

(2013) 11 DEL CK 0126**Delhi High Court****Case No:** Writ Petition (C) No. 6699 of 2002

Nathimal Gupta

APPELLANT

Vs

Indraprastha Power Generation
Company Ltd.

RESPONDENT

Date of Decision: Nov. 28, 2013**Acts Referred:**

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Valmiki J Mehta, J**Bench:** Single Bench**Advocate:** S. Janani, for the Appellant; Rajmangal Kumar, Proxy Counsel, for the Respondent**Final Decision:** Dismissed**Judgement**

Valmiki J Mehta, J.

By this writ petition, the petitioner who was an employee of erstwhile Delhi Vidyut Board and thereafter of the present respondent-Indraprastha Power Generation Company Limited (IPGCL), impugns the orders passed by the departmental authorities; of the disciplinary authority dated 24.8.2001 and the appellate authority dated 10.9.2002; imposing upon the petitioner the punishment of removal from services. Petitioner, an Inspector with the Delhi Vidyut Board, was found guilty of stealing an electricity meter which was installed at one connection in one premises and thereafter he had illegally installed the same at another premises after receiving a bribe of Rs. 10,000/-.

The facts of the case are that a raid of the enforcement officials of Delhi Vidyut Board was conducted on 10.6.1999 at the premises B-271, Yojana Vihar, Delhi. The raid comprised of many officers of Delhi Vidyut Board, who also had prepared the inspection report of the said date. In the inspection, it was found that at the premises B-271, Yojana Vihar, Delhi, the stolen meter bearing No. E-9705279 was installed, and which meter actually was installed and thus ought to have been found at the premises No. 75A, Pocket-F, GTB Enclave,

Dilshad Garden, Delhi. Inspection of the records maintained by the DVB with respect to the electricity connection, and records particularly of the Meter Testing Department (MTD), showed that actually the meter number legally installed at the premises at Dilshad Garden was installed and illegally put at the premises at Yojna Vihar, Delhi. FIR No. 157/99 was lodged on 22.3.2009 with respect to the theft of the meter. Statements were recorded of the persons of the Dilshad Garden premises namely Shri Ashok Kumar Anand and of Shri Suchit Kumar Jain of the Yojana Vihar premises where the stolen meter was found to be installed. At the premises where the stolen meter was installed, an amount of Rs. 1,42,720/- was found to be due on account of electricity consumption as per a bill which was not paid. Accordingly, a charge-sheet dated 26.7.1999 was issued against the petitioner. Inquiry Officer was thereafter appointed. Evidence was led by both the parties in the inquiry proceedings. The department led evidence of as many as six witnesses including the persons who conducted the raid on the premises at Yojana Vihar and found the stolen meter. Department also filed and proved various documents including the report of the inspecting team, meter issuing docket for installation at the first premises at Dilshad Garden, of provisional installation of the stolen meter at Dilshad Garden, the electricity bill of Rs. 1,42,720/- showing unpaid amount for consumption of electricity at the new premises at Yojana Vihar, FIR No. 157/1999 dated 22.3.1999 with respect to the theft of the stolen meter etc. Petitioner, herein, only led the evidence of one witness, namely, Shri Kamal Rameshwar as DW-1. It may be noted that the petitioner did not step into the witness box and depose in his own favour in the inquiry proceedings. The Inquiry Officer, on the conclusion of the departmental proceedings, submitted his report dated 19.7.2000 holding the petitioner guilty of the charges. As already stated above, this inquiry report has been accepted by the departmental authorities imposing the punishment of removal from services upon the petitioner. I may note that the Enquiry Officer's report is a detailed report of 30 pages wherein all proved documents have been referred to, the depositions of the witnesses, their cross-examination and their re-examination have been reproduced and thereafter conclusions have been given. It has been held by the Enquiry Officer by reference to the documents and depositions of the witnesses that the meter number which was found at the premises of Yojana Vihar was in fact originally installed at Dilshad Garden and the same was found illegally installed at the Yojana Vihar premises. It was found that the meter number in question was E-9705279. The confusion was as to whether the last digit "9" was there or not in the meter which was found at the premises at the Yojana Vihar, was got confirmed from the records of the department and thereafter comparing the same with the number of meter embossed on the dial of the meter. Electricity meter in question was thereafter handed over to the Police as the criminal case with respect to the same was going on as per FIR number 157/1999 dated 22.3.1999. The Inquiry Officer has accordingly given the following conclusion:-

