(1979) 03 BOM CK 0033

Bombay High Court

Case No: Misc. Petition No. 821 of 1975

Jaysing Rangarao Raut		APPELLANT
	Vs	
Maharashtra State Electricity Board and Another		RESPONDENT

Date of Decision: March 12, 1979

Acts Referred:

- Industrial Disputes Act, 1947 - Section 33A
- Penal Code, 1860 (IPC) - Section 147, 149, 341, 353, 427

Citation: (1980) 1 LLJ 117

Hon'ble Judges: Sujata V. Manohar, J

Bench: Single Bench

Judgement

1. The petitioner in the present petition was an employee of the 1st respondent. The petitioner as well as other employees of the 1st respondent were members of a trade union known as the Maharashtra Rajya Vij Mandal Nokar Sangh. On or about 6th February, 1967 the employees of the 1st respondent including the petitioner went on strike. This strike continued for some period. During the period of the strike, on or about 3rd March, 1967 a large number of employees of the 1st respondent had gathered in a open space at Sangli and they were shouting slogans. At about 5-30 P.M. on that day, a jeep belonging to the 1st respondent was proceeding to Budhgaon, carrying some of the engineers of the 1st respondent. These engineers wanted to go to Budhgaon for carrying out repairs to the water works at Budhgaon. This jeep was prevented from proceeding to Budhgaon by the employees who had gathered in the open space and the jeep had to go back. The petitioner was one of the employees who stood in front of the jeep and prevented it from proceeding to Budhgaon. Thereafter a criminal case was filed against the petitioner and 12 other employees in the Court of the judicial Magistrate, First Class, Sangli, being Criminal Case No. 229 of 1968. The petitioner and the other employees were charged under the provisions of S. 147, 149, 341, 353 and 427 of the Indian Penal

Code. All the 13 accused in that case were convicted of an offence under Ss. 149 and 341 of I.P.C. and were fined Rs. 51 each : in default, they were ordered to suffer S.I. for two weeks. The occurred were acquitted of all the other charges. The case went in appeal before the District Court at Sangli in Criminal Appeal No. 126 of 1968. The Appeal Court acquitted 5 of the accused-employees and confirmed the sentence on the remaining 8 accused-employees including the petitioner. This order was challenged in revision before the High Court in Criminal Revision Application No. 144 of 1969. In Criminal Revision Application, 5 more accused were acquitted, but the sentence of the remaining 3 accused including the petitioner was confirmed. While all these criminal proceedings were in progress, the 1st respondent admittedly charge-sheeted the petitioner and held an inquiry. Thereafter the 1st respondent waited for the verdict of the District Court, which heard the Criminal Appeal filed by the accused. After the verdict of the District Court announcing the confirmation of the sentence passed on the petitioner, the 1st respondent by their order dated 2nd December, 1968 terminated the services of the petitioner with effect from 2nd December, 1968 and offered him one month''s wages in lieu of one month''s notice.

2. Prior to the strike, by an order dated 24-10-1966 the State of Maharashtra had referred certain disputes between the 1st respondent and its employees with regard to gratuity, casual leave, earned leave, etc., for adjudication to the Industrial Tribunal. Similarly by another order dated 3rd December, 1966 the State of Maharashtra had referred a dispute between the 1st respondent and its employees in respect of bonus for adjudication to the Industrial Tribunal. Both these references were pending on the date of the order of termination of service passed against the petitioner on 2nd December, 1968. The petitioner, therefore, filed a complaint under S. 33A of the Industrial Disputes Act, 1947 before the Industrial Tribunal contending, inter alia, that he was removed for his trade union activities, that the Board had instituted a departmental inquiry and had charge-sheeted the petitioner and that a colourable order terminating his service was issued by the 1st respondent on 2nd December, 1968. In the written statement, which was filed by the 1st respondent in answer to the plaint, the 1st respondent had raised a preliminary objection with regard to the maintainability of the complaint on the ground that the Tribunal had become functus officio and it had no jurisdiction to entertain the complaint of the petitioner. On merits, the 1st respondent took the stand that the order of termination was issued under Regulation 24 of the Maharashtra State Electricity Board Employees'' Service Regulations and that the order of termination was not an order of dismissal under Regulation 88 of the above Regulations.

3. Regulation 24 is as follows :

"24. The services of an employee of the Board are liable to be terminated by the competent authority with a notice in writing or with salary in lieu of the notice period as prescribed below ...."

Regulation 88 prescribes the procedure for dealing with acts of misconduct. It provides for (a) suspension of an employee charged with an act of misconduct, (b) for a charge-sheet, (c) submission of written statement, (d) oral statement, (e) inspection of documents (f) production of documents and other evidence by the employee, (g) recording of oral evidence, (h) findings of the enquiry officer, (i) show cause notice, (j) decision to be communicated and (k) orders to be effective forthwith. It will also be relevant to reproduce at this stage, Regulation 89(c) on the basis of which the present petition has been filed. Regulation 89 is an exception to the provisions in Regulation 88. The material part of this regulation is as follows :

"89 Exception to the Provisions in Regulation 88.

The procedure prescribed in Regulation 88 need not be followed and all or any of its provisions may be waived in the following cases :

* * *

(c) when the punishment such as dismissal or removal is ordered on account of conviction of the employee in a criminal Court for an offence involving moral turpitude."

