
Paresh Nath Chowdhury and Others Vs Modern Food Industries India Ltd. and Others

A.F.O.O. (Tender) No. 1327 of 1998

Court: Calcutta High Court

Date of Decision: April 11, 2002

Acts Referred:

Constitution of India, 1950 – Article 226#Industrial Disputes Act, 1947 – Section 10, 11A

Citation: (2003) 2 LLJ 499

Hon'ble Judges: Ashok Kumar Mathur, C.J; Subhro Kamal Mukherjee, J

Bench: Division Bench

Advocate: K.H. Dasan and Mala Chakraborty, for the Appellant; Partha Sarathi Sengupta and Lakshman Chandra Halder for Respondent No. 1 and Jayanti Dhar Quader, for the Respondent

Final Decision: Dismissed

Judgement

Subhro Kamal Mukherjee, J.

This Letters Patent appeal is directed against the judgment and order dated March 26, 1998 passed by a

learned single Judge of this Court whereby the learned single Judge allowed an application under Article 226 of the Constitution of India (writ

petition in short) and set aside the award passed by the Second Industrial Tribunal, West Bengal in Case No. VIII 54-75 and remitted the matter

to the said Tribunal for proper adjudication.

2. The brief facts leading to filing of this appeal may be summarised as under:

The management of Modern Food Industries (India) Limited, respondent No. 1 in this appeal, was receiving informations, for a considerably long

period, that there has been a systematic from the bread store of the company. While the supply van of the company bearing registration No.

WMK-5 was delivering breads in Zone 6 under the regular delivery schedule on August 23, 1972 at 7.45, p.m., some officers of the company

undertook" physical verification and/or checking of the breads in the said van and it was detected that the breads were in excess quantities in the

said van. On return to the factory, the gate pass was checked in relation to the challans and it was, further, detected that in the gate pass it was

wrongly inserted 10 crates in place of 6 crates. A preliminary enquiry was held and a charge sheet was issued on August 29, 1972 against, T.K.

Sen, Sales Assistant, Bimal Krishna Ghosh, Delivery Van Driver, Pran Krishna Kundu, the Loader and Paresh Nath Chowdhury, the Bread Store

Clerk, alleging that each of them, in collusion and conspiracy with each other, committed theft, fraud or dishonestly or wilfully caused damage in

connection with the business and the property of the company whereby the company incurred heavy financial loss. They were also charged for

wilful negligence and neglect of duty in complying with the departmental directions regarding despatch and delivery. Thereafter, the management of

the company conducted an enquiry and those workmen were found guilty of the charges levelled against them and they were dismissed from the

services of the company. The workmen raised an industrial dispute and the Government of West Bengal referred the industrial dispute by order

dated June 3, 1975 to the said Tribunal u/s 10 of the Industrial Disputes Act, 1947 for adjudication of the following issue:

Whether termination of services of Sarbasree T.K. Sen, P.N. Chowdhury, P.K. Kundu and B.K. Ghosh is justified: To what relief, if any, are

they entitled?

3. By Order No. 61 dated June 17, 1980 the Tribunal held that the domestic enquiry by the management was vitiated. However, it was, further,

held that the company would be entitled to adduce further evidence on merits and the workmen would adduce evidence in rebuttal thereof.

Although the company challenged the said Order No. 61 dated June 17, 1980 in an earlier writ petition, but M.N. ROY J., on September 15,

1980 rejected the said writ petition. A Division Bench of this Court disposed of the appeal against the said order being FMAT No. 3133 of 1980

by granting liberty to the company to agitate the points taken in the earlier writ petition in argument before the Tribunal and the Tribunal was

directed to pass necessary award in accordance with law after considering the submissions to be made by the parties.

4. The Tribunal passed the award on February 28, 1986 holding, inter alia, that the management has failed to prove the case of theft, fraud or

dishonest or wilful damage beyond reasonable doubt against the charged workmen on merit. However, it was held that the evidence on record

proved the case of neglect of duty and as such they should deserve appropriate punishment in that respect. It was directed that the workmen

would be reinstated with full back wages from the date of their dismissals less 25% per cent of their total salaries and allowances due to them

during the said period. The Government of West Bengal published the said award on March 24, 1986. The respondent No. 1 challenged the said

award by moving the present writ petition.

