

Serial No. 01
Supplementary
List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 19 of 2020

Date of Decision: 20.03.2020

Shri. Sanjib Dhar

Vs. The North Eastern Electric Power
Corporation Ltd. & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.C. Chakrawarty, Sr. Adv. with
Ms. E. Slong, Adv.
For the Respondent(s) : Mr. V.K. Jindal, Sr. Adv. with
Mr. D. Pyngrope, Adv. for R 1 & 2.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

1. The petitioner is the Executive Director (C) of the respondent Corporation, North Eastern Electric Power Corporation Ltd. and was in service for more than 30 years since the year 1988 when he joined in the post of Sub-Divisional Office (C).

2. The petitioner over the years has been involved in the implementation of various projects of the respondent No 1 in the North Eastern Region of our country.

3. Vide Memo No PERS/21/144/02-03 dated 02.01.2020, the petitioner was served with a Memorandum issued under Rule 29 of the Conduct Discipline and Appeal Rules of NEEPCO Ltd enclosed therewith at Annexure-A, the Statement of Article of Charge, at Annexure-B, the Statement of Imputation of Misconduct in support of the Article of Charge,

at Annexure-C, the list of documents in support of the Article of Charge, at Annexure-D, the list of witnesses through whom the charge is proposed to be sustained and at Annexure-E, the Office Memorandum dated 11.11.2019. The Office Memorandum dated 11.11.2019 of the Central Vigilance Commission advising initiation of Major Penalty Proceedings against 19 employees of the respondent No. 1 including the petitioner herein at Serial No. 1 was also annexed with the above.

4. Upon perusal of the said Memorandum dated 02.01.2020 and the annexures thereto, particularly the Annexure-B which is the Statement of Imputations, the petitioner is firm that no case is made out against him, prima facie to warrant his participation in the departmental proceedings against him and the same was termed to be unwarranted only to subject him to gross harassment and prejudice to his past credentials.

5. The petitioner while admitting to being the Engineer-in-Charge of the Package 2 Works of the Kameng Hydro Electric Project of the respondent No.1, he has however assailed the various imputations made out in the Memorandum of Imputation and has stated that by responding to the Memorandum of Departmental Proceedings by filing his written statement of Defence (SOD), he shall be submitting himself to the outcome of the enquiry without the questions and issues raised in this petition being first judicially determined.

6. Mr. S.C. Chakrawarty, learned Sr. counsel assisted by Ms. E. Slong, learned counsel pleading on behalf of the petitioner, has submitted that on going through the Statement of Imputation and the Article of Charge, no rule, regulation, office order, contract, work manual or any other basis was mentioned to impose responsibilities and liabilities set to be vested with the petitioner herein and in view of the assumed liabilities and responsibilities, the departmental authority has no basis for proceeding against the petitioner.

7. It is also the submission of the learned Sr. counsel for the petitioner that the enquiry is only a fact finding enquiry wherein, there is no scope of

determining whether the assumed liabilities and responsibilities of the petitioner were actually his liabilities and responsibilities or not and great injustice shall be perpetrated on the petitioner by subjecting him to the said departmental proceedings.

8. Apprehension has been raised by the petitioner by submitting that the outcome of the departmental proceedings, if the petitioner is to undergo the same, would be subject to a very limited scope of judicial intervention or judicial review as has been laid down by the Hon'ble Supreme Court in the case of *B.C. Chaturvedi v. Union of India & Ors: (1995) 6 SCC 749*.

9. On the reliance placed by the respondents in the case of *Union of India & Anr v. Kunnisetty Satyanarayana: (2006) 12 SCC 28*, the petitioner has submitted that at paragraph 16 of the said judgment, the Hon'ble Supreme Court has been pleased to categorically provide that 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 as was in this case.

10. The petitioner has also given a gist of the allegation in the statement of imputations against him by submitting that on the basis of an allegation that the contractor has raised fake bills in respect of 17,628 non-genuine trips for which M/s NEEPCO has incurred loss to the tune of ₹ 63 crores. The petitioner's complicity in the case is to the extent that he has certified the bills without verifying the details of the vehicles used, that no parameters were put in place by him to check the types of vehicles used, the registration number of the said vehicles, etc. and also that the petitioner did not carry out random checks of the vehicles used and finally that the petitioner did not put any system in place for recording the details of each trip for carriage of the materials, nor ensured that payment for only genuine trips were made, so as to allow the contractor to manipulate the entire system for transportation of river borne materials and thereby earned undue benefits, which allegations are without any basis.

11. In view of the above, the learned Sr. counsel for the petitioner has submitted that this Court may be pleased to allow this instant writ petition and to grant the prayer made by the petitioner.

12. Mr. V.K. Jindal, learned Sr. counsel assisted by Mr. D. Pyngrope, learned counsel on behalf of the respondent No. 1 and 2 has submitted that he will not file any written submission, but will rely on the oral submission made and the affidavit filed before this Court.

13. Mr. Jindal has submitted that at this point of time, the only issue to be taken up and decided by this Court is with regard to the issue of maintainability and as such, no comments are offered on the merits of the writ petition, which is otherwise the subject matter of enquiry under the departmental proceedings initiated against the petitioner.

