

**(2007) 09 CAL CK 0052**

**Calcutta High Court**

**Case No:** F.M.A. No. 109 of 2004

Steel Authority of India Ltd. and  
Another

APPELLANT

Vs

Shri Nitish Chakraborty and  
Others

RESPONDENT

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**Date of Decision:** Sept. 10, 2007

**Acts Referred:**

- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 4(1)

**Citation:** (2008) 1 CALLT 6

**Hon'ble Judges:** Surinder Singh Nijjar, C.J; Tapen Sen, J

**Bench:** Division Bench

**Advocate:** Narayan Chandra Bhattacharyya and Arun Chatterjee, for the  
Appellant; Joytosh Majumdar, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Tapen Sen, J.

This appeal is directed against a Judgment dated 4.7.2001 passed by a learned single Judge of this Court in W.P. No. 7353(W) of 1999 whereby and whereunder he was pleased to set aside the Order of removal dated 20.5.1998 as well as the Order of the Appellate Authority dated 15/19.2.1999 and was further pleased to substitute the order of punishment of removal by a minor penalty of censure. While allowing the Writ Petition, the learned Judge also directed reinstatement of the Petitioner with further directions that the management/Respondent/Appellant herein shall extend all service benefits to the Petitioner including backwages within a period of four weeks from the date of communication of the Order.

2. The short facts which could be gathered from a perusal of the Writ Petition which was registered as W.P. No. 7353(W) of 1999 are that on 23.8.1997 the Petitioner was placed under suspension for certain allegations amounting to serious misconduct

under the Certified Standing Orders of the Company and on 25.8.1997 the Deputy General Manager, (CO & CCO) Steel Authority of India Ltd., Durgapur Steel Plant issued the Charge-sheet. From the Statement of Allegations contained therein, the charge levelled against the Petitioner was that on 22.8.1997, the Petitioner was apprehended by the CISF Personnel trying to leave the Works premises through Plant Gate No. 9 with 9 (Nine) litres of Gear oil amounting to Rs. 500/- (Approximately) which was concealed in a chamber within the petrol tank of his Motorcycle No. WNP- 4293. Consequently, such act, according to the Statement of Allegations, constituted a misconduct under Clause 28(vi) and 28 (ii) of the Certified Standing Orders of the Company. The statement of allegations contained in the Charge-sheet reads as follows:

It is reported that you Sri Nitish Chakraborty, Operator, T. No. 237296, Battery section of Coal, Coke & Chems. Department, were in General Shift duty on 22.8.97 and assigned the job of house keeping in Battery No. 1.

At about 12.20 P.M. on 22.8.97 you Sri Nitish Chakraborty, were apprehended by the CISF Personnel at the Plant Gate No. 2 while trying to leave the Works Premises through Plant Gate No. 2 with 09 (nine) of Gear Oil, costing Rs. 500/- (approx.) concealed in a false chamber of the petrol tank of your Motor Cycle No. WNP-4293 for persona] gain.

This act of Leaving the duty place without permission/authorisation and carrying the Gear Oil (09 litres) costing Rs. 500/-(approx.) without any valid authority, constitute to be a misconduct as per Clause No. 28 (vi) Neglect of duty) & 28 (ii) (Theft of Company's property) of the Certified Standing Orders of the Company applicable to you.

Thus, you Sri Nitish Chakraborty, T. No. 237296, Operator, Battery section have committed acts of misconduct as per the Certified Standing Orders of the Company.

