



2024:KER:87414

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

FRIDAY, THE 22ND DAY OF NOVEMBER 2024 / 1ST AGRAHAYANA, 1946

WP(C) NO. 27752 OF 2021

PETITIONER:

GEORGEKUTTY C. X., AGED 52 YEARS
S/O.VARGHESE, SUB ENGINEER,
ELECTRICAL SECTION OFFICE, KERALA STATE
ELECTRICITY BOARD, PATHIRAPILLY, RESIDING AT
CHAKKALAKKAL HOUSE, PATHIRAPILLY P. O.,
ALAPPUZHA DISTRICT.

BY ADV JOSE J.MATHEIKEL

RESPONDENTS:

- 1 THE CHAIRMAN AND MANAGING DIRECTOR
KERALA STATE ELECTRICITY BOARD LIMITED, VYDYUTHI
BHAVAN, PATTOM, THIRUVANANTHAPURAM, PIN - 695004.
- 2 THE CHIEF ENGINEER (HUMAN RESOURCES MANAGEMENT)
KERALA STATE ELECTRICITY BOARD LIMITED, VYDYUTHI
BHAVAN, PATTOM, THIRUVANANTHAPURAM, PIN - 695004.
- 3 THE EXECUTIVE ENGINEER, ELECTRICAL DIVISION,
KERALA STATE ELECTRICITY BOARD LIMITED,
PATHANAMTHITTA, PIN - 689101.

BY ADVS.SRI.K.S.ANIL, SC, KSEB
B.PRAMOD, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22.11.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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"C.R."

JUDGMENT

The prayers in this writ petition are as follows:-

- "(i) To issue a writ of certiorari or such other appropriate writ, order or direction calling for the records relating to P1, P4, P5, P8 and P10 and to quash them.
- (ii) To declare that the entire disciplinary proceedings against the petitioner are illegal and violative of all rules relating to disciplinary proceedings.
- (iii) To grant such other reliefs that may be deemed just and proper by this Honourable court and to allow this writ petition with costs."

2. The petitioner challenges the disciplinary proceedings initiated against him by the competent authority in the Kerala State Electricity Board Limited.

3. The facts leading to this writ petition are as follows:-

3.1. The petitioner is a Sub Engineer in the Kerala State Electricity Board Limited (KSEBL). He was working as such in the Section office of the KSEBL at Aranmula during the period from



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15.7.2010 to 16.8.2012. One Mr.K.P.Mohanan was the Assistant Engineer in the Section office. He went on leave from 2.8.2011 to 15.8.2011 after giving Charge Transfer Certificate (CTC) to the petitioner till 15.8.2011. Sri.K.P.Mohanan rejoined duty on 16.11.2011, but he was placed under suspension from that day onwards.

3.2. On 18.8.2011, the Anti Power Theft Squad, Thiruvalla inspected the premises of Consumer No.3367 under the Aranmula Section office. The inspection team wanted the petitioner to accompany them for preparing the mahazar. The petitioner accompanied the team and prepared the mahazar as per their instructions.

3.3. On or after 16.8.2011, the Assistant Engineer of the Aranmula section office or any other higher officials did not issue CTC or any other authorization transferring the charge of the Assistant Engineer to the petitioner. As per SRO No.229/2005 issued by the Government of Kerala, the Assistant Engineer of the concerned section office of the KSEB is the assessing officer under Section 126 of the



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Electricity Act, 2003. The authority competent to issue a provisional assessment order was the Assistant Engineer of the section office concerned. The presence of the assessing officer is not mandatory at the time of inspection and preparation of mahazar.

3.4. Later, the Chief Engineer (HRM) issued a memo of charges and statement of allegations dated 26.4.2017 to the petitioner, mainly alleging delay on his part to issue the provisional assessment order under Section 126 of the Electricity Act to Consumer No.3367 pursuant to the inspection dated 18.8.2011. The petitioner submitted a reply to the memo of charges and the statement of allegations contending that he never had the power of the Assistant Engineer from 16.8.2011 onwards and, therefore, was incompetent to issue a provisional assessment order. He further contended that as no competent officer was present in the section, in the interest of the institution, he issued a provisional assessment order. He further stated that he was in no way responsible for the delay in the preparation of the provisional assessment order. Pursuant to the memo of charges and not satisfied with the reply submitted by the petitioner, the disciplinary authority



