THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)
(BENCH UNDER ENERGY CONSERVATION ACT)

APPEAL NO.228 OF 2016
AND
IA NOS.491 & 492 OF 2016

Dated : 25TH APRIL, 2017

Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I. J. Kapoor, Technical Member.

In the matter of:-

MUKUND V. BHANDARE)
S/o. Sh. V.G. Bhandare, R/o. 43,)
Shankar Nagar, Gangapur Road, Nashik –)
422 001.) .... Appellant(s)

Versus

1. **BUREAU OF ENERGY EFFICIENCY**)
Through the Secretary, 4th Floor, Sewa)
Bhawan, R.K. Puram, New Delhi – 66.))
2. **THE SECRETARY,**)
BUREAU OF ENERGY EFFICIENCY,)
4th Floor, Sewa Bhawan, R.K. Puram,)
New Delhi – 110 066.) .... Respondents

Counsel for the Appellant(s) Mr. Pradeep Dahiya

Counsel for Respondent(s) Ms. Madhu Sweta
Mr. Rohit Jain
Mr. Sunny Jangra (Rep).
for **R-1 & R-2**.

J U D G M E N T

1. The Appellant is an engineer, who claims to have a long career of over 45 years in the field of audits and management. Respondent No.1 is Bureau of Energy Efficiency (**"BEE"**) established under Section 3 of the Energy Conservation Act, 2001 (**"the Energy Act"**). Respondent No.2 is the Secretary of BEE. In this appeal filed under Section 31(1) of the Energy Act, the Appellant has challenged Order dated 25/01/2016 passed by Respondent No.2, whereby the Appellant's Accreditation Certificate stands cancelled.

2. The Appellant's case needs to be stated in short. On 05/08/2011, the Appellant joined K.R. Bedmutha Techno Associates Private Limited (**"the firm"**) as Vice President – Projects on consultation basis on a fixed consolidated monthly remuneration. BEE issued a letter of certification dated 07/02/2013 to the Appellant certifying that he is qualified as Certified Energy Manager and he is deemed to have qualified

for appointment as Energy Manager under Clause (l) of Section 14 of the Energy Act.

3. On 14/06/2013, one Mr. Arvind Dixit, BEE Certified Energy Auditor submitted an application to the firm for appointment as Energy Auditor. After conducting an interview, he was appointed as Energy Auditor. According to the Appellant, two other Energy Auditors namely, Mr. Khamtikar and Mr. Gawle were also appointed by the firm as Energy Auditors and these auditors conducted number of energy audits on behalf of the firm from January, 2013 till May, 2015.

4. It is the Appellant's case further that since he possessed the requisite qualifications to become Accredited Energy Auditor under the Bureau of Energy Efficiency (Qualifications for Accredited Energy Audits and Maintenance of Their List) Regulations, 2010 (**"BEE Regulations, 2010"**), he applied for accreditation. The BEE issued the Certificate of Accreditation dated 26/05/2014 to the Appellant with effect from 26/11/2013.

5. In January, 2015, the firm applied to BEE for empanelment for M&V under Perform, Achieve and Trade (PAT) Scheme (**"PAT Scheme"**). Vide e-mail dated 21/01/2015 the firm was asked to provide "No objection" from the management of the firm and the undertaking from the full-time/part-time Accredited Energy Auditors and Certified Auditors stating that their names have not been given to other firm which is also applying for empanelment and that they have no objection in including their names as a part of the firm.

6. According to the Appellant, the firm submitted the "No Objection Certificate" dated 29/01/2015. The firm also submitted undertaking dated 29/01/2015. It is the case of the Appellant that on the undertaking, the Appellant put his signature. Then, the firm sent their clerk to take signatures of other Certified Energy Auditors namely, Mr. Arvind Dixit, Mr. Khamitkar and Mr. Gawle on the undertaking. According to the Appellant, he had no knowledge that the undertaking

dated 29/01/2015 was not signed by the said Certified Energy Auditors and, in good faith, he forwarded the said documents on behalf of the firm to BEE.

