(2009) 05 DEL CK 0453

Delhi High Court

Case No: Writ Petition (C) No''s. 6735 and 13747 of 2004

DCM Shriram Consolidated Ltd.	APPELLANT
Vs	
Shri Jai Singh Shri Jai Singh Vs Management of Swatantar Bharat Mills and Others	RESPONDENT

Date of Decision: May 19, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Industrial Disputes Act, 1947 - Section 10, 33(2)

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: Harvinder Singh Bhawna Chopra and D.N. Vohra, for the Appellant; D.N. Vohra, Harvinder Singh and Bhawna Chopra, for the Respondent

Final Decision: Dismissed

Judgement

Kailash Gambhir, J.

By way of this common order, both the petitions bearing WP(C) 13747/2004 & 6735/2004 shall be disposed of. By way of the writ petition bearing No. 13747/2004 filed under Articles 226 and 227 of the Constitution of India the petitioner management seeks to challenge the orders dated 2.12.1995, 17.1.1996 and 5.11.2003 passed by the industrial tribunal. The other writ petition No. 6735/2004 has been preferred by the workman seeking implementation of the order dated 5.11.2003, whereby Ld. Industrial Tribunal rejected the application of the management filed u/s 33(2)(b) of the I.D. Act.

2. Vide orders dated 2.12.1995 the Industrial Tribunal decided issue No. 1 in favour of the respondent workman and against the petitioner management holding that the enquiry conducted by the petitioner management cannot be said to be either fair or proper or in accordance with the principles of natural justice. Vide orders

dated 17.1.1996 the application moved by the petitioner to seek review of the order dated 2.12.1995 was rejected. The final Award was passed against the petitioner vide order dated 5.11.2003, and the same along with the said two orders is assailed by the petitioner management in the present petition. The workman, on the other hand, seeks his reinstatement as a result of dismissal of application of the petitioner management filed u/s 33(2)(b) of the I.D. Act through the same order dated 5.11.2003. The facts relevant for deciding the present petition are:

3. The workman Sh. Jai Singh had joined M/s Sawtantar Bharat Mills as Fitter Trainee on 14.7.1980 and was declared permanent as Tackler on 1.9.1982. While on duty on 28.10.1985 at about 5.30 p.m., the Shift Officer asked him to put a shuttle on Loom No. 021 but he refused to obey the same & when on the same day the shift officer called him in his office at about 8.50 p.m. to enquire about the reason for disobeying his orders, he again refused to put the shuttle and caught hold of the collar of the shift officer, Sh. Jagdish Kr. Sehgal, and also used abusive language. Other workmen came and saved the said officer but even while leaving, he threatened the shift officer, that he will see him outside also. On the complaint of the said Sh. Jagdish Kr. Sehgal charge sheet was issued & upon unsatisfactory reply of the workman, disciplinary enquiry was initiated, and upon completion of the same, enquiry report was filed by the Enquiry Officer on 19.11.1985 and the management after considering the said enquiry report imposed the punishment of dismissal on 26.11.1985. An application u/s 33(2)(b) was made to the Industrial Tribunal for approval of dismissal, which was rejected vide order dated 5.11.2003. Aggrieved with the same, the present petition is preferred by the management.

4. Mr. Harvinder Singh, counsel for the petitioner management contended that full fledged adjudication is not envisaged u/s 33(2)(b) of the Act where only the Tribunal has to take a prima facie view on the action of the management terminating the service of the workman being justified or not, unlike u/s 10 of the Industrial Disputes Act where a detailed examination is required. Counsel for the petitioner further submitted that in a domestic enquiry the workman has no legal right for representation by an outsider and also a workman who himself boycotted the domestic enquiry cannot subsequently challenge the same or to term it illegal or unfair. Counsel further contended that while passing the order dated 2.12.1995 the Tribunal wrongly observed that the respondent workman was not allowed the assistance of Shri Roshan Lal an employee of the petitioner while the fact was that the said Roshan Lal was never an employee of the petitioner mill but was an outsider. Even when the said mistake on the part of the Tribunal was brought on record by an application dated 20th December, 1995 moved by the petitioner management, even then the Tribunal although realized its mistake in wrongly terming the said Roshan Lal as an employee of the petitioner, but still sustained its view of holding the enquiry to be unfair and improper. Contention of the counsel for the petitioner is that both the orders passed by the Tribunal dated 2.12.1995 and 17.1.1996 are illegal, unjustified and perverse. The other contention raised by the

