(1972) 11 MP CK 0002

Madhya Pradesh High Court

Case No: Miscellaneous Petition No. 495 of 1970

Associated Cement Co. Ltd.	APPELLANT
Vs	
Presiding Officer, and another	RESPONDENT

Date of Decision: Nov. 28, 1972

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 11
- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 33, 33(1), 33(2)(b), 33C(2)

Citation: (1973) JLJ 241 : (1973) 18 MPLJ 314

Hon'ble Judges: P.K. Tare, C.J; R.J. Bhave, J

Bench: Division Bench

Advocate: I.M. Nanavati and R.S. Dabir, for the Appellant; Gulab Gupta, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.J. Bhave, J.

The petitioner-Company, by this petition under Article 226 of the Constitution, seeks a writ of certiorari for quashing the order dated 14th September, 1970, passed by the Labour Court No. 1, Jabalpur, in Case No. 54 of 1968 under the Madhya Pradesh Industrial Relations Act.

The facts of the case, in brief, are that a dispute regarding bonus was pending before the National Industrial Tribunal, Dhanbad. To this dispute the petitioner-Company and its workers were also parties along with other Companies and their workers. While the said dispute was pending, Girish Chand Shukla, a crane operator in the petitioner''s-Company at Kymore (respondent No. 2), entered in the Office of Shri Amritlal, a foreman, on 2nd June, 1968, at about 9 15 A.M., caught hold

of his collar and abused him and threatened him that he would be killed. On the report of the said foreman, a departmental enquiry was instituted against the second respondent for the misconduct defined under Standing Order No. 12 (1) (f) of the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963. In the said enquiry the charge of misconduct was found to be proved. As an industrial dispute, referred to above, was pending before the National Tribunal, the second respondent was dismissed by order dated 3rd August 1968, but in terms of section 33(2)(b) of the Industrial Disputes Act, 1947, he was granted one month''s pay, and an application for approval of the action against the second respondent was also filed before the National Tribunal.

The industry in question is included in the Schedule attached to the Madhya Pradesh Industrial Relations Act, 1960, and, as such, the said Act governs the disputes between the Company and its workers. The second respondent, therefore, filed an application u/s 31(3) of the said Act for relief of reinstatement and back wages without awaiting the decision of the National Tribunal.

It appears that the second respondent also participated in the proceedings before the National Tribunal and challenged the order of the petitioner-Company inter alia on the grounds of unfair labour practice, victimization, want of proper opportunity as also on the ground that the charge was false. At the time of arguments, ground of jurisdiction was also raised. The contention was that the State Act over-rides the provisions of the Industrial Disputes Act, 1947, as consent of the President was obtained and to the extent the provisions of the State Act are in conflict with the provisions of the Central Act, the State Act prevails; and inasmuch as the provisions of section 33 of the Central Act are somewhat in conflict with section 31 of the State Act, the provisions of the State Act would prevail and hence the jurisdiction of the National Tribunal cannot be invoked u/s 33(2)(b) of the Central Act.

The National Tribunal held that no evidence was led before it by the second respondent, nor any facts were established, to justify a finding of unfair labour practice or victimization. It also held that full opportunity was given to the second respondent and thus the enquiry was fair and that the charge of misconduct was proved. The contention that the National Tribunal had no jurisdiction was also rejected. As a result, the National Tribunal accorded the approval sought and the second respondent stood dismissed. The order was passed by the National Tribunal on 11th February, 1969. Even after the decision of the National Tribunal, the second respondent pressed his application u/s 31 of the State Act. The petitioner-Company, therefore, amended its written statement and raised a plea of res judicata. The Labour Court, therefore, framed an additional issue to the effect--

Whether the Labour Court had no jurisdiction in view of the decision of the National Tripunal?

The other issues framed by the Labour Court were to the effect--

(1) Whether the enquiry is improper and illegal?

(2) Whether the second respondent is guilty of misconduct?

(3) Whether the second respondent has been victimized due to Union activities?

(4) Whether notice was given in prescribed manner?

