal of this writ petition.

5. Heard the learned Counsel appearing for the petitioners and the learned Standing Counsel appearing for the Tamil Nadu Electricity Board and perused the materials placed on record.

6. The facts in the present case are not in dispute. The writ petitioners are employees of TNEB and based on some allegations, they were transferred to some other places and challenging the said transfer orders, the petitioners filed writ petitions before this Court and the writ petitions were allowed and the petitioners were allowed to continue duty in the same places. However, the present writ petition is filed seeking declaration to declare the paragraphs 4(a) and 4m of Part IV (Duties and functions) of TNEB Codified Instructions which are issued in Board Proceedings in Ms(Ch) No.379, dated 30.12.1988 to TNEB Vigilance Cell as null and void.

7. In order to appreciate the contentions and counter contentions raised, it is relevant to extract hereunder paragraphs 4 (a) and 4 (m) of Part IV (Duties and functions) of TNEB Codified Instructions:

"4(a) It shall review and streamline the working procedures which appear to afford scope for corruption and malpractices and initiate such other action as may be necessary from time to time for the prevention and detection of corruption and malpractices in the department and suggest remedial, preventive and punitive measures.

(m) It shall suggest to the Chairman transfer of officers and staff of the Board when such transfers are warranted to ensure clean administration."

8. A perusal of the instruction 4 (a) reveals that for the purpose of reviewing and streamlining the working procedures, which gives scope for breeding corruption and malpractice within the administrative setup, the Vigilance Cell has been given power to suggest remedial, preventive and punitive measures so as to cleanse the administration and weed out corruption within the organisation.



Further, a perusal of instruction 4 (m) reveals that the Vigilance Cell shall suggest for the transfer of officers and staff of the Board to the Chairman to ensure clean administration.

9. A careful perusal of the above instructions reveal that the Vigilance Cell is provided only with review and streamlining of the working procedures for the better administration of the organisation and to suggest to the Chairman remedial, preventive and punitive measures so as to cleanse the administration. Further, it is evident from the said instruction that the same is mainly for the purpose of detecting and preventing corruption and malpractice within the organisation. Further, the instructions reveals that suggestion shall be made to the Chairman for transfer of an officer/staff in the interest of cleansing the administration.

10. In **Maharashtra State Board of Secondary and Higher Secondary Education - Vs - Paritosh Bhupeshkumar Sheth, (1984 (4) SCC 27)**, the Hon'ble Supreme Court held thus :-

"21. The legal position is now well-established that even a bye-law cannot be struck down by the Court on the ground of unreasonableness merely because the Court thinks that it goes further than "is necessary" or that it does not incorporate certain provisions which, in the opinion of the Court, would have been fair and wholesome. The Court cannot say that a bye-law is unreasonable merely because the Judges do not approve of it. Unless it can be said that a bye-law is manifestly unjust, capricious, inequitable, or partial in its operation, it cannot be invalidated by the Court on the ground of unreasonableness. The responsible representative body entrusted with the power to make bye-laws must ordinarily be presumed to know what is necessary, reasonable, just and fair. In this connection we may usefully extract the following oft-quoted observations of Lord Russell of Killowen in *Kruse v. Johnson* [(1898) 2 QB 91, 98, 99 : 78 LT 647 : 46 WR 630 (DC)] (quoted in *Trustees of the Port of Madras v. Aminchand Pyarelal* [(1976) 3 SCC 167, 178 : AIR 1975 SC 1935 : (1976) 1 SCR 721, 733]) (SCC p. 178, para 23):

"When the Court is called upon to consider the bye-laws of public representative bodies clothed with the ample authority which I have described, accompanied by the checks and safeguards which I have mentioned, I think the consideration of such bye-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, 'benevolently

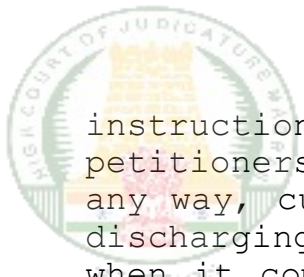


interpreted', and credit ought to be given to those who have to administer them that they will be reasonably administered.

The learned Chief Justice said further that there may be cases in which it would be the duty of the court to condemn bye-laws made under such authority as these were made (by a county council) as invalid because unreasonable. But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the court might well say, 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires'. But it is in this and in this sense only, as I conceive, that the question of reasonableness or unreasonableness can properly be regarded. A bye-law is not unreasonable merely because particular Judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by an exception which some Judges may think ought to be there."