5. The learned single Judge by the judgment and order dated March 26, 1998 allowed the writ petition, as aforesaid, holding, inter alia, that the

Tribunal wrongly considered the standard of proof as "beyond reasonable doubt." Being aggrieved some of the delinquent workmen came up with

this appeal.

6. The Supreme Court of India in the case of Management of Balipara Tea Estate Vs. Its workmen, held that in making an award in an industrial

dispute referred to it, the Tribunal has not to decide for itself whether the charge framed against the workman concerned has been established to its

satisfaction; it has only to be satisfied that the management of a business concern was justified in coming to the conclusion that the charge against its

workman was well founded. The Tribunal should not insist upon conclusive proof of guilt to be adduced by the management in the inquiry before it.

Therefore, in our opinion, the learned single Judge was right in holding that the standard of proof relating to disciplinary proceedings is

preponderance of probabilities and not beyond reasonable doubt and that the Tribunal wrongly considered the standard of proof.

7. Mr. K.H. Dasan, learned advocate, appearing in support of the appeal, however, cited the decision in the case of H.S. Chandra Shekara Chari

Vs. The Divisional Controller, KSRTC and Another, . Mr. Dasan has invited our attention to the following observations of the Supreme Court at

p. 1325 of LLJ:

Once the Tribunal had found that the charges against the appellant were not established, it was not open to the learned single Judge, who had

rightly refused to reappraise the evidence, to say that with better proof the charges could have been established. The learned single Judge has no

jurisdiction, not even u/s 11-A of the Industrial Disputes Act, 1947, to enter into the question whether the charges could have been established by

better or further evidence. That is not the function of the Court or any quasi-judicial authority. If it is found as a fact that the charges are not

established, then the necessary consequences have to follow and, as a corollary thereto, appropriate orders are to be passed. There may be

circumstances justifying non-payment of full back wages, but they cannot be denied for the reason that the charges could have been established

with better proof. If better proof was available with the Management and it was not furnished or produced before the Court, a presumption would

arise that such proof, if furnished, would have gone against the Management.

8. We failed to see how this judgment has any application to the case in hand. It is not the case here that the Tribunal has exonerated the workmen

of all the charges levelled against them. The Tribunal held that the management has failed to prove beyond reasonable doubt the charges levelled

against the workmen concerning theft and fraud, but, at the same time, held that the management has proved their allegation of negligence against

the workmen. Since the Tribunal has applied wrong standard of proof, the learned single Judge, in our view, rightly set aside the award and

remitted the matter to the Tribunal for proper adjudication. The proper test is to find out what a reasonable employer would have done in the facts

and circumstances of the case. There has been a patent error and grave illegality in the award passed by the Tribunal as the Tribunal proceeded on

irrelevant consideration compelling the learned single Judge to exercise the power of judicial review.

9. The Supreme Court of India in the case of T. Prem Sagar Vs. The Standard Vacuum Oil Company Madras and Others, , held:

In writ proceedings if an error of law apparent on the face of the record is disclosed and a writ is issued, the usual course to adopt is to correct

the error and send the case back to the special Tribunal for its decision in accordance with law. It would, we think, be inappropriate for the High

Court exercising its writ jurisdiction to consider the evidence for itself and reach its own conclusions in matters which have been left by the

legislature to the decisions of specially constituted Tribunals.

10. Accordingly, we do not find any merit in this appeal, which is dismissed. The order impugned in this appeal is affirmed.

11. There will be no order as to costs.

12. The Tribunal is, however, directed to dispose of the matter as early as possible preferably within a period of three months from the date of

communication of this order to the said Tribunal.

13. Let xerox certified copy of this order, if applied for, be supplied to the parties expeditiously.

Ashok Kumar Mathur, CJ.

I agree.