From the listed documents, deposition made by PWs and facts corroborated during the inquiry proceedings it is established that meter No. E-9705279 installed against K. No. 614-1295770 at the premises of Sh. Kasturi Lal, 75-A, Pocket F, GTB Enclave, Dilshad Garden, Delhi by the then Inspector, Sh. Sanjiv Gupta, VI (T), was stolen by Shri N.M. Gupta, CO and he installed the same in fraudulent manner at the premises of Shri S.P. Jain, B-271, Yojna Vihar, Delhi in consideration for illegal gratification of Rs. 10,000/- from Shri S.P. Jain which was (meter No. E-9705279) later removed by the Joint Inspection Team on 10.6.99. The said meter subsequently was handed over to Police Station Dilshad Garden by A.E. Zone 2201 (under whose custody the said meter was) against the FIR No. 157/99 dated 22.3.99, which was lodged for stolen of the said meter (E-9705279) from premises of Sh. Kasturi Lal, 75-A, Pocket-F, GTB Enclave, Delhi. Since an FIR was lodged in the police Dilshad Garden, as regard to the stolen meter No. E-9705279 on 22.3.99 and it was recovered from the premises of Sh. S.P. Jain B-271, Yojna Gihar on the day of Joint Inspection dt. 10.6.99 and Sh. S.P. Jain has given a statement that the said meter was not installed by the CO in consideration of Rs. 10,000/- illegally the charges against the CO are established beyond doubt. He stole and installed the said meter in the said premises. These actions on the part of CO, Sh. N.M. Gupta, not only caused a huge financial lose to Delhi Vidyut Board but also brought a bad name to D.V.B. and tarnished it fair reputation.

The documents placed on record (listed as Ex. S-1 to S-6 and additional documents as Ex. D-1 to D-6N go to support the charges mentioned in Article I to III against the CO. Whatever missing links were there in these documents have been elaborately clarified by the 6 PWs, particularly by Investigating Officer. Taken together, along with prosecution brief and its enclosures, the charges in Article I to III against the CO are established. Charges of Article IV and V are natural off-shoot of the first three and accordingly they also stand proved.

2. Before I turn to the arguments urged on behalf of the petitioner, it is necessary at this stage to set out what is the scope of a hearing before a Court hearing a petition under Article 226 of the Constitution of India by which orders passed by the departmental authorities are challenged. It is settled law that this Court does not sit as an Appellate Court while hearing a petition under Article 226 of the Constitution of India and this Court does not re-apprise findings of facts and conclusions arrived at by the departmental authority. This Court can only interfere if the findings and conclusions are perverse or against the principles of natural justice or the findings and conclusions are against the rules of the employer organization/law.

3. Further, it is equally a settled law that in the departmental proceedings, burden of proof is discharged on preponderance of probability like in a civil case, and it is not as if a department has to prove its case beyond all reasonable doubt like in a criminal case.

4. Before me on behalf of the petitioner, the following arguments are urged:-

(i) The FIR No. 157/1999 which was registered with respect to any theft of the meter was registered after a delay of about 100 days and whereby its credibility comes in question. It is also argued that the FIR wrongly mentions the meter number because the last digit number "9" is not found in the FIR. It is also argued that the FIR which is relied upon by the departmental authorities is without basis because the said FIR is a general FIR without containing the name of the petitioner.

(ii) The Enquiry Officer and the departmental authorities have committed a gross illegality in relying upon the statement of Shri Suchit Jain of the Yojna Vihar address where the stolen meter was found to be installed, without actually summoning the said person and the petitioner being allowed to cross-examine him.

(iii) The orders passed by the departmental authorities are bound to be set aside because the complainant of the stolen meter, i.e. Shri Ashok Kumar Anand of the Dilshad Garden premises, was not examined and who ought to have been examined, because without his deposition, it cannot be said that the meter was stolen.