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proceeded against him. The Chief Engineer (HRM), as per order dated 15.6.2021, imposed the punishment of barring one increment without cumulative effect for one year and ordered recovery of Rs.73,606/- with applicable interest from 26.9.2011 onwards (Ext.P8). The petitioner challenged Ext.P8 by filing an appeal before the Chairman of the KSEBL. The Chairman, after hearing the matter, rejected the appeal but reduced the punishment of barring one increment without cumulative effect for one year to that of "Censure on Record" and ordered recovery of Rs.73,606/- with applicable interest from 26.09.2011 onwards. The petitioner has approached this Court after exhausting all the efficacious remedies.

4. I have heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the Kerala State Electricity Board Limited.

5. The following facts are not in dispute:-

(i) During the relevant period, the petitioner was working as Sub Engineer in the section office of the KSEBL at Aranmula.



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(ii) One K.P.Mohanan, Assistant Engineer, Aranmula went on leave from 02.8.2011 to 15.8.2011 after issuing CTC to the petitioner till 15.8.2011.

(iii) Sri.K.P.Mohanan rejoined as Assistant Engineer on 16.8.2011.

(iv) Sri.K.P.Mohanan was placed under suspension from 16.8.2011.

(v) On 18.8.2011, the Anti Power Theft Squad, Thiruvalla inspected the premises of Consumer No.3367 under the Aranmula section office. The inspection team wanted the petitioner to accompany them in preparing the mahazar.

(vii) On or after 16.8.2011, neither the Assistant Engineer of the Aranmula section office nor any other superior officers issued CTC or any other authorization, written or oral, transferring the charge of the Assistant Engineer to the petitioner.

6. As per Section 126 of the Electricity Act, 2003, the Assistant Engineer of the section office concerned is the assessing officer and the competent authority to issue a provisional assessment order.



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7. The petitioner issued a provisional assessment order on 26.09.2011.

8. The charges levelled against the petitioner in the disciplinary proceedings are the following:-

- “1. Committed undue delay in the preparation of provisional assessment bill to Consumer No.3367, where theft was detected on 18.08.2011.
2. Failed to incorporate the bill in ORUMA that is System Software.
3. Negligence in handing over related documents and file pertaining to Consumer No.3367 to the successor.
4. Failed to issue final bill to Consumer No.3367.
5. Your above lapse incurred a monetary loss of Rs.3,85,669/- to the Board.
6. Being an assessing officer, acted in gross violation of Section 126(3) of the Electricity Act 2003.
7. Committed severe dereliction of duty.” (sic.)

9. In the enquiry proceedings, charge No.1 alone was proved. Other charges were held to be not proved. The findings of the enquiry officer on charge No.1 reads thus:-



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“The inspection was carried out on 18.08.2011 and provisional assessment bill was prepared and served on the consumer only on 26.09.2011. Obviously the assessment bill should have been served within 30 days on or before 17.09.2011 after giving an opportunity to the party/person to file objections, if any, against the provisional assessment, before the order of final assessment is passed. In this case, the provisional bill was delayed, but the assessee preferred an appeal/objection to check/test the meter condition. The Sub Engineer in charge at the time of inspection issued the provisional bill, even though he was not given CTC or issued any order. Sri.K.P.Mohan, the Assistant Engineer went on leave from 02.08.2011 to 15.08.2011. A Charge Transfer Certificate was seen given to Sri.Georgekutty C.X. Sub Engineer at that time.

In between 16.08.2011 and 27.08.2011, no charge handing over document or order to take over charge was seen in available records. But since Sri.Georgekutty C.X. , Sub Engineer was in charge from 02.08.2011 to 15.08.2011 during the period of leave of the Assistant Engineer Sri.Mohan K.P. it can be assumed that Sri.Georgekutty C.X was in charge of the section on 18.08.2011. Then Sri.Rajan C.A. joined duty as Assistant Engineer only on 27.09.2011 the delay in issuing provisional bill is proved.”

10. The allegation against the petitioner is that he prepared the provisional assessment order and served it to the consumer only on 26.9.2011, which should have been served within 30 days from the date of inspection, that is, on or before 17.09.2011. It is further



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alleged that since the service of the provisional assessment order was delayed, the assessee preferred an appeal.