The issue regarding res judicata was tried as a preliminary issue by the Labour Court. It was decided against the petitioner-Company. The Labour Court, relying on two decisions of the Supreme Court, came to the conclusion that u/s 33(2)(b) of the Central Act the Tribunal is not called upon to decide any industrial dispute. It is only to see whether a prima facie case is made out justifying the action and whether there is any victimization. If the Tribunal is satisfied on these two matters, it lifts the ban. This does not take away the right of the workman to raise an industrial dispute which can be referred to appropriate Tribunal under appropriate enactment. It also follows that the decision of the Tribunal u/s 33(2)(b) does not operate as res judicata. The issue regarding jurisdiction was, therefore, decided against the petitioner-Company. Being aggrieved by the said order, the petitioner-Company has filed the present petition.

Shri Nanavati, learned counsel for the petitioner-Company, urged before us that the decision of the Tribunal u/s 33(2)(b) of the Industrial Disputes Act may not, as such bar the jurisdiction of the Labour Court, but certain findings recorded by the said Tribunal which it is duty-bound to record shall definitely operate as res judicata in subsequent enquiry on the general principles of res judicata well recognised by the Courts in India and by the Supreme Court as well.

Shri Nanavati, learned counsel for the petitioner-Company referred to certain decisions of the Supreme Court where the scope of the enquiry u/s 33(2)(b) of the Industrial Disputes Act, 1947, was considered. Three cases may be referred to in this connection. In The Lord Krishna Textile Mills Vs. Its Workmen, it was held that u/s 33(2)(b) the industrial authority was entitled to enquire whether the proposed action was in accordance with the Standing Orders, whether the employee concerned had been paid wages for one month and whether an application had been made for approval as prescribed by the said action In that case it was also held that the jurisdiction of the industrial authority in holding the enquiry u/s 33(2)(b) was more limited than the one u/s 33(1) of said Act. It was further held :

In view of the limited nature and extent of the enquiry permissible u/s 33(2)(b) all that the authority can do in dealing with an employer''s application is to consider whether a prima facie case for according approval is made out by him or not. If before dismissing an employee the employer has held a proper domestic enquiry and has proceeded to pass the impugned order as a result of the said enquiry, all that the authority can do is to enquire whether the conditions prescribed by section 33(2)(b) and the proviso are satisfied or not. Do the standing orders justify the order

of dismissal? Has an enquiry been held as provided by the standing order? Have the wages for the month been paid as required by the proviso? and has an application been made as prescribed by the proviso?

Further the appropriate authority dealing with such approval application could not examine the facts as an appellate Court. It is well-known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a Court of facts and may fall to be considered by an appellate Court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the Court is limited as u/s 33(2)(b). It is conceivable that even in holding an enquiry u/s 33(2)(b), if the authority is satisfied that the finding recorded at the domestic enquiry is perverse in the sense that it is not justified by any legal evidence whatever, only in such a case it may be entitled to consider whether approval should be accorded to the employer or not; but it is essential to bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate or satisfactory evidence.

In Mysore Steel Works v. Jitendra Chandra Kar (1971) I LLJ 543 the Supreme Court observed:

If the domestic enquiry is vitiated for violation of principles of natural justice the entire matter would be at large before the Tribunal for being decided on merits and the employer is entitled to adduce evidence justifying the action taken by him against the employee..... The scope of the Tribunal''s jurisdiction in an application u/s 33(2)(b) is limited and it does not sit as an appellate Court on the findings of fact. If the domestic enquiry is not vitiated by principles of natural justice it has to see whether there is prima facie case made out by the employer for the dismissal of the employee and whether the employer has come to the bona fide conclusion that the employee was guilty of misconduct, in other words that there was no unfair labour practice or victimization. It would then grant approval. If the enquiry is defective for any reason the Tribunal would have to consider for itself the evidence adduced before it for finding out as to whether the dismissal was justified. If on the evidence so adduced it finds that the dismissal was justified, it would grant approval. If the enquiry was defective, employer must let in evidence for obtaining approval in the manner in which evidence would be normally let in before the Tribunal, i.e., by examining witnesses and not by tendering the evidence laid before the domestic enquiry, unless such procedure is resorted to by consent of parties and the assent of the Tribuaal. When the domestic enquiry is not defective by reason of violation of principles of natural justice or when the findings are not perverse or there is no unfair labour practice, the Tribunal has only to be satisfied that there is a prima facie case for dismissal.