5. So far as the first argument which is urged on behalf of the petitioner is concerned, I may state that the issue in the departmental proceedings is of the factum of stealing of the meter from the Dilshad Garden address and its installation at the Yojana Vihar address. This aspect has been more than amply proved by the document Ex. S-1 being the meter issuing docket when the stolen meter was firstly and legally installed on 4.7.1997 at the Dilshad Garden address and which is taken with the report of the raiding team who conducted the raid on 10.6.1999 showing that it was that meter number E-9705279 which was found at Yojana Vihar address. The minor doubt with respect to the meter number of the last digit number "9" existing or not was clarified by reference to the MTD Department report showing the meter number which was installed originally and thereafter re-confirming the meter number on the dial of the meter which was found at the Yojana Vihar address. As many as six witnesses have deposed with respect to the case of the department and has proved the case of the department. Therefore, merely because there is delay in lodging of the FIR cannot take away the findings and conclusions of the Enquiry Officer with respect to a wrongful theft of the meter which was actually ought to have been found at Dilshad Garden address instead of the Yojana Vihar address where it was found installed. Merely because, the FIR does not contain the name of the petitioner would not be material because at the stage of FIR, the person who lodged the FIR, namely, Shri Ashok Kumar Anand could not have been definitely known who had stolen the meter installed at Dilshad Garden address, and this aspect therefore does not take the case of the petitioner any further with respect to the aspect of challenging the valid findings and conclusions of the departmental authorities with respect to the theft of the meter. The first argument, therefore, urged on behalf of the petitioner is rejected more so because this Court is not sitting as an Appellate Court to reappraise the findings of facts and conclusions of the

departmental authorities and the arguments raised before this Court are arguments not of perversity, but of alleged incorrectness (and which incorrectness also is not there) and the petitioner has failed to establish that the findings and conclusions of the departmental authorities can in any manner be said to be illegal or faulty and definitely not perverse.

6. So far as the second argument is concerned, of the department not having examined Shri Suchit Jain of the premises where the stolen meter was found and installed at the Yojana Vihar, although his statement is relied upon, I may state that really the statement of Shri Suchit Jain which is relied upon by the department is not in the nature of deposition on oath for which there has to be cross-examination, but the statement relied upon is similar to a letter or a document containing a fact and its statement to the electricity department. Such a document can always be relied upon in a civil proceeding and all that is required is that contents of the same are otherwise legally proved. The contents of the statement of Shri Suchit Jain have been proved in the departmental proceedings because it has been established that the meter number in question actually was installed at the Dilshad Garden address, and therefore, it could have been found installed at Yojana Vihar address only if it was wrongly been installed at Yojna Vihar address i.e. on being stolen from the Dilshad Garden address. The facts of stealing have already been established and have been discussed while rejecting the first argument which is urged on behalf of the petitioner. Therefore, in my opinion, there is no illegality in the departmental proceedings simply because Mr. Suchit Jain has not been called.

7. I may at this stage state that it is important to note that the petitioner did not have the courage or the conviction to step into the witness box and depose in his own favour in the inquiry proceedings. Departmental proceeding, as stated above, are like a civil case and not a criminal case, and the petitioner therefore if he had belief in this case ought to have at least deposed in his favour. The very fact that the petitioner had no courage to depose in his favour and thus not stand the test of cross-examination, the same is sufficient to otherwise accept the findings and conclusions of the departmental authorities on the basis of documentary evidence and the oral evidence given by the witnesses of the department. Therefore, for this additional reason, there is no illegality in the findings and conclusions of the department for holding the petitioner guilty of the theft of meter, and which conclusion cannot be set aside merely because Shri Suchit Jain was not called on behalf of the department. I may also note that the Inquiry Officer in this regard has also rightly noted that if the petitioner was so sure of his case then there was no difficulty for the petitioner himself to summon Suchit Jain, and which course of action the petitioner did not adopt. Therefore, the second argument urged on behalf of the petitioner is also rejected.

8. The third argument with respect to Mr. Ashok Anand, owner of Dilshad Garden premises, having not been examined is once again an argument which is without

merit and in substance it has already been considered by me while considering the first argument because the issue is not whether or not the complainant of the stolen meter has to be examined, but because the process of theft that in fact took place viz. of illegally removing and stealing of the meter from the Dilshad Garden premises and its installation thereafter at Yojana Vihar premises has otherwise been proved by the department and has been dealt with in detail while considering and rejecting the first argument.

9. The present is a classic case as regards that prevalent time when distribution of electricity was not privatized, and therefore a consumer used to face a lot of difficulty for getting an electricity connection and meter from the departments such as Delhi Vidyut Board. Persons like the petitioner thus resorted to do illegal actions by illegally giving meters at a premises by stealing the same from other premises. Even the money receipt which is filed by the petitioner with respect to the connection installed at Yojana Vihar was found to be bogus on its comparison with the original receipt of the installation of meter at Dilshad Garden. It is therefore clear that the petitioner was guilty of grossly abusing his position and which was in a sense a position of trust of being guardian of the property and finances of his employer-the erstwhile Delhi Vidyut Board. But for the fact that petitioner is an aged person, I would have imposed exemplary costs while dismissing the petition, but only out of sympathy I am not imposing costs. In view of the above, writ petition is, therefore, dismissed. Parties are left to bear their own costs.