

(1993) 04 KL CK 0030

High Court Of Kerala

Case No: O.P. No. 7324 of 1989

K.S. Mani

APPELLANT

Vs

The Kerala Soaps and Oils Ltd.

RESPONDENT

Date of Decision: April 7, 1993

Hon'ble Judges: K.G. Balakrishnan, J

Bench: Single Bench

Advocate: P.N.K. Achan and M.M. Sugunapalan, for the Appellant; M. Pathrose Mathai, for the Respondent

Final Decision: Dismissed

Judgement

K.G. Balakrishnan, J.

During the relevant time Petitioner was Depot Assistant of Respondent company at Bangalore. On 15th February, 1984 he was served with a charge memo alleging that on 31st December 1983 he sold 271 cases of "Washwell" bar soaps at reduced rate without obtaining any sanction or authorisation from the superiors. It was also alleged in the charge memo that Petitioner failed to deposit the sale proceeds in time. According to Respondent this amounted to wilful insubordination and disobedience and hence an enquiry was proposed to be initiated against the Petitioner.

2. The Petitioner submitted detailed explanation wherein he contended that circular prohibiting such sale was deceived by him on 31st December 1983 and the sale in question took place earlier to that and after receipt of circular he stopped all further sales at the reduced rate. He further explained that delay in remittance was due to the fact that he sold the soap on credit and the customers took time to pay the amount.

3. The explanation offered by the Petitioner was not accepted and Respondent issued notice, of enquiry and an advocate was appointed as enquiry officer. The Petitioner sought the assistance of a trained lawyer to defend his case and this

request was turned down by the company. The Petitioner alleges that enquiry officer conducted a partisan enquiry and found the Petitioner guilty. After the enquiry no notice was given to the Petitioner and the report was not communicated to the Petitioner. The company accepted the report and ordered dismissal of the Petitioner from service.

4. On receipt of Ext. P-5 order of dismissal from, service Petitioner approached a lawyer at Palghat for taking steps against the said order. He advised that no writ petition would lie against a Government owned company and the remedy open to the Petitioner was to file civil suit for damages. The Petitioner was not aware of the decision wherein it was held that a writ petition could be filed against a Government company. In the meantime Petitioner fell ill and therefore delay occurred in filing this original petition.

5. On the basis of various grounds urged in the Original Petition, he seeks to quash all proceedings pursuant to Ext. P-1 charge memo.

6. The Managing Director of the Respondent-company filed a counter-affidavit denying the allegations in the Original Petition. The disciplinary action was taken against the Petitioner in accordance with standing orders applicable to him as a workman governed by the Industrial Disputes Act. If the Petitioner was aggrieved by the order he could have raised it as an Industrial Dispute and sought relief from the Labour Court. Petitioner did not care to avail that efficacious remedy hence the original petition is not maintainable.

7. It is further contended that the original petition is highly belated. The reason for delay is not correct and it was settled position as early as in 1979 that writ petition would be maintainable against a Government owned company. It is alleged that disciplinary action was taken while Petitioner was working as depot assistant of the company at Bangalore. He was aware that he was not authorised to sell products on credit. It is denied that enquiry officer was playing dual role. The witnesses were cross-examined by the Petitioner. The enquiry officer did not put any question. The workman is not entitled to be represented by a lawyer. The enquiry officer allowed the Petitioner to be represented by a fellow workman. There was no collusion between the enquiry officer and the company. The enquiry officer was not later appointed as an employee of the company.

8. I heard the Petitioner's counsel and the counsel for the Respondent-company. The first contention urged on behalf of the Petitioner is that there was no presenting officer and the enquiry officer played dual role of judge and prosecutor and the enquiry was unquestioned in nature. The fact that there was no presenting officer for the enquiry is admitted by the Respondent, but it is contended that the absence of presenting officer has in no way prejudiced the delinquent employee.