[Quoted Verbatim but emphasis by bold fonts is by this Court]

3. The Certified Standing Orders which the learned Counsel for the Appellant has produced shows that actually Clause 28 relates to "Conduct" and it is Clause 29 that deals with "Acts of Misconduct" in which Clauses (ii) and (vi) referred to as Clause 28(ii) and 28(vi) in the Order of suspension as well as in the Statement of Allegations have been mentioned. We therefore proceed on the assumption that Clause 28 mentioned in the Charge-sheet actually refers to Clause 29. Therefore, for purposes of clarification, the relevant portions of both Clauses 28 and Clause 29(ii) and 29(vi) as they appear in the Certified Standing Orders which was produced by Mr. Narayan Chandra Bhattacharjee, appearing for the Appellants, are reproduced below:

28. Conduct:

(a) An employee shall not at any time work against the interest of the Company. An employee shall not enter the service of or be employed in any capacity for any

purpose whatsoever and for any part of his time, by any other person, Government Department, Firm or Company etc., and shall not have any private financial dealings with persons or firm etc., having business relations with the Company for the sale purchase of any materials, equipments or supply of labour, if any, or for any other purpose.

(b) An employee shall at all times conducts himself soberly and temperately while on the Works premises and show proper respect and civility to all concerned and shall use his best endeavours to promote the interests of the Company and to maintain and promote the good reputation thereof.

(c) An employee shall avoid habitual indebtedness and where an employee applies to be or is adjudged insolvent, he shall within 3 days, report the fact to his departmental head.

#### 29. Acts of Misconduct:

without prejudice to the general meaning of the term "Misconduct", the following acts and omissions shall be treated as misconduct.

(ii) Theft, fraud or dishonesty in connection with the Company's business or property.

(vi) Negligence or neglect of duty, malingering, slowing down of work or sleeping on duty.(Quoted verbatim)

4. After having received the aforementioned Charge-sheet, the petitioner filed his explanation addressed to the Deputy General Manager vide annexure-C appended to the Writ Petition wherein he stated that he had a double tank in his Motor-cycle because he was in the habit of going out with his wife on long distance trips to places of religious importance and would therefore not only keep his tank full but would also keep lubricants ready. He further stated that a few days prior to the occurrence, he had purchased 10 litres of gear oil and had stored it in the tank for such use whenever necessary. He also stated that since there was no Rule or system to disclose the contents of the tank of a Motorcycle, he did not make any such declaration at the time of entering the Works complex. He also emphatically stated that since the gear oil did not belong to the company and since it was purchased by him, there was no question of committing theft of Company's property. He also stated that the CISF Personnel wanted to be otherwise satisfied to which the Petitioner did not yield and therefore, the issuance of the Charge-sheet was uncalled for, motivated and mala fide. The relevant portion of his reply reads as follows:

I further state that I have a double tank in my motor cycle because very often I go out on long trips with my wife with my said motor cycle at places of religious importance. For the trips I not only get the tank full of oil but keep ready the lubricants also. A few days prior to the occurrence I purchased ten litres of gear oil and kept stored in my tank of the said motor cycle so as to use whenever necessary.

Since there is a reason, compulsion, rule or system to disclose about the contents of fuels and lubricants in respective vehicle I did not make any declaration at the time of entry.

I emphatically state that I was not going out of the factory. That since the gear oil did not belong to the company and was purchased by me there is no question of theft of the companies property as alleged.

The Senior Manager of the department only made my identify clear to the C.I.S.F. personal & the C.I.S.F. personnel out of oblique motive falsely cooked up the allegation against me in spite of my making it clear that the said articles/thing did not belong to the Company and was my personnel property. The C.I.S.F. personnel wanted to be otherwise satisfied which I did comply. I made everything clear to the C.I.S.F. but they did not pay any heed to me.

(Quoted Verbatim but emphasis by bold fonts is by this Court)

5. The Petitioner also stated that during the course of the domestic enquiry, he had produced a photocopy of the Receipt dated 20.8.1997 showing purchase of 10 litres of gear oil and this receipt was marked as a Defence Evidence. In fact, in the enquiry report, the Enquiry Officer has also referred to the same while taking this document as Defence Evidence No. 1 (DE-1). The relevant portion of the enquiry report is paragraph 7 which reads as follows:

7. Assessment of evidence.

From above it will be seen that the prosecution has tried to prove both the charges by producing oral as well as documentary evidences. The accused submitted one defence exhibit (DEI) on 10/12/97 showing purchase of 10(ten) litres of gear oil at Rs. 400/- (appx) on 20/08/97 from U.R. Automobiles, G.T. Road, Panagarh. On the other hand prosecution produced 3(three) prosecution witnesses and 10(ten) prosecution exhibits.