7. According to the Appellant, on 13/05/2015, the firm carried out an Energy Audit of M/s. Priyadarshini Sahkari Soot Girni, Shahpur, Maharashtra for M&V under PAT Scheme with which abovementioned Mr. A.N. Dixit was associated. Later on, Mr. A.N. Dixit and other Certified Energy Auditors wrote an email to BEE disputing the authenticity of their signatures on the undertaking dated 29/01/2015 and stating that they were not associated with the firm. According to the Appellant, as a matter of fact, these Certified Energy Auditors were associated with the firm, however, they started asking for exorbitant fees and royalty as a precondition to continue their association with the firm. It is the case of the Appellant that the firm rejected their demands, discontinued their association with the firm and appointed new Certified Energy Auditors about which intimation was given to the Respondents through an e-mail.

8. It is now necessary to refer to certain annexures to the appeal memo. It appears from e-mail dated 13/07/2015 addressed by BEE to the firm that BEE had received mails dated 06/07/2016 from Mr. Arvind Dixit, Mr. Khamitkar and Mr. Gawle, the Certified Energy Auditors that they were not associated with the firm. BEE, therefore, informed the firm about this fact and stated that the firm had forwarded undertaking dated 29/01/2015 of the said Certified Energy Auditors claiming that they formed the team for empanelment and on that basis the firm was empanelled. BEE further stated in this e-mail that the firm had not informed the status of the abovementioned three persons till date, but vide mail dated 28/06/2015 had requested that new three members be added. The firm was further informed that BEE had called for signed documents of the said persons for verification of signatures and for comparing them with the signatures on the undertaking, however, the signatures of the said persons did not match with the signatures on the signed document. BEE called upon the firm to give explanation within seven days

from the receipt of the mail about the said three persons' claim that the signatures on the undertaking were not theirs and also to state why action of de-empanelment may not be initiated against the firm if the claim of the said three persons is found to be true.

9. According to the Appellant, in his capacity as Vice President of the firm, the Appellant replied to above e-mail by letter dated 16/07/2015. In this reply letter, the Appellant stated that the said three Certified Energy Auditors were closely associated with the firm and they had carried out many Energy Audits on behalf of the firm. They were contacted for the firm's empanelment with BEE to which they agreed but afterwards started asking for exorbitant fees and, therefore, in the interest of the client, the firm appointed three other Certified Energy Auditors and this was communicated to BEE vide letter dated 01/06/2015. It was further stated that the firm was forced to delete their names from its panel. So far as the undertaking is concerned, it was stated that the firm had asked its clerk to take signatures of the said three Certified

Energy Auditors on the consent letter which was submitted to BEE. However, by oversight/clerk's mistake, the wrong paper was submitted. The firm requested that it may be permitted to withdraw the said wrong consent letter. The firm expressed regrets for the episode and promised that it will be careful in future. The firm accused the said Certified Energy Auditors of making false claims with the intent to spoil the firm's image for personal gains.

10. BEE by the impugned order dated 25/01/2016 addressed to the Appellant cancelled the Certificate of Accreditation of the Appellant and de-empanelled the firm under Clause (c) of sub-regulation (l) of Regulation 8 and clause 9(1) of sub-regulation (1) of Regulation 8 respectively of BEE Regulations, 2010. It is stated in the impugned order that signatures of the three Certified Energy Auditors in the undertaking submitted by the firm were on verification, found to be forged and the said three Certified Energy Auditors had informed BEE that they had not given any consent to the firm. The firm was informed that the reply received from it was not

satisfactory. The impugned order further informed the Appellant that the firm is guilty of professional misconduct and has to be therefore de-empanelled and since, the Appellant had represented the firm, his Accreditation Certificate stands cancelled and his name shall be removed from the list of Accredited Energy Auditors maintained by BEE. The Appellant was asked to surrender his certificate for Accreditation and was warned that since his Accreditation Certificate stands cancelled, he cannot carry out Energy Audits as regards mandatory audits or verification/check verification under the PAT Scheme hereafter.

11. Mr. Pradeep Dahiya, learned counsel for the Appellant submitted that the impugned order is liable to be set aside as it is illegal, arbitrary and violative of Article 14 of the Constitution of India. Counsel also contended that it is violative of principles of natural justice. Counsel submitted that the Appellant merely represented the firm and submitted a reply on behalf of the firm. He was never given an opportunity to explain his alleged professional misconduct.

