

IN THE HIGH COURT OF KERALA AT ERNAKULAM

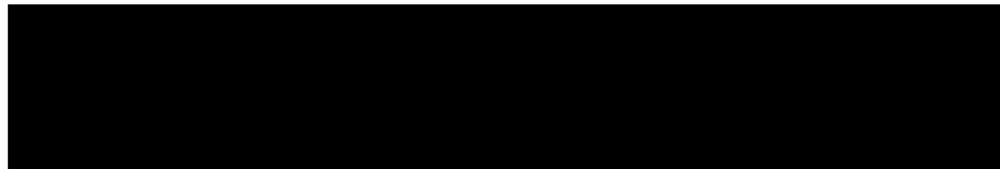
PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 26TH DAY OF MARCH 2021 / 5TH CHAITRA, 1943

WP (C) . No. 21994 OF 2020 (Y)

PETITIONER:



BY ADVS.

SRI.KALEESWARAM RAJ

SRI.VARUN C.VIJAY

KUM.THULASI K. RAJ

SMT.MAITREYI SACHIDANANDA HEGDE

RESPONDENTS:

- 1 KERALA STATE ELECTRICITY BOARD LTD.
REPRESENTED BY CHAIRMAN AND MANAGING DIRECTOR, KERALA STATE ELECTRICITY BOARD, VAIDYUTHI BHAVAN, THIRUVANANTHAPURAM-695 001
 - 2 THE CHAIRMAN AND MANAGING DIRECTOR,
KERALA STATE ELECTRICITY BOARD LTD. VAIDYUTHI BHAVAN,
THIRUVANANTHAPURAM-695 001
 - 3 CHIEF ENGINEER (HRM)
KERALA STATE ELECTRICITY BOARD LTD, VAIDYUTHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM-695 004
 - 4 EXECUTIVE ENGINEER,
ELECTRICAL DIVISION, SOUTH BAZAR, PAYYANNUR-670 307
 - 5 DEPUTY CHIEF ENGINEER,
KERALA STATE ELECTRICITY BOARD LTD., SREEKANDAPURAM CIRCLE, SREEKANDAPURAM-670 631
 - 6 EXECUTIVE ENGINEER,
ELECTRICAL SUB DIVISION, VELLUR, KANNUR-670 001
- R1-6 BY SRI.M.K.THANKAPPAN, SC, KERALA STATE ELECTRICITY BOARD LIMITED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26.03.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R

JUDGMENT

Dated this the 26th day of March 2021

The petitioner, while working as a Cashier in “Mathamangalam” Electrical Section, under the Kerala State Electricity Board Ltd. (KSEB), was placed under suspension through an order dated 29.09.2016, alleging that he had posted and was disseminating defamatory online posts against the Government of Kerala and its Chief Minister, in a private “Whatsapp” group by name “[REDACTED]”.

2. Subsequent to this, a charge memo was issued to the petitioner on 26-10-2016, with three imputations, namely:

- a) He had posted messages denigrating the Government of Kerala and defaming the Chief Minister personally.
- b) That afore actions are contrary to the disciplinary standards of employees of the KSEB and
- c) That his action, as afore, has caused the good name of the KSEB to be dented.

3. The petitioner filed his response to the charge sheet explaining that ‘██████████’ was a private “Whatsapp” group and that what was posted therein had absolutely no privy or access to the public. He also explained that the massages that are attributed to him were only re-posted by him, but was circulating in the said group at the instance of various others.

4. However, this explanation was not accepted by the KSEB and disciplinary action was initiated against the petitioner, leading to an enquiry being conducted by the Assistant Executive Engineer of the Electrical Sub Division, Vellur. The petitioner says that the enquiry was a virtual farce, since only two witnesses were examined; one of them – who is a Sub Engineer of the KSEB – testifying that he had absolutely no information about the allegations; while the second person – who was stated to be a member of the ‘██████████’ group – affirming that certain massages were posted by the petitioner to defame the Government of Kerala and the Chief Minister.

5. The petitioner says that based on the afore, he has now been awarded a punishment of “censure” and that his period of suspension, between 29.09.2016 and 19.12.2016, has been regularised only as eligible leave. He, therefore, prays that Exts. P1, P2, P4, P7, P9, P11 and P14 be set aside and the KSEB be directed to regularise the period of his suspension as duty for all service benefits.