11. Admittedly, no CTC was given to the petitioner between 16.8.2011 and 27.8.2011. The conclusion of the enquiry officer is that since the petitioner was in charge of the Sub Engineer between 16.8.2011 and 27.8.2011, it can be assumed that the petitioner was in charge of the section on 18.08.2011. The disciplinary authority accepted the findings of the enquiry officer. In the appeal proceedings, the Chairman, applying the doctrine of "Factum Valet", concluded that since the petitioner acted as the Assistant Engineer by issuing a provisional assessment order, he was deemed to be the Assistant Engineer of the concerned section from 16.8.2011 to 27.8.2011. The Chairman concluded that the petitioner was responsible for issuing the provisional bill as he discharged the duties of the Assistant Engineer.

12. The defence set up by the petitioner to the charges and statement of allegations is as follows:-

(a) As per SRO No.229/2005 (GO(P)No.4/05/PD dated 2.3.2005), the competent authority to issue provisional assessment order under



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Section 126 of the Electricity Act, 2003 is the Assistant Engineer of the concerned section.

(b) During the period between 16.8.2011 and 27.8.2011, as the charge of the Assistant Engineer, Aranmula section office was not assigned to anyone, including the petitioner, he had no competence to issue the provisional assessment order. No CTC was issued to the petitioner authorising him to discharge the statutory duties of the Assistant Engineer as provided under Section 126 of the Electricity Act. He only acted in good faith in the interest of the KSEBL by issuing a provisional assessment order, even in the absence of statutory competence.

(c) The delay in the preparation of the provisional assessment order cannot be attributed to the petitioner.

(d) The Assistant Engineer who assumed charge later processed the file and proceeded in accordance with law.

(e) There was no dereliction of duty on the part of the petitioner.

13. The learned counsel for the petitioner submitted that the disciplinary proceedings initiated against the petitioner are in a manner unknown to the law. The learned counsel submitted that as



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there is no legal provision which permits a person to assume the office of a higher officer after the expiry of the CTC, the petitioner was not competent to invoke the jurisdiction of the Assistant Engineer concerned under Section 126 of the Electricity Act. Therefore, no legal action could be taken against him for not doing the duties of the assessing officer. The learned counsel submitted that it was only in the best interest of the institution and in good faith, the petitioner issued the provisional assessment order, though he was not authorised by any other superior officers in this regard. The learned counsel submitted that the doctrine of "Factum Valet" cannot be applied to penalise the petitioner. The learned counsel further submitted that the proceedings initiated against the consumer who allegedly committed theft are pending before the appellate authority under Section 127 of the Electricity Act following the directions of this Court in W.P. (C)No.13304/2020 dated 22.5.2024.

14. The learned Standing Counsel for the KSEBL submitted that as the petitioner had issued the provisional assessment order the presumption was that he assumed charge of the Assistant Engineer.



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The learned Standing Counsel further submitted that the petitioner was deemed to be the Assistant Engineer of the section during the period from 16.8.2011 to 27.8.2011 as there was no Assistant Engineer during that period, and the Sub Engineer had the responsibility to discharge the duties of the Assistant Engineer.

15. As per Section 126 of the Electricity Act, 2003, on an inspection of any place or premises or after inspection of the records maintained by any person, the assessing officer, on satisfied that such person was indulged in unauthorised use of electricity, shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use. As per SRO No.229/2005, the Assistant Engineer of the concerned electricity distribution office is designated as the assessing officer under Section 126 of the Electricity Act. The petitioner was the Sub Engineer of the concerned section from 15.07.2010 to 16.8.2012. He was given the charge of the Assistant Engineer as per CTC to perform the duties of the Assistant Engineer from 2.8.2011 to 15.8.2011. The Assistant Engineer Sri.K.P.Mohanan rejoined duty on 16.8.2011. The



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necessary conclusion is that the petitioner ceased to officiate as the Assistant Engineer of the concerned section with effect from 16.8.2011. Sri.K.P.Mohanam was placed under suspension from 16.8.2011. Admittedly, none of the competent authorities in the KSEB issued a CTC to the petitioner to discharge the duties of the Assistant Engineer after 16.8.2011.