Even the firm has written a letter to Respondent No.2 accepting its responsibility. Counsel submitted that the Appellant has been fastened with strict liability for the alleged misconduct of the firm without giving any opportunity to him to explain his case. Counsel submitted that the impugned order deserves to be set aside on this ground. In support of his submissions, counsel relied on the judgments of the Supreme Court in ***Basudeo Tiwary v. Sido Kanhu University & Ors.***[1], ***Ramchandra Narayan Nayak v. Karnataka Neeravari Nigam Ltd. & Ors.***[2], ***Mahipal Singh Tomar v. State of Uttar Pradesh & Ors.***[3], ***SMS Pharmaceuticals Ltd. v. Neeta Bhalla & Anr.***[4], ***S. Srikanth Singh v. North East Securities Ltd. & Anr.***[5] and ***Sunil Bhati Mittal v. Central Bureau of Investigation***[6].

12. Mr. Rohit Jain, learned counsel for the Respondents on the other hand strenuously contended that no interference is

[1] (1998) 8 SCC 194
[2] (2013) 15 SCC 140
[3] (2013) 16 SCC 771
[4] (2007) 4 SCC 70
[5] (2007) 12 SCC 788
[6] (2015) 4 SCC 609

necessary with the impugned order. Counsel submitted that the Appellant was the Vice President of the firm. It is he who took all the steps in the matter. He sent the reply to the notice. Counsel drew our attention to Energy Conservation Rules, 2012. He particularly relied on the following rules:

> *"(2) The accredited energy auditor shall ensure that persons selected as team head and team members must be independent, impartial and free of potential conflict of interest in relation to activities likely to be assigned to them for verification or check-verification.*
>
> *(3) The accredited energy auditor shall have formal contractual conditions to ensure that each team member of verification and check-verification team and technical experts act in an impartial and independent manner and free of potential conflict of interest.*
>
> *(4) The accredited energy auditor shall ensure that the team head, team members and experts prior to accepting the assignment inform him about any known, existing former or envisaged link to the activities likely to be undertaken by them regarding verification and check verification.*
>
> *xxx xxx xxx*
>
> *(10) The accredited energy auditor shall conduct independent review of the opinion of verification or*

check-verification team and shall form an independent opinion and give necessary directions to the said team if required."

Counsel submitted that it was for the Appellant therefore to ensure that the members of the team constituted for the work of verification and check are men of integrity and character. He had to ensure that formal contractual conditions are in place so that each member of the team acts in impartial and independent manner and there is no conflict of interest. As an Accredited Energy Auditor and as Vice President of the firm, the Appellant was responsible for constitution of an impartial team. The Appellant has failed to carry out his responsibility because the signatures on the undertaking were found to be forged. The Appellant himself has signed on this undertaking. The Appellant cannot avoid the consequences of his actions. So far as opportunity of hearing is concerned, counsel relied on ***Canara Bank v. V.K. Awasthy***[7]. Counsel submitted, relying on this judgment, that where grant of opportunity in terms of principles of

[7] (2005) 6 SCC 321

natural justice do not improve the situation "useless formality theory" can be pressed into service. Counsel submitted that the case of BEE is so strong that giving a personal hearing will be a useless formality. Counsel submitted that in the circumstances, the appeal is liable to be dismissed.

13. In our opinion, it is not necessary to go into the merits of the case, because the only issue involved here is breach of principles of natural justice. It is necessary in this connection to reproduce the relevant provisions of the BEE Regulations, 2010. Regulations 8 and 9 need to be quoted. They read as under:

> ***"8. Removal and restoration of names in the register of list of accredited energy auditors***
>
> *The Bureau may remove the name of the accredited energy auditor from the register of list of energy auditors on the following grounds, namely:—*
>
> *(a) the Bureau, after giving an opportunity of hearing to the person concerned, is satisfied that such certificate of accreditation has been granted on the basis of incorrect, misleading or false information;*

(b) on the person ceasing to be an energy auditor or on his failure to undertake energy audit of an Energy Intensive Industries in accordance with the Bureau of Energy Efficiency (Manner and Intervals of Time for Conduct of Energy Audit) Regulation 2010;

(c) if the person is guilty of professional misconduct or fraud;

(d) if the person has failed to pay annual accreditation fee.