(Quoted verbatim but emphasis by bold fonts is by this Court)

6. The Petitioner further stated in paragraph 12 of the Writ Petition that the Enquiry Officer did not apply his mind to the said defence evidence and therefore, the proceeding was vitiated by non-application of mind. On 20th May, 1998 the Deputy General Manager, Coke Oven and Coal Chemicals, issued the Order of removal from service under the provisions of Clause 30(ii)(c) of the Certified Standing Orders. Being aggrieved, the Petitioner filed an Appeal before the Managing Director, Durgapur Steel Plant which was however rejected by the General Manager, Co & CC by Order dated 15/19.2.1999.

7. Thereafter being aggrieved by the aforementioned two Orders, the Petitioner filed the Writ Petition wherein he also challenged a subsequent Notice dated 20.1.1999 issued under the provisions of Section 4(1) of the Public Premises

(Eviction) of Unauthorised Occupants (Act) 1991 asking him to show cause as to why an Order of eviction from the Company's quarter be not made against him. The aforementioned Writ Petition was taken up for final hearing by the learned single Judge who passed the impugned Order in the manner indicated at the outset.

8. We have no hesitation in upholding the order of the learned single Judge and dismissing the Appeal filed by the management on a number of grounds. We must first deal with the explanation that the Petitioner gave before the Deputy General Manager vide Annexure-C appended to the Writ Petition and a portion of which has been quoted in paragraph 4 supra.

Upon a perusal of the aforementioned explanation it is evident that the Petitioner categorically settled that the gear oil did not belong to the Company and that he had himself purchased the same. In order to substantiate this explanation, the Petitioner also filed the Receipt showing purchase of 10 litres of gear oil which was marked as Defence Exhibit No. 1 (DE-1) by the Enquiry Officer. The said Enquiry Officer, being a part of a quasi-judicial machinery, was required to deal with the same in a proper and reasonable manner. Instead of doing so, the Enquiry Officer merely made a remark to the effect that his document i.e. DE-1 was not testified by any defence witness i.e. either the signatory or the proprietor of the Motorcycle concerned from where he had purchased the gear oil. At the same time, and in the same paragraph, the Enquiry Officer himself has stated that the prosecution also could not prove that the gear oil found in the Motorcycle belonged to the Durgapur Steel Plant. Consequently, the fact that DE-1 was not testified, became a meaningless remark resorted to only for purposes of rejecting its validity. The fact that the prosecution could not prove that the gear oil belonged to the Company has been recorded by the Enquiry Officer at two places and yet, he proceeded to hold that theft of Company's property had been proved because, according to him, absolute proof beyond reasonable doubt was not necessary and that all that was required was the preponderance of probabilities. This would be evident from the last 3(three) paragraphs of the Report of the Enquiry Officer which are quoted below:

The charged employee did not raise any dispute regarding any PES produced by prosecution. During cross-examination also, the charged employee could not bring out anything which would go in his favour. DEI was submitted by him. But this document DE-1 was not testified by any defence witness e.g. signatory of the document or the proprietor of the said Automobiles, Panagarh. The prosecution also could not prove that the materials (gear oil) found in the motor cycle of Shri Chakraborty belonged to DSP (Durgapur Steel Plant.)

Sri Chakraborty was charged for (1) Neglect of duty and (2) Theft of company's property. That 09 (nine) litres of gear oil found in the petrol tank of Sri Chakraborty was company's property, could not be proved by prosecution excepting that it was found in the modified and concealed petrol tank of motor cycle No. WNP 4293. This shortage in the stock of gear oil in the custody of DSP, should have been projected

to substantiate theft of company's property. However, since domestic enquiry is quasi judicial enquiry and absolute proof beyond reasonable doubt is not necessary the standard of proof required is that preponderance of probability.