counsel for the petitioner is that there was no question of violation of principles of natural justice on the part of the enquiry officer as sufficient opportunity was given to the respondent workman to effectively participate in the enquiry proceedings. On 16.11.1985 the respondent workman gave an application to bring an outsider as representative and the said application of the respondent workman was rejected by the enquiry officer on 18.11.1985 with clear direction to the respondent workman to bring only such employee as a representative who is an employee of the mill and not an outsider. The proceedings were accordingly adjourned for 19.11.1985 as one day's time was sought by the petitioner to bring an employee of the mill as his representative. On 19.11.1985 the respondent workman walked out of the proceedings on the ground that he was not permitted to bring an outsider. Counsel for the petitioner thus submitted that in view of such defiant conduct of the respondent workman the Tribunal wrongly held that the enquiry officer conducted the proceedings in haste or in violation of the principles of natural justice. Counsel for the petitioner further submitted that wrong stand was taken by the respondent workman that he had submitted a letter dated 19.11.1985 to the management raising grievance against the enquiry officer for his refusal to bring Roshan Lal as his representative to get the proceedings adjourned on that date. No such letter was received by the petitioner management which in fact was delivered on 26.11.1985 after passing of the dismissal order, the counsel contended. Even otherwise, as per the contention of the counsel for the petitioner Roshan Lal was an outsider and not an employee of Swatanter Bharat Mills and already request made by the respondent workman to bring Roshan Lal was not entertained by the enquiry officer. Counsel thus submitted that under the standing orders of the mill the respondent workman was not entitled to be represented in the domestic enquiry by an outsider and, therefore, the enquiry officer rightly rejected the request of the workman to bring an outsider as representative in the enquiry proceedings. Merely because the entire ex parte evidence was recorded on one date by the enquiry officer and the dismissal order was passed within a week thereafter, that, by itself would not show that the enquiry officer acted in undue haste or fair opportunity was not granted to the respondent workman.

5. Another ground of challenge raised by the counsel for the petitioner was that even if the enquiry was considered as vitiated still the Tribunal erred in passing the final order dated 5.11.2003 on the ground that the petitioner had failed to prove charges in its additional evidence led before the Tribunal. The contention of the counsel for the petitioner was that the petitioner even in additional evidence led before the Tribunal had fully proved the misconduct on the part of the respondent workman and the said additional evidence was sufficient enough to grant approval to the petitioner u/s 33(2)(b) of the Industrial Disputes Act. The Tribunal committed grave illegality in not giving any weightage to the statements of the two witnesses Shri Jagdish Kumar Seghal and Shri Dinesh Kumar recorded before the enquiry officer even though they might not have fully corroborated their own testimony in

the evidence led by them before the Tribunal. Contention of the counsel for the petitioner is that Jagdish Kumar Seghal might have been unable to recall the exact incidence which took place nearly 18 years ago from the date of his statement and while the other witness Dinesh Kumar turned hostile at the instance of the respondent workman. Both the witnesses were duly confronted with their statements given by them before the enquiry officer which they had accepted and based on the same the Tribunal ought to have granted approval. The counsel urges that the case was not required to be proved by the petitioner beyond any reasonable doubt and only prima facie material was to be placed on record to facilitate the Tribunal to examine whether the decision taken by the enquiry officer is based on some sufficient or cogent material or not. In support of his arguments counsel for the petitioner placed reliance on the following judgments:

1. State Bank of Bikaner Vs. Balai Chander Sen,

2. Dalmia Dadri Cement, Ltd. Vs. Shri Murari Lal Bikaneria,

3. Delhi Cloth and General Mills Co. Ltd. v. Ganesh Dutt, 1972 (1) LLJ 172 (SC)

4. Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another,

5. Cholan Roadways Limited Vs. G. Thirugnanasambandam,

6. Delhi Transport Corporation v. Krishan Kumar 2006 Lab. I.C. 4171 (Del).

6. Refuting the said submissions of the counsel for the petitioner, Mr. D.N. Vohra, counsel for the respondent strongly contended that while exercising jurisdiction under Article 226 of the constitution of India this Court will not reappreciate the findings of fact arrived at by the Tribunal in the same manner as can be gone into by the Appellate Authority exercising appellate powers. On 19.11.1985 the respondent workman himself had appeared before the enquiry officer and sought permission to bring one Mr. Kamal Narayan to represent him in the enquiry proceedings. The respondent workman also submitted that he would not be in a position to effectively participate in the enquiry proceedings without the assistance from the authorized representative. Since the respondent workman was not permitted to bring his authorized representative so there was no option left to him but to walk out of the enquiry proceedings. The contention of the counsel for the respondent was that the enquiry officer had seriously violated the principles of natural justice by not permitting the respondent workman to bring his authorised representative and in utter haste on 19.11.1985 recorded the entire evidence of the petitioner and within a weeks time gave its report on 26.11.1985. Counsel thus submitted that the Tribunal had passed all the three orders assailed by the petitioner in the present petition on correct appreciation of the facts and none of these orders can be termed as either illegal, irrational or perverse. The petitioner also failed to prove misconduct on the part of the respondent even after fresh opportunity was given to the petitioner management to prove the charges on its merits before the Tribunal. Both