(2) Where the name of the accredited energy auditor is removed on the grounds specified in clause (b) or clause (d) of sub-regulation (1), his name in the register shall be restored on an application made by him after restarting the work of energy audit or on payment of annual accreditation fee, as the case may be.

(3) Where the name of the accredited energy auditor is removed on any other grounds, no restoration of name in the register shall be made by the Bureau.

9. Cancellation of certificate of accreditation

(1) On removal of the name from the register under regulation 8, the Bureau may cancel the certificate of accreditation granted under regulation 6.

(2) Before issuing an order of cancellation of accreditation, the Bureau shall give an opportunity of hearing to the energy auditor holding such certificate.

(3) Where the certificate of accreditation is cancelled, the Bureau shall communicate its order to the holder of such certificate and the concerned designated consumer and shall also publish the same and upload necessary changes on its official website.

(4) The certificate of accreditation shall stand cancelled with effect from the date of publication of the order of cancellation.

(5) On cancellation of certificate of accreditation, the holder of such certificate shall surrender the same to the Bureau within fifteen days."

14. From the above provisions, it is clear that the name of the Accredited Energy Auditor may be removed from the register of list of Energy Auditors if (a) the certificate of accreditation has been granted on the basis of incorrect, misleading or false information, (b) on the person concerned ceasing to be an Energy Auditor or on her failure to undertake energy audit of Energy Intensive Industries in accordance with the Bureau of Energy Efficiency (Manner and Intervals of Time for Conduct of Energy Audit) Regulation, 2010, (c) if the person is guilty of professional misconduct or fraud and (d) if the person has failed to pay annual accreditation fee. The case of BEE is that the Appellant is guilty of professional misconduct or fraud and that is why his name is removed from the list of Accredited Energy Auditors. Thus, his case falls under Regulation 8(c). Regulation 8(2) states that if the

name of the Accredited Energy Auditor is removed on the grounds specified in clause (b) or clause (d) stated above, his name in the register shall be restored on an application made by him after restarting the work of energy audit or on payment of annual accreditation fee as the case may be. Regulation 8(3) states that where the name of the Accredited Energy Auditor is removed on any other grounds, no restoration of name in the register shall be made by BEE. It is clear therefore that where name is removed under clause (a) or (c), the name cannot be restored in the register. Thus, the consequences of name being removed under clauses (a) and (c) are severe. The Appellant's case falls under clause (c). Thus, as per Regulation 8(3) once removed, his name cannot be restored. Therefore, while taking action against a person on the ground that his case falls under clause (a) or (c), BEE has to be extremely careful and it must follow the required procedure.

15. Regulation 9 relates to cancellation of certificate of accreditation. Regulation 9(1) says that on removal of the

name from the register under Regulation 8, BEE may cancel the certificate of accreditation granted under Regulation 6. Regulation 9(2) says that before issuing an order of cancellation of accreditation, BEE shall give an opportunity of hearing to the Energy Auditor holding such certificate. Admittedly, in this case, no hearing was given to the Appellant. It is submitted by the counsel for BEE that at the stage of removal of the name from the register, opportunity of hearing is contemplated only under sub-clause (a) of Regulation 8. No opportunity of hearing is contemplated, so far as cases falling under clauses (b), (c) and (d) are concerned. As we have already noted, the consequences of removal of name from the register on the ground that the person is guilty of professional misconduct which falls in clause (c) are severe. In such a situation, his name cannot be restored in the register by BEE. Therefore, it is necessary for BEE to give a chance to the concerned person to explain his case. Pertinently, Regulation 9(2) states that before issuing an order of cancellation of accreditation, the BEE shall give an opportunity of hearing to the Energy Auditor holding such

certificate. We find in this case, there is blatant violation of Regulation 9(2). No opportunity of hearing was given to the Appellant before issuing an order of cancellation of accreditation.