We may also refer with advantage to the well-known decision of the Privy Council in *Slattery v. Naylor* [(1888) 13 AC 446 : 59 LT 41 : 36 WR 897 (PC)] where it has been laid down that when considering whether a bye-law is reasonable or not, the Court would need a strong case to be made against it and would decline to determine whether it would have been wiser or more prudent to make the bye-law less absolute or will it hold the bye-law to be unreasonable because considerations which the Court would itself have regarded in framing such a bye-law have been overlooked or rejected by its framers. The principles laid down as aforesaid in *Kruse v. Johnson* [(1898) 2 QB 91, 98, 99 : 78 LT 647 : 46 WR 630 (DC)] and *Slattery v. Naylor* [(1888) 13 AC 446 : 59 LT 41 : 36 WR 897 (PC)] have been cited with approval and applied by this Court in *Trustees of the Port of Madras .v. Aminchand Pyarelal* [(1976) 3 SCC 167, 178 : AIR 1975 SC 1935 : (1976) 1 SCR 721, 733]"

11. It is to be pointed out that corruption and malpractice is a major menace spreading its tentacles far and wide and plaguing the entire public machinery and pushing it into doldrums. If the said menace is not nipped in the bud, it would have far reaching implications in the effectiveness of the administrative setup. The

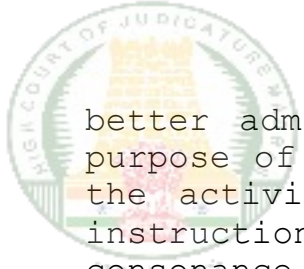


instructions, which have been put to test before this Court by the petitioners, in the considered opinion of this Court, does not in any way, curtail the rights of the petitioners, so long as they are discharging their duties in a lawful and efficient manner. Only when it comes to the attention of the Vigilance Cell as to certain dereliction of duties committed by employees in the form of corruption and malpractice in the discharge of their duties, the Vigilance Cell comes into play. Further, it is to be pointed out that even then, it is only a suggestion on the basis of materials, which is given by the Vigilance Cell and any further order is only on the basis of the appreciation of the said materials by the Chairman of the Board.

12. It is settled position of law that transfer is an incidence of service and unless it is shown to be punitive in nature or that the said transfer is imposed as a punishment, which is not warranted, the Courts are to individually appreciate the case and render a decision with regard to the transfer. The Courts, as a matter of course, shall not interfere with the order of transfer and has to analyse the merits and demerits of the individual case, before interfering with an order of transfer. So long as an order of transfer is within the legal bounds, the Courts shall refrain from interfering with the said order.

13. In the case on hand, the petitioners have sought a declaration to declare certain portions of the instructions, as noted above, as *ultra vires* the Constitution. An analysis of the contentions and the grounds raised by the petitioners show that the said declaration is sought on apprehension. Apprehension is not the basis on which a rule/regulation could be said to be *ultra vires*. The *vires* of a rule/regulation is determinant on very many factors, which have by now been settled by the Hon'ble Apex Court in a catena of decisions and unless the said factors stood attracted, the rule/regulation cannot be said to be *ultra vires*. In the case on hand, the instructions, which have been amended, are only for the purpose of increasing the efficiency in the discharge of administrative duties and also for weeding out the corruption and malpractice in the organisational setup. When the said instructions have been amended for the purpose of the effective functioning of the public machinery, mere mention of punitiveness in the said instructions would not give leverage to the petitioners to contend that the Vigilance Cell would be transferring the employees at its whims and fancies, more so, when checks and balances have been provided by placing the decision making on the Chairman of the Board. The petitioners, while challenging a provision, cannot, on mere surmises and conjectures, submit that the said amended provision would be detrimental to them, without showing the way in which it is detrimental to them.

14. AS stated above, transfer is an incidence of service and it is not a punishment, but is effected only for the purpose of



better administration. Instructions having been codified for the purpose of improving the administration and also to have a check on the activities of the officers and staff of the Board, the said instructions cannot be said to be *ultra vires* as the same is in consonance with the necessities of the situation. To borrow the words of V.R.Krishna Iyer, J., (as His Lordship then was) in ***STO - Vs - Ajit Mills Ltd., (1977 (4) SCC 98)***, "a law has to be adjudged for its constitutionality by the generality of cases it covers, not by the freaks and exceptions it martyrs". This is exactly the case on hand, as the petitioners sought to contend it for the purpose of their particular case and not on its generality. Therefore, the grounds raised by the petitioners, being only apprehensive in nature and concern only about their cases, does not constitute a valid ground to interfere with the instructions by issuing a declaration as sought for.

15. For the reasons aforesaid, this writ petition sans merit and, accordingly, the same is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar

// True Copy //

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Sub Assistant Registrar(CS)

SSL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Chairman,
Tamil Nadu Electricity Board,
N.P.K.R.R.Maaligai,
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3.The Chief Engineer(Personnel),
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N.P.K.R.R.Maaligai,
144, Anna Salai, Chennai-600 002.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-38[F] dated 05/01/2021)

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-167[F] dated 05/01/2021)

W.P(MD)No.7859 of 2010
04.01.2021

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