9. It is not necessary that in all enquiry proceedings there should be a presenting officer. The presenting officer is appointed to help the enquiry officer as part of

adversary system. If the company itself produced all the witnesses and made available all the relevant documents the enquiry officer himself can conduct the proceedings. The basic requirement is that the delinquent employee must be given real and effective opportunity to cross-examine the witnesses and to deny evidential value or correctness of any documents that may be produced in the proceedings in support of the allegation. If the enquiry officer himself put some searching questions to the witnesses to elicit some answers so as to adversely affect the interest of the delinquent employee that may be said to be a bias conduct on his part. In the instant case the Petitioner has no case that the enquiry officer put any leading or searching question so as to adversely affect the interest of the Petitioner. The Respondents' counsel made available the relevant files relating to the enquiry and it showed that the witnesses gave voluntary statements and the Petitioner was given opportunity to challenge their evidence. The enquiry officer acted as independent arbiter throughout the proceedings. The absence of presenting officer has not prejudicially affected the rights of the Petitioner and the principles of natural justice are not violated.

10. The Supreme Court of India in *Workmen in B and C Mills v. B and C Mills* 1970 1 L.L.J. 20 held that in the domestic enquiry if the management was not represented by any officer separately and that the questions to the worker and the witnesses were put by the enquiry officer himself will not vitiate the domestic enquiry. The Supreme Court expressed the view that if the enquiry officer had put questions to the witnesses to elicit answers and allowed the workers to cross-examine the witnesses, there is no warrant for the criticism levelled by the Appellant therein that the enquiry officer had acted both as Prosecutor and Judge.

11. The Division Bench of this Court also took similar stand in [M. Rama Warriar and Others Vs. Coir Board](#), that appointment of presenting officer is not mandatory and the failure to appoint presenting officer will not vitiate enquiry.

12. The Respondents' counsel contended that this original petition is not maintainable as the Petitioner has got other efficacious remedy under the Industrial Disputes Act. It is true that an alternate remedy is not an absolute bar to the maintainability of a writ petition; when the authority has acted wholly without jurisdiction or in flagrant violation of the principle, of natural justice. See [Dr \(Smt.\) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur \(U.P.\) and Others](#), .

13. In [A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another](#), the Supreme Court held that rule of exhaustion of alternate remedy is not the one bars jurisdiction of the Court, but it is a rule which Courts have laid down for the purpose of exercising its jurisdiction.

14. In the instant case the Petitioner has got a statutory remedy under the I.D. Act against the impugned order. Where there is other efficacious remedy this Court

must be slow in exercising the writ jurisdiction. Then the Court shall extend its jurisdiction only after exhaustion of alternative remedy. When there is alternate statutory remedy by way of appeal that shall be the appropriate means of challenging the decision. This must be so especially in a matter concerning the disciplinary action taken against an industrial workman. In such cases the appellate body may be better or equally well equipped to handle disputed of fact than a Court operating under the judicial mechanism. The appellate body would be able to re-hear evidence and witnesses and determine question of fact. If the initial decision making body went wrong in appreciating evidence, the same could be corrected by the appellate forum by a reappraisal of evidence. Appeal deals with merits of the cast, whereas the judicial review deals with the legality of the exercise of power. Moreover the judicial review is a speedy remedy and it is necessary that the judicial review cases must be limited to cases where the statutory remedy is illusory or entirely ill suited to meet the demands of extraordinary situations.

15. If the above guidelines are applied to the facts of this case, this original petition is only to be held not maintainable. The Petitioner had other speedy and efficacious remedy.

16. There is yet Anr. reason to hold that this petition is not maintainable. The impugned order was passed on 6th June 1984. Present original petition was filed only on 28th August 1989. The explanation offered by the Petitioner is untenable and highly improbable. As pointed out by the Respondents' counsel it was decided as early as in 1979 that a writ petition would be maintainable against a Government owned company. For this reason also the Original Petition is liable to be dismissed.

17. No other grounds were urged on behalf of the Petitioner. Original Petition is dismissed. No costs.