the witnesses produced by the petitioner management gave their testimony against the case set up by the petitioner management. MW3, Dinesh Kumar even went to the extent by stating that no such incident as alleged by the petitioner had happened, while MW 2 Jagdish Kumar Seghal did not make any imputing statement against the workman either in his chief or his cross- examination. Counsel thus submitted that once the petitioner has failed to prove the charges even on merits, therefore, the Tribunal has rightly dismissed the approval application of the petitioner and which order of the Tribunal does not warrant any interference by this Court.

7. I have heard learned Counsel for the parties at considerable length and perused the record.

8. It is a settled legal position that the jurisdiction of the Industrial Tribunal u/s 33(2)(b) of the Industrial Disputes Act is a limited one. The scope of adjudication in proceedings u/s 33(2)(b) of the Industrial Disputes Act is limited and while granting or rejecting approval it does not sit as a court of appeal to re-appreciate the evidence. It is no more res integra that u/s 33(2)(b) of the Industrial Disputes Act the tribunal has to take a prima facie view to examine as to whether the conclusions arrived at by the enquiry officer are based on sufficient material or not. The management u/s 33(2)(b) of I.D. Act is not required to prove the case beyond reasonable doubt to establish misconduct on the part of the workman which led to the imposition of award punishment. In this regard, the Hon&#65533;ble Apex Court in Workmen of Balmadies Estates Vs. Management Balmadies Estate and Others, observed as under:

10. It is fairly well settled now that in view of the wide power of the Labour Court it can, in an appropriate case, consider the evidence which has been considered by the domestic tribunal and in a given case on such consideration arrive at a conclusion different from the one arrived at by the domestic tribunal. The assessment of evidence in a domestic enquiry is not required to be made by applying the same yardstick as a civil court could do when a lis is brought before it. The Evidence Act, 1872 (in short ''the Evidence Act'') is not applicable to the proceeding in a domestic enquiry so far as the domestic enquiries are concerned, though principles of fairness are to apply. It is also fairly well settled that in a domestic enquiry guilt may not be established beyond reasonable doubt and the proof of misconduct would be sufficient. In a domestic enquiry all materials which are logically probative including hearsay evidence can be acted upon provided it has a reasonable nexus and credibility.

9. It is only when it appears that the action of the management is illegal on the very face of it or the enquiry proceedings conducted by the management are wholly perverse, illegal, irrational or based on no material then the findings of the enquiry officer can be interfered with to decline approval u/s 33(2)(b) of the I.D. Act and if the findings of the inquiry officer are based on some material proving mis-conduct

of the workman, then merely because of the fact that the evidence before the enquiry officer was not sufficient enough or strong enough to establish misconduct on the part of the delinquent workman, the findings of the enquiry proceedings cannot be upset. The jurisdiction of the tribunal u/s 33(2)(b) of the ID Act has been extensively explained, in Cholan Roadways Limited Vs. G. Thirugnanasambandam, by the Hon�ble Apex Court, wherein it observed as under:

18. The jurisdiction of the Tribunal while considering an application for grant of approval has succinctly been stated by this Court in Martin Burn Ltd. v. R.N. Banerjee. While exercising jurisdiction u/s 33(2)(b) of the Act, the Industrial Tribunal is required to see as to whether a prima facie case has been made out as regards the validity or otherwise of the domestic enquiry held against the delinquent, keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding before the Industrial Tribunal in terms of the provision of the Industrial Disputes Act. In Martin Burn case 6 this Court stated: (AIR p. 85, para 27)

A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. (See Buckingham & Carnatic Co. Ltd. v. Workers of the Co.).

19. It is further trite that the standard of proof required in a domestic enquiry vis-�-vis a criminal trial is absolutely different. Whereas in the former ''preponderance of probability'' would suffice; in the latter, ''proof beyond all reasonable doubt'' is imperative.