#### 8. Findings:

Analysing the evidence of the prosecution witnesses and the documentary evidence the undersigned has come to the conclusion that charges of "Neglect of Duty" against Sri Chakraborty has been proved beyond doubts. The charge of "theft of company's property" also has been proved against Shri Chakraborty since absolute proof beyond reasonable doubt is not necessary - the standard of proof required is that of preponderance of probability. Shri Chakraborty is guilty of both the charges.

Sd-B Dev Gupta

14/01/98

Dy. Ch. PM (works)

(Quoted Verbatim but emphasis by bold fonts is by this Court)

9. We are constrained therefore to hold that the Enquiry Officer proceeded to hold the Petitioner guilty of a charge of theft of Company's property without any evidence. For a charge of theft, absolute proof beyond reasonable doubt is absolutely necessary to establish that there was an actual theft. When the Enquiry Officer himself states and comes to the conclusion that there was no evidence to prove that the gear oil belonged to the Company and that the prosecution could not prove that it was Company's property, the Enquiry Officer thereafter could not have proceeded to hold the Petitioner guilty of the charge of theft.

Consequently, we are of the view that the learned single Judge was absolutely right in holding that the finding of the Enquiry Officer was totally perverse. The relevant portions of the finding of the learned single Judge is recorded below:

On the second charge regarding "theft of company's property" I find from the enquiry report that the Enquiry Officer while assessing the evidence adduced by the respective parties came to conclusion that the prosecution could not prove that the materials (gear oil) found in the motor cycle of the petitioner belonged to D.S.P.

In spite of expressing the aforesaid opinion, surprisingly, Enquiry Officer came to conclusion that the charge of "theft of company's property" has been proved against the petitioner. In my opinion, the aforesaid finding is totally perverse since the prosecution has failed to prove that the seized goods belonged to the company. The charge regarding "theft of Company's property" cannot be established against the petitioner until and unless it cannot be proved that the seized goods belonged to the company. As in the instant case, prosecution failed to prove that the seized goods belonged to the company petitioner cannot be held to be guilty of charge regarding "theft of company's property."

(Quoted Verbatim but emphasis by bold fonts is by this Court)

10. We will now deal with another significant aspect which proves that the Petitioner has been dealt with in a very unjustified manner. The Enquiry Officer has given a lot of weightage to the statement of one V.P. Bhatt, an Inspector of the CISF who was examined as Prosecution Witness No. 3. This witness had mentioned that the Petitioner himself had allegedly stated that he had got the petrol tank of his Motorcycle improvised from M/s. Three Star Engineering Company, Benachiti in the month of October 1996 and since then, he had been stealing mobile/gear oil from the Durgapur Steel Plant for personal gains. The said V.P. Bhatt also testified that the petitioner had admitted that he was selling the stolen gear oil @ Rs. 30 per litre. He also said that the gear oil was seized in the presence of one Kesav Singh AGM who had certified that the said gear oil was DSP property worth about Rs. 500/-.

11. Let it be once again recorded here at this stage that the gear oil that was found could not be proved that it belonged to the Company. However the so called acceptance and/or confession of the Petitioner which is at page 157 of the Paper-Book and which was marked as Exhibit PE-10 before the Enquiry Officer, as vehemently denied by the Petitioner who had stated that the same was never written by him. This would be evident from Para-7 of the Enquiry Report itself. If the Petitioner had actually confessed his guilt then there is no reason as to why such confession was not mentioned in so many terms in the Charge-Sheet itself. All that the Charge-Sheet discloses is that "it was reported" that on 22.8.1997, 9 litres of gear oil costing Rs. 500/- was found in the chamber of the petrol tank. The so called confessional statement of the Petitioner which V.P. Bhatt had recorded was taken on 22.8.1997 itself. The Charge-Sheet was issued on 25.8.1997. If this be so, then why was this fact not mentioned in the charge-sheet?