16. The case of the petitioner is that for the best interest of the KSEB, as the authorities failed to authorise any officer to perform the duties of the Assistant Engineer, he issued a provisional assessment order on 26.9.2011. As per the statutory mandates, the assessment order should have been issued on or before 17.9.2011 (within 30 days). So, there is a delay in the issuance of the provisional assessment order. Is the petitioner, being the Sub Engineer, responsible for the delay? His specific case is that he was confused as to who was competent to issue the provisional assessment order in the absence of any authorisation. Admittedly, no authority in the KSEB instructed any officer to discharge the duties of the Assistant Engineer. The conclusion of the enquiry officer and the disciplinary authority is



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that the petitioner was deemed to be the Assistant Engineer of the section concerned during the period from 16.8.2011 to 27.8.2011. The authorities concluded that the petitioner acted as the Assistant Engineer in charge of the Aranmula section and performed the daily functions of the office, and therefore, he himself was responsible for issuing the provisional assessment order. The appellate authority applied the doctrine of "Factum Valet" to shoulder the responsibility on the petitioner. The only function the petitioner performed during the relevant period was the preparation and issuance of a provisional assessment order under Section 126 of the Electricity Act. There is nothing to show that he assumed charge of the Assistant Engineer after the suspension of Sri.K.P.Mohanan. The higher authorities remained silent during the relevant period without giving charge of the Assistant Engineer, who was the competent authority to issue proceedings under Section 126 of the Electricity Act, to any officers. On 16.8.2011, the petitioner ceased to be in charge of the Assistant Engineer. It was only in good faith, for the interest of the institution, that the petitioner issued the provisional assessment order, which benefited the



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institution. The doctrine of "Factum Valet" cannot be applied to punish the petitioner.

17. The maxim "Quod fieri non debris factum valet or the Doctrine of Factum Valet", is a Latin maxim, which means 'what ought not to be done is valid, when done'. Some of the celebrated authors referred to this doctrine to the relevant Sanskrit quotation "a fact cannot be altered by a hundred texts". The principle is that the impropriety of the act does not affect the legal character of the act (factum valet). By reason of a legal prohibition to the contrary, an act solemnised could not be undone. If the competence or the authority of the person doing the act is essential to the validity of the transaction the legal character of the act is beyond the province of the doctrine of 'factum valet'.

18. The authority of the petitioner to issue the provisional assessment order seems to me not essential to the validity of the proceedings. Therefore, the legal character of the provisional assessment order is protected under the doctrine of "Factum Valet". However, this principle cannot be extended to hold that the petitioner,



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who was not authorised to issue the provisional assessment order but issued the same in the interest of the institution, is responsible for the delay. The reason for the delay was admittedly the absence of authorisation to do the act. The resultant conclusion is that the disciplinary proceedings initiated against the petitioner are illegal and, therefore, vitiated. Exts.P1, P4, P5, P8 and P10 proceedings stand quashed. The petitioner is exonerated from the charge levelled against him. The KSEB shall not deny any service benefits to the petitioner as a consequence of the proceedings initiated against him.

The writ petition is allowed as above.

Sd/-
K.BABU
Judge

TKS



APPENDIX OF WP(C) 27752/2021

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF MEMO OF CHARGES DATED 26.04.2017.
- Exhibit P2 TRUE COPY OF REPLY DATED 29.05.2017.
- Exhibit P3 TRUE COPY OF ORDER TO CONDUCT ENQUIRY DATED 18.01.2018.
- Exhibit P4 TRUE COPY OF ENQUIRY REPORT DATED 30.03.2019.
- Exhibit P5 TRUE COPY OF SHOW CAUSE NOTICE DATED 10.06.2019.
- Exhibit P6 TRUE COPY OF REPLY DATED
- Exhibit P7 TRUE COPY OF REVISED SHOW CAUSE NOTICE DATED 17.02.2021.
- Exhibit P8 TRUE COPY OF ORDER DATED 15.06.2021.
- Exhibit P9 TRUE COPY OF APPEAL DATED 23.07.2021.
- Exhibit P10 TRUE COPY OF ORDER DATED 25.10.2021 BY CHAIRMAN.
- Exhibit P11 TRUE COPY OF SRO 229/2005.

TKS