16. Several judgments have been cited by learned counsel for the Appellant on the principles of natural justice. We may only refer to ***Basudeo Tiwary***, where the Supreme Court has reiterated that principles of natural justice have to be followed to prevent arbitrariness in action. So sacrosanct and important are these principles that where a statute is silent, they may be implied where the right of party is affected adversely. We may quote the relevant observations.

> *"9. The law is settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. It has come to be established, as a further corollary, that the audi alteram partem facet of natural justice is also a requirement of Article 14, for natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are the components of fair treatment. The conferment of absolute power to terminate the services of an employee is an antithesis*

to fair, just and reasonable treatment. This aspect was exhaustively considered by a Constitution Bench of this Court in Delhi Transport Corpn. v. D.T.C. Mazdoor Congress, AIR 1991 SC 101.

10. In order to impose procedural safeguards, this Court has read the requirement of natural justice in many situations when the statute is silent on this point. The approach of this Court in this regard is that omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing — it may be implied from the nature of the power — particularly when the right of a party is affected adversely. The justification for reading such a requirement is that the court merely supplies omission of the legislature (vide Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405) and except in case of direct legislative negation or implied exclusion (vide S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379).”

17. Thus, BEE cannot be heard to say that where the name of a person is removed from the register because he is guilty of professional misconduct or fraud, there is no requirement of hearing in the statute and, therefore, it is not necessary to give a hearing. If the name of such person once removed cannot be restored in the register as stated in Regulation 8(3), then such action undoubtedly adversely affects his career. He must be given a hearing.

18. The judgment of the Supreme Court in ***Canara Bank*** turns on its own facts. In that case, the respondent-employee had preferred an appeal before the prescribed Appellate Authority. However, in the memorandum of appeal there was no stand taken that there was any prejudice caused to him on account of the fact that the order was passed prior to the expiry of the indicated period and, therefore, there was any violation of principles of natural justice. The respondent-employee was given personal hearing by the Appellate Authority. Before him also no such stand was taken and no plea regarding any prejudice was raised. The Supreme Court noted that that being the position, the learned Single Judge was right in holding that no prejudice was caused. The Supreme Court further noted that in the circumstances of the case, the Kerala High Court's view that there was violation of the principles of natural justice cannot be maintained. The Kerala High Court had permitted the employee to make a detailed representation to the disciplinary authority and ordered it to pass a fresh order. The Supreme Court observed that since no prejudice has been shown to have been caused, it was not necessary to go into the 'useless formality' theory. In the present case, the appellant was not afforded an opportunity of personal hearing before his accreditation

was cancelled. Moreover, the main ground of challenge in the appeal is that the order cancelling the accreditation is, violative of principles of natural justice. In the circumstances, it is not possible to hold in the facts of this case that personal hearing is a useless formality. Therefore, the judgment in ***Canara Bank*** is not applicable to the present case.

19. Admittedly, before cancelling his accreditation, BEE has to give an opportunity of hearing to such a person. That opportunity has not been given to him. The impugned order so far as the Appellant is concerned, therefore, needs to be set aside on the ground of non-observance of principles of natural justice. So far as the firm is concerned, by its letter dated 06/03/2016, the firm has accepted responsibility for the entire episode and expressed willingness to take the consequences. Therefore, the impugned order so far as it de-empanels the firm merits no interference. Hence, the following order:

"The impugned order dated 25/01/2016 is set aside to the extent it cancels the accreditation

certificate of the Appellant and removes his name from the list of Accredited Energy Auditors maintained by BEE. BEE is directed to give a hearing to the Appellant by following Regulations 8 and 9 of the BEE Regulations, 2010 and pass appropriate order independently and in accordance with law as early as possible and in any case within a period of three months from the date of receipt of this order. The Appellant shall cooperate. We make it clear that we have not expressed any opinion on the merits of the case."

20. The appeal is disposed of in the aforestated terms. Needless to say that in view of the disposal of the appeal, the above IAs do not survive and are disposed of, as such.

21. Pronounced in the open court on this **25th day of April, 2017.**

I.J. Kapoor
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]

√**REPORTABLE/~~NON-REPORTABALE~~**