12. Consequently, we approve the findings of the learned single Judge to the effect that "it cannot be said that any of the charges levelled against the Petitioner was admitted by the Petitioner beforehand by making any confessional statement."

Such a finding of the learned single Judge is based on sound reasoning because he correctly proceeded to hold that there was "much force" in the submissions made on behalf of the Petitioner which was that if the Petitioner had already confessed his guilt and had made a confessional statement, then there was no question of holding an enquiry in respect of the charge of theft of Company's property and then finding him guilty.

The learned Judge also correctly appreciated the arguments that neither in the Charge-Sheet nor in the statement of Allegations, the fact relating to the Petitioner having made a confessional statement was ever mentioned.

The relevant portions of the Judgment of the learned single Judge therefore are worth reproducing. They read as follows:

Learned counsel of the petitioner submitted that in the statement of allegations supplied to the petitioner it was never alleged that the petitioner had admitted the allegations. The confessional statement was neither mentioned in the charge sheet nor even in the statement of allegations on the basis whereof the charges have been framed against the petitioner herein. The petitioner, however, submitted that he was compelled to put signature on blank page which was subsequently used by the respondent authority as the confessional statement. The learned advocate of the petitioner also referred to the representation made by the petitioner on the enquiry report and submitted that the petitioner in the said representation specifically mentioned that he never admitted that charges levelled against him. Dr. Pal appearing on behalf of the petitioner submitted that the petitioner never admitted that he has stolen the gear oil. The Enquiry Officer advised to accept such denial in his written explanation to the charge sheet. According to the learned Counsel of the petitioner, the respondent authorities never referred to the alleged confessional statement either in the charge-sheet or in the statement of allegations on the basis of which the charges had been framed and as such question of dealing with the said alleged admission by the petitioner in the written explanation filed in response to the charge sheet could not and did not arise.

Learned advocate of the petitioner further submitted that if the petitioner had already confessed his guilt and made a confessional statement the question of holding enquiry in respect of the charge regarding "theft of company's property" could not and did not arise. According to the learned Counsel of the petitioner, enquiry is conducted only in respect of the charges which are denied by the charged employee. It was further submitted on behalf of the petitioner that the question of holding any enquiry in this case against the petitioner is must as the petitioner denied the charges levelled against him all along and the respondent authorities by directing enquiry in respect of charges mentioned in the charge-sheet impliedly, accepted that the charges levelled against the petitioner and mentioned in the charge-sheet had been denied by the petitioner.

I find much force in the aforesaid submissions of the learned Counsel of the petitioner. Since respondent authorities have conducted an enquiry in respect of both the charges and in particular in respect of the charge regarding "theft of company's property", it cannot be said that either the petitioner had made any confessional statement or the respondent Durgapur Steel Plant authorities could ever accept any statement of the petitioner as confessional statement admitting the charges levelled against the petitioner. The authorities of the respondent Durgapur Steel Plant not only levelled specific charges against the petitioner but tried its best to establish the same tried its enquiry proceeding and, therefore, it cannot be said that any of the charges levelled against the petitioner was admitted by the petitioner beforehand by making any confessional statement. (Quoted Verbatim)



13. We are therefore inclined to agree and uphold the findings of the learned single Judge to the effect that in view of the fact that the prosecution could not prove the principle charge of theft of Company's property, the Order of removal for the charge of neglect for duty, was grossly disproportionate. On the aforementioned facts and circumstances, we are also therefore of the view that the learned single Judge correctly passed the Order that a minor penalty of censure would meet the ends of justice in place of an Order of removal from service.

14. For the foregoing reasons, we find no reason to interfere with the Judgment of the learned single Judge which is accordingly upheld. The appeal must therefore fail. It is accordingly dismissed. No order as to costs.

15. Upon appropriate Application(s) being made, urgent xeroxed certified copy of this Order, may be given/issued expeditiously subject to usual terms and conditions.

S.S. Nijjar, C.J.

16. I agree.