6. I have heard Smt.Thulasi. K. Raj – learned counsel for the petitioner and Sri.M. K. Thankappan – learned Standing Counsel for the KSEB.

7. The documents available on record, particularly those which have been produced by Sri.M.K. Thankappan along with his memo dated 18.03.2021, would show that the petitioner was suspended based on an oral direction from the Deputy Chief Engineer, Electrical Section, Sreekandapuram, who appears to have been guided by a report that appeared in the “Desabhimani Newspaper” on 28.09.2016. However, thereafter, when the Enquiry Officer was appointed by the Executive Engineer,

through his order dated 29.11.2016, a mention is seen made therein regarding the complaint of a certain person by name Sri. K.V. Gopinathan and the said document is available as document Nos.1 and 7, produced along with the afore memo of Sri.M.K.Thankappan. In the said letter – which is seen addressed to the Minister for Electricity, Government of Kerala - the aforementioned Sri.K.V. Gopinathan alleges that the petitioner is posting “denigratory messages” against the Government and the Chief Minister in a private “Whatsapp” group called “[REDACTED]”. Pertinently, this letter has never been marked in evidence, though it appears to greatly influenced the opinion of all the competent Authorities in the hierarchy, who dealt with the disciplinary action of the petitioner.

8. More importantly, even though as said above, the order of suspension refers to a report in the “Desabhimani Newspaper”, the same had, admittedly, never been produced before the Enquiry Officer; and going by the Enquiry Report, there are only two documents produced and marked, namely, the

copies of the screenshots of the alleged messages sent by the petitioner, as Ext.P1; and the disciplinary Regulations applicable to the KSEB, as Ext.P2. These documents have also been made available to this Court by the learned Standing Counsel for the KSEB and I have examined them very carefully.

9. The alleged screenshots of the messages, said to have been posted by the petitioner in “[REDACTED],” are several in nature, dealing with various issues and in one or two of them, there are certain references to the Government of Kerala and the Chief Minister.

10. However, what is crucial at this juncture is that, even the KSEB concedes that “[REDACTED]” is a private “Whatsapp” group, to which the public have no access whatsoever; and therefore, it is rather inscrutable as to how a message posted in such a group should have spurred the KSEB to such extent, so as to place the petitioner under suspension for a fairly long period of time and then to find him guilty, thus slapping the punishment of censure on him. The only alleged

“incriminating” evidence against the petitioner before the Enquiry Officer is Exhibit P1 series, which are the copies of the screenshots of the alleged messages posted by the petitioner; but nothing is available on record to show how the Presenting Officer – who concededly produced it before the Enquiry Officer – obtained it and in what manner. This becomes vitally relevant especially because the said document does not have any legally acceptable endorsement that is has been obtained or produced as per the provisions of the Information Technology Act, 2000.

11. Therefore, merely because certain copies of the snapshots of messages in a private “Whatsapp” group had been produced before the Enquiry Officer, its veracity or genuineness could never have been gauged by the said Authority and this is singularly pertinent because no evidence was led by the KSEB to prove its forensic worth in any manner whatsoever.

12. Crucially, even though the KSEB relies upon a letter

issued by the aforementioned Sri.Gopinathan, the said person was not summoned or examined as a witness; nor, as I have already said above, the competent Authority of the newspaper – which allegedly published a report against the petitioner – been called or his statement recorded in the proceedings. Obviously, therefore, this is a classic case where there is absolutely no cogent or reliable evidence against the petitioner, nor have the imputations against him been proved in a manner, acceptable in law.

13. That said, I must also deal with the adscititious submissions of Smt.Thulasi. K. Raj, that though her client did not post any of the messages that are attributed to him, even if it be assumed so, it should not have led to any enquiry against him at the instance of the KSEB, because: for one, the posts were made admittedly in a private “Whatsapp” group, without any access to the public; and for the second, because, even if there was any denigratory content in it against the Government or against the Chief Minister, it cannot *ipso facto* be construed as a

disciplinary infraction by an employee of the KSEB. She added to her submissions by saying that, like every citizen of this country, the petitioner also has the right of free speech and that this has been sought to be stifled by the KSEB, acting *in terrorem*, by first suspending him and then censuring him.