10. In the facts of the present case, the tribunal while passing orders dated 2.12.1995 on the issue No. 1 got unduly carried away with the speed shown by the enquiry officer in concluding the enquiry proceedings. Simply because of the fact that the enquiry officer did not adjourn the matter for longer dates or had concluded the evidence on a single date cannot lead to draw an inference that the principles of natural justice were not followed by the enquiry officer. It is well settled that the rules of natural justice are not embodied rules. The question whether in a given case the principles have been violated or not has to be found out on consideration as to whether the procedure adopted by the appropriate authority is fair and proper or not. In other words, what is required to be examined is whether the delinquent knew the nature of accusation against him whether he was given

sufficient opportunity to state his case and whether the enquiry officer adopted a fair procedure during the proceedings. If these requirements are satisfied then it cannot be said that the principle of natural justice were violated. Be that as it may, mere duration or length of Disciplinary enquiry is not sufficient to prove that the principles of natural justice were violated rather the entire circumstances have to be taken into consideration to reach to any conclusion. It is now a settled principle of law that rules of natural justice ought not to be applied in an abstract manner or as a straight-jacket formula. The main test is whether any real prejudice has been caused to the respondent workman or not. In the present case, it cannot be said that any real prejudice has been caused to the respondent workman by the fact that the enquiry officer examined all the management witnesses on one single day, viz. 19.11.1985, the day when the workman conveniently walked out of the enquiry and refused to participate in it even after being given due and adequate opportunity.

11. Perusal of the enquiry report rather shows that sufficient opportunity was given to the respondent/workman to prove his case but he deliberately adopted dilatory tactics to prolong the proceedings. The enquiry proceedings commenced on 6.11.1985 after the respondent workman had submitted his explanation on 4.11.1985 and on the very first date despite service he did not choose to appear. The enquiry proceedings were thereafter adjourned for 7.11.1985 and a fresh notice to this effect was served upon the respondent/workman. He although avoided his appearance on 7.11.1985 but still more opportunities were granted to the workman and the matter was adjourned by the enquiry officer for 8.11.1985 and again a notice to this effect was sent to him. But since he again did not put appearance, the matter was adjourned for 11.11.1985 and for this date again notice was issued by the enquiry officer. On this date the workman/respondent appeared in person and made a request for adjournment as he wanted to engage the services of a representative and sought the matter to be fixed after 15.11.1985 due to the impending festival of Diwali. The matter on his request was adjourned to 16.11.1985 when again he moved an application to bring an outsider to represent him in the case which request of the respondent/workman was disallowed and the matter was adjourned as no outsider could be permitted to represent his case during the enquiry proceedings and the matter was accordingly adjourned for 19.11.1985. It was also made clear to the respondent workman that no further date will be given and after 19.11.1985 the enquiry proceedings will be held from day to day. On 19.11.1985 the workman appeared and told the enquiry officer that unless he was allowed to bring an outsider he would not participate in the enquiry proceeding. He was again told that outsider cannot be allowed to represent him in the enquiry proceedings. He was also told that in the event of his not participating in the enquiry the ex-parte proceedings shall be held against him. On this, the respondent/workman told the enquiry officer that let him do whatever he liked and he will not participate in the enquiry proceedings. It is under these circumstances the enquiry proceedings were held against the respondent/workman ex-parte and

the management examined four witnesses on 19.11.1985 and in the enquiry report the enquiry officer held that all the charges as leveled against him in the charge sheet dated 30.10.1985 stood fully proved. It would be thus evident that no haste was shown by the enquiry officer in conducting the enquiry proceedings, rather sufficient opportunity was given to the respondent which opportunity was not availed by the respondent himself. I, therefore, do not find that the enquiry officer did not observe the principles of natural justice in conducting the enquiry proceedings and simply because of the fact that enquiry proceedings culminated in a short span that would not lead to the conclusion that principles of natural justice were violated by the enquiry officer. Even otherwise, the respondent was well aware that under given rules he could not be represented through a outsider and this position was made clear to him when his request was declined by the enquiry officer by passing a speaking order on 18.11.1985. The conduct of the respondent clearly demonstrates that he was trying to delay the proceedings and even had the temerity to walk out of the proceedings without bothering with the outcome of the same. The conduct of the employees in this case was utterly defiant and irresponsible and can hardly be justified.

12. In view of the above discussion, the writ petition bearing No. 13747/2004 filed by the management challenging the orders dated 2.12.1995, 17.1.1996 and 5.11.2003 passed by the industrial tribunal is allowed and the aforesaid orders are quashed. Resultantly, the writ petition No. 6735/2004 filed by the workman seeking reinstatement & implementation of the order dated 5.11.2003, whereby Ld. Industrial Tribunal rejected the application of the management filed u/s 33(2)(b) of the I.D. Act is dismissed.

13. The petitions are disposed of in terms of the above directions.