14. It is also submitted that the petitioner has already filed his reply dated 21.01.2020 to the Show Cause Notice issued by the respondent dated 02.01.2020.

15. Reiterating the allegations made against the petitioner, the learned Sr. counsel for the respondent No. 1 and 2 has submitted that the petitioner while functioning as the Engineer-in-Charge (EIC), Package-II of Kameng Hydro Electric Project (600 MW), NEEPCO Ltd. Arunachal Pradesh in between December 2012 to July 2015 without verifying the details of vehicles engaged in carriage of RBMs (River Borne Materials), against payment of extra lead money to the contractor had signed/certified the bills of non-genuine trips and thereby incurred huge loss to the exchequer of the Corporation, besides corresponding wrongful gain to the contractor and his action has attracted an offence under Rule 4 (C) (1) (i) and (ii) and Rule 5.5 of Conduct Discipline and Appeals Rules of NEEPCO Ltd., for which a Memorandum of Charge dated 02.01.2020 was issued against him with direction to submit his written statement of Defence within 15(fifteen) days of receipt of the said Memorandum of Charges.

16. It is also submitted that the petitioner has only been asked to show cause to the Memorandum of Charges for which the reply will have to be considered by the Disciplinary Authority and if substance is found, to proceed with the appointment of an enquiry officer, for which the petitioner will have all opportunity to defend his case.

17. In this regard, the case of *Union of India & Anr v. Kunnisetty Satyanarayana (supra)* have been cited by the learned Sr. counsel for the respondent laying emphasis on paragraph 13, 14, 15 and 16 of the same to contend that the aforesaid judgment of the Hon'ble Apex Court is squarely applicable in the facts and circumstances of the case in hand.

18. It is finally submitted that there is no cause of action for filing the instant writ petition, the same is not maintainable and is liable to be dismissed with cost.

19. On consideration of the argument of the rival parties and on perusal of the records, the admitted fact is that the petitioner herein is an employee of the respondent/NEEPCO Ltd., and as such, is under the authority of the respondent No.2/Chairman-cum-Managing Director, NEEPCO Ltd.

20. It is also an admitted fact that the petitioner was the Engineer-in-Charge (EIC) Package-II of Kameng Hydro Electric Project, NEEPCO Ltd. Arunachal Pradesh during the relevant period under scrutiny.

21. It is on record that the Central Vigilance Commission, vide Notification No. 016/PWR/029/438370 dated 11.11.2019 issued through its Director, upon perusal of the investigation report filed by NEEPCO Ltd., and the recommendations therein has advised initiation of Major Penalty Proceedings against 19 officials, the petitioner herein being listed at Sl. No. 1 of the said list.

22. On receipt of the Memorandum including the Statement of Article of Charge (Annexure-A) and Statement of Imputation of Misconduct or allegations in support of Article of Charge (Annexure-B), the petitioner has

preferred this petition, inter alia on the ground that he cannot be prosecuted on the basis of assumed liabilities and responsibilities.

23. Further, advancing his argument, the learned Sr. counsel for the petitioner has submitted that without deciding on the issue of such assumed liabilities and responsibilities, if compelled to participate in the enquiry, the same will be directed only at determining whether the facts of violation of such liabilities and responsibilities are established or not and in the consequent result, if aggrieved by such finding, the petitioner has no scope to seek judicial intervention with regard to his initial objection i.e., the objection as regard assumed liabilities and responsibilities, as the scope is limited as laid down by the Hon'ble Supreme Court in the case of **B.C. Chaturvedi (supra)**.

24. In the case of **B.C Chaturvedi (supra)**, the learned Sr. counsel for the petitioner has relied on paragraph 12 which reads as follows.

“12.The Court/ Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence...”

25. This Court is unable to accept the contention of the petitioner that the issue of assumed liabilities and responsibilities has to be decided first. The authority relied upon by the petitioner, would show that the Court may interfere only when the rules of natural justice or statutory rules are violated in the proceedings, which according to my opinion, the petitioner would be well within his rights to agitate the same and present his version of the case during the Enquiry.

26. It is also noticed that the petitioner has filed his statement of reply to the Show Cause issued by the Disciplinary Authority as seen from the affidavit-in-opposition filed by the respondent No. 1 and 2. The petitioner has not controverted this fact. This would show that the petitioner has

participated in the disciplinary proceedings and as such, there is no scope for him to rescind from the proceedings.

27. The authority cited by the respondent i.e., in the case of *Kunnisetty Satyanarayana (supra)* has force inasmuch as, in the said case, it was held that, ordinarily no writ lies against a charge-sheet or show-cause notice and that a writ petition should not be entertained at that stage, which may be held as premature, since a mere show-cause or notice does not infringe the right of anyone. 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.

28. This Court is in respectful opinion that the above case cited by the respondents would cover the facts and circumstances of the case of the petitioner, inasmuch as, the petitioner has been issued with the said Memorandum which has called upon him to participate in the enquiry proceeding and the final outcome is yet to be known.

29. This being the case, I find that at this juncture this writ petition is not maintainable and the same is hereby dismissed.

30. This petition is hereby disposed of accordingly. No cost.

Judge

Meghalaya
20.03.2020
"D. Nary, PS"