I find the afore submissions of Smt.Thulasi. K. Raj to be on *terra firma* because, it is not comprehensible from the records as to how the Presenting Officer obtained the copies of the snapshots of the alleged posts in the private “Whatsapp” group “ [REDACTED]”; and even if these had been posted there, how this would amount to be an infraction of discipline, merely because it has references against the Government of Kerala or the Chief Minister in his personal capacity, especially when it is conceded by Sri.M.K. Thankappan that the KSEB is not a department of the Government but a Corporate entity, governed by its own Regulations. This certainly cannot be found favour with this Court in these times, when the right of free speech – with only the well recognised restrictions

WP (C) . No. 21994 OF 2020 (Y)

10

circumscribing it – being affirmatively declared and celebrated as an imperative component of the right to meaningful life.

In the afore circumstances, I have no hesitation in allowing this writ petition and to thus quash the impugned orders herein; with a consequential direction to the KSEB to regularise the period of suspension of the petitioner, treating it to be duty for all purposes.

This writ petition is thus ordered.

Sd/-

DEVAN RAMACHANDRAN

SAS/26/03/2021

JUDGE

WP (C) . No. 21994 OF 2020 (Y)

11

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1** TRUE COPY OF THE ORDER NO. GB/DA/6/2016-17/150 DATED 29.09.2016 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P2** TRUE COPY OF THE CHARGE MEMO NO. GB/DA/6/2016-17/183 DATED 26.10.2016 TOGETHER WITH STATEMENT OF ALLEGATIONS ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P3** TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT DATED 05.11.2016.
- EXHIBIT P4** TRUE COPY OF THE ORDER NO. GB/DA/6/2016-17/218 DATED 29.11.2016 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P5** TRUE COPY OF THE ORDER NO. GB/DA/6/2016-17/231 DATED 16.12.2016 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P6** TRUE COPY OF THE ARGUMENT NOTE DATED 03.10.2017, SUBMITTED BY THE PETITIONER.
- EXHIBIT P7** TRUE COPY OF THE SHOW CAUSE NOTICE NO. GB/DA/6/2017-18/2018-19/133 DATED 12.09.2018, ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P8** TRUE COPY OF THE REPLY DATED 03.10.2018, SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.
- EXHIBIT P9** TRUE COPY OF THE ORDER NO. GB/DA/6/17-18/2018-10/180 DATED 07.11.2018 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P10** TRUE COPY OF THE APPEAL DATED 11.01.2019 FILED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.
- EXHIBIT P11** TRUE COPY OF THE ORDER NO. GB/DISCIPLINARY PROCEEDINGS/2019-20/589 DATED 16.07.2019 ISSUED BY THE 5TH RESPONDENT.
- EXHIBIT P12** TRUE COPY OF THE REVISION PETITION, DATED 22.10.2019, SUBMITTED BY THE PETITIONER

WP (C) . No. 21994 OF 2020 (Y)

12

BEFORE THE 2ND RESPONDENT.

- EXHIBIT P13 TRUE COPY OF THE NOTE TO THE CHIEF ENGINEER (HRM) NO. VIG/B4/5821/2016/664 DATED 30.03.2020, ISSUED BY THE CHIEF VIGILANCE OFFICER (I/C).
- EXHIBIT P14 TRUE COPY OF THE ORDER NO. EBVS. 3/05/2020/288 DATED 23.05.2020, ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P15 TRUE COPY OF THE INTERIM ORDER IN O.A. (EKM) 1120/2018.
- EXHIBIT P16 TRUE COPY OF THE ORDER DATED 17.07.2018 IN OA (EKM) 762/18
- EXHIBIT P17 TRUE COPY OF THE JUDGMENT DATED 26.09.2018 IN OP(KAT) NO. 345/18.

RESPONDENTS' EXHIBITS:-

- EXHIBIT R1A TRUE COPY OF THE RELEVANT PAGES OF STANDING ORDERS FOR WORKMEN, 1996
- EXHIBIT R1B TRUE COPY OF THE BOARD CIRCULAR NO.E.B.7/GENERAL/SOCIAL MEDIA/STIPULATIONS/2018 DATED 29.09.2018
- EXHIBIT R1C TRUE COPY OF THE RELEVANT PAGES (REGULATION 10(1) (A) OF KSE BOARD EMPLOYEES CCA REGULATIONS 1969
- EXHIBIT R1D TRUE COPY OF THE CIRCULAR NO.78 OF THE PERSONAL & ADMINISTRATIVE REFORMS DEPARTMENT DATED 31.10.2017

//TRUE COPY//
P.A. TO JUDGE