The difference between the two decisions is that in the latter decision it is also envisaged that if the domestic enquiry is defective, the Tribunal granting approval u/s 33(2)(b) can also allow the parties to adduce evidence before itself and then

decide as to whether the dismissal would be justified or not. Otherwise the Tribunal has only to be satisfied regarding the fair enquiry and whether a prima facie case was made out. The same principle was reiterated by their Lordships of the Supreme Court in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, . On the basis of these decisions Shri Nanavati urged that both u/s 33(2)(b) of the Central Act and also u/s 31 (3) of the State Act the scope of enquiry by the Tribunal is almost identical, the only difference being that u/s 33(2)(b) if the enquiry is properly held, that is to say, the principles of natural justice are not violated, the Tribunal has only to see whether a prima facie case has been made out or not and the sufficiency of evidence is not open to question. Shri Nanavati suggested that the sufficiency of the evidence might be considered by the Tribunal in deciding an industrial dispute u/s 31 (3) of the State Act. In this view of the matter, the decision of the National Tribunal would be binding on issues nos (1) and (3) framed by the Labour Court and to that extent the decision would operate as res judicata, and that the decision on the second issue, viz., whether the second respondent was guilty of misconduct or not on the consideration of sufficiency of evidence might still be left for the consideration of the Labour Court. On the point that principles of res judicata apply on general principles. Shri Nanavati referred to the decision of the Bombay High Court in Lypunny (C.K.) v. Madhusudan Mills (1964) I LLJ 197. The question before the Bombay High Court was as to whether the remedy u/s 33C(2) of the Industrial Disputes Act, 1947, could be allowed to be pursued when similar remedy was available under the State Industrial Relations Act. It was held that the remedy u/s 33C(2) was additional or supplementary to the remedy under the State Act. The argument advanced against such a conclusion was to the effect that such a conclusion would enable a party after he has lost in one Court to take resort to another Court. That argument was repelled with these words :

We do not think that the contention is justified. Even though section 11 of the CPC cannot apply as the proceedings are not in Civil Courts, the principles analogous to res judicata have been applied to proceedings under these Acts on grounds of public policy in the general interest of finality of decision see D.P. Dunderdele and Others Vs. G.P. Mukherjee and Another, ; Mckenzie and Co. Ltd. Vs. Its Workmen and Others, ; India General Navigation and Railway Co. Ltd., Calcutta and Another Vs. Their Workmen and Another, If, therefore, an application is made under either of the Acts and fails on merits, a similar application would be barred. The suggested reason for the limited construction of this section must, therefore, fail

The other case, referred to, was Central India Electric Supply Company Workers'' Union Ltd. Vs. Central India Electric Supply Company Ltd., wherein this Court held:

The Supreme Court has repeatedly held that the principle of res judicata, as distinguished from the technical rule of res judicata, applies to decisions of industrial tribunals: See Burn and Co., Calcutta Vs. Their Employees, followed in India General Navigation and Railway Company, Ltd. v. Their workmen and Dalmia

Dadri Cement v. Antar Narayin Gujral (1962) I LLJ 261

In that case, the decision on the earlier reference was held to operate as res judicata in a subsequent reference made before the Labour Court on the matters already concluded. That the decisions before the Labour Tribunals operate as res judicata on general principles is not open to any doubt. Still, it will have to be seen whether the scope of enquiry before the two Tribunals was identical and their powers were equally extensive. The question as to whether the decision of the industrial authority u/s 33(2)(b) of the Industrial Disputes Act operates as res judicata came for consideration before the Supreme Court in Makenzie and Co. v. Its Workmen and others (supra). Their Lordships observed:

That section (section 33) does not confer any jurisdiction on a tribunal to adjudicate on a dispute but it merely empowers the tribunal to give or withhold permission to the employer during the pendency of an industrial dispute to discharge or punish a workman concerned in the industrial dispute. And in deciding whether permission should or should not be given, the industrial tribunal is not to act as a reviewing tribunal against the decision of the management but to see that before it lifts the ban against the discharge or punishment of the workmen, the employer makes out a prima facie case. The object of the section is to protect the workman in pending industrial disputes against intimidation or victimization. As said above, principles governing the giving of permission in such cases are that the employer is not acting mala fide, is not resorting to any unfair labour practice, intimidation or victimization and there is no basic error or contravention of the principles of natural justice. Therefore, when the tribunal gives or refuses permission, it is not adjudicating an industrial dispute; its function is to prevent victimization of a workman for having raised an industrial dispute. The nature and scope of proceedings u/s 33 shows that removing or refusing to remove the ban on punishment or dismissal of workmen does not bar the raising of an industrial dispute when as a result of the permission of the Industrial Tribunal the employer dismisses or punishes the workmen..... ... ...
As the purpose of section 33 of the Act is merely to give or with hold permission and not to adjudicate upon an industrial dispute, any finding u/s 33 would not operate as res judicata and bar the raising of an industrial dispute,.....

Shri Nanavati tried to distinguish the above-said decision of the Supreme Court by saying that section 33, as it stood then, barred any disciplinary action against the employees without obtaining previous sanction from the tribunal or the authority before which the dispute was pending. To satisfy the authority the management might have been required to produce certain evidence which may not be found satisfactory by the said tribunal. But when the said bar was removed after the matter pending before the authority was finally disposed of, there could not be any bar for the employer to take disciplinary action against the employee for the same misconduct. It was on this background, Shri Nanavati urged, that it was held by the

Supreme Court that the tribunal or the industrial authority acting u/s 33 of the Industrial Disputes Act was not called upon to decide an industrial dispute and in that sense the decision of the authority could not be said to operate as a bar for any action before an industrial tribunal deciding in industrial dispute. Shri Nanavati, on the basis of the decisions of the Supreme Court, referred to above, on the scope of the enquiry under the amended section 33(2)(b) of the Industrial Disputes Act, urged that under the new section there is no question of removing any bar, but what the authority is required to do is to grant its approval after considering the various matters, referred to in those decisions. He, therefore, urged that the scope of enquiry before the two Tribunals is identical except for the fact that the Tribunal deciding an indutrial dispute may also enter into the question of adequacy of evidence; and so the decision of the Supreme Court in Makenzie and Co. v. Its Workman and others (supra) does not come in his way.

We find it difficult to accept the contention of Shri Nanavati. Even under the amended section the order of dismissal does not take effect till approval is granted and hence there is still a bar against the action of the employer, though the stage at which the bar operates is somewhat postponed. The emphasis of the Supreme Court is on the fact that the tribunal or the labour authority acting u/s 33(2)(b) does not embark on the decision of an industrial dispute but is only required to consider as to whether the bar should be allowed to be lifted or not, depending on whether a prima facie case was made out or not, and hence it was held by the Supreme Court that the decision of the authority acting u/s 33(2)(b) cannot operate as res judicata. This, in our opinion, would be so even when the scope of the enquiry before that authority and before an industrial tribunal deciding an industrial dispute may be identical. Further, in our opinion, the purpose of the enquiry before the two tribunals is altogether different. In one case the emphasis is on the fact whether there is attempt at victimization or not; in the other, the emphasis is on the fact whether any misconduct has been really committed or not and, if so, what would be the proper penalty. Naturally, the approach to the appreciation of evidence is bound to be of a different nature.

In the view we have taken, it is not necessary to consider the submission of the worker (second respondent) that the National Tribunal had no jurisdiction to entertain the application for approval in view of the passing of Madhya Pradesh Industrial Relations Act.

For the aforesaid reasons, we do not think that the Labour Court was in error in holding that the decision of the National Tribunal does not operate as res judicata. The petition, therefore, fails and is dismissed with costs. Hearing fee Rs. 200/-. After deducting costs, the remaining amount of the security deposit, if any, shall be refunded to the petitioner.