Thus, the stand taken by the 1st respondent in the written statement was that the order dated 2-12-1968 was an order of simple discharge under Regulation 24 and it was not an order of dismissal for misconduct under Regulation 88. The Tribunal, however, upheld the preliminary objection of the 1st respondent to the effect that it had become functus officio and hence it could not entertain the complaint of the petitioner. A writ petition was filed, inter alia, by the petitioner from this decision of the Tribunal. The petitioner succeeded in the writ petition and the matter was remanded back to the Tribunal for a decision on merit. Thereafter by its order dated 20th December, 1974 the Tribunal came to the conclusion that the order of 2nd December, 1968 was not an order of discharge simpliciter but it was a punitive action taken under Regulation 88. The above order was passed by the Industrial Tribunal of M. G. Chitale. After the order M. G. Chitale ceased to be an Industrial Tribunal. The complaints were subsequently heard by the 2nd respondent. By its award dated 31st March, 1975, this Industrial Tribunal, inter alia, came to the conclusion that as far as the petitioner was concerned, the order passed against him on 2-12-1968 was an order passed under Regulation 89(c) and hence it was not necessary for the 1st respondent to comply with the provisions of Regulation 88. The 1st respondent, either in its written statement, or before the Industrial Tribunal of M. G. Chitale, had not contended at any time that the order against the petitioner dated 2-12-1968 was an order under Regulation 89(c). The 2nd respondent, however, allowed the 1st respondent to raise this plea at the stage of arguments on ground that it was a plea of law and upheld the contention that the order of 2-12-1968 was an order under Regulation 89(c). Being aggrieved by this finding of the 2nd respondent, the petitioner has filed the present writ petition challenging the award dated 31st March, 1975.

4. The first objection that is raised by the learned Government Pleader is that the Court, when it exercises its writ jurisdiction, is not acting as an Appellate Court. It, therefore, cannot interfere with a finding of the Tribunal simply on the ground that the finding is incorrect. He has rightly submitted that the Court should be satisfied that there is an error of law apparent on the face of the record before the Court can interfere with the finding of the Tribunal. In this connection he has relied upon two decisions of the Supreme Court both Ganpat Ladha Vs. Sashikant Vishnu Shinde, and page 574 Abdul Rehman v. State Transport Appellate Tribunal. He has also relied upon a decision of the Supreme Court in Biswabahan Das Vs. Gopen Chandra Hazarika and Others, The learned Government Pleader is undoubtedly right when he submits that there could be no occasion for interference unless the finding of the Tribunal is vitiated by an error of law apparent on the face of the record. A perusal of the award, however, makes it clear that the award is vitiated in this manner for reasons given below :

5. In the first place, the Tribunal has failed to take into account the essential requirements under Regulation 89 which it has sought to apply to the older of 2-12-1968. Under Regulation 89(c) the procedure prescribed in Regulation 88 need not be followed provided that the order of dismissal or removal is made on account of a conviction of the employee in a criminal Court for an offence involving moral turpitude. Hence before applying the provisions of Regulation 89(c) the Tribunal should have first examined the nature of the offence in order to decide whether the offence involved any moral turpitude. What is necessary to examine in this connection is the offence for which the employee was convicted and not merely the action of the employee in a particular case. A similar interpretation has been put on the phrase "offence involving moral turpitude" by the Allahabad High Court in Buddha Pitai Vs. Sub-Divisional Officer Malihabad and Others, In that case, some provisions of U.P. Panchayat Raj Act were examined by the Full Bench of the Allahabad High Court. While delivering the majority judgment, Desai, C.J. observed as follows :

"In deciding whether a person is convicted of an offence involving moral turpitude there are two ways of looking at the matter, one of considering the nature of the act done and the other of considering the nature of the offence, punished under the statutory provision. S. 5A speaks of "an offence involving moral turpitude" and suggests that what is to be seen is the nature of the offence which is made punishable by "the statutory provision and not that of the act which is brought within its ambit. It must be the offence, i.e., the ingredients of the offence prescribed by the statutory provision, and not the act actually done, which must involve moral turpitude."

In the present case, the petitioner was acquitted of charges under Ss. 147, 353 and 427 of I.P.C. Section 147 deals with punishment for rioting. Section 353 deals with assault or criminal force to deter a public servant from discharge of his duty. Section 427 deals with mischief causing damage to the amount of Rs. 50 or upwards. Thus, the petitioner was acquitted of all the serious charges which were levelled against him. He was convicted of a lesser offence - of being a member of an unlawful assembly (S. 149) and for wrongful

restraint (S. 341). The only punishment which was inflicted on him was a fine of Rs. 51 and in default, simple imprisonment for a period of two weeks. Thus, if the offence is examined first, it becomes fairly clear that the nature of the offence is such that it cannot be considered as involving any moral turpitude. The action of the petitioner should, therefore, be viewed in the context of the offence for which he was convicted. The petitioner was found guilty under S. 147, I.P.C. inasmuch as he was a member of an unlawful assembly which surrounded the jeep of the 1st respondent. He has been convicted under S. 341 of I.P.C. for wrongfully restraining the engineers of the 1st respondent from proceeding to Budhgaon in the jeep of the 1st respondent.

6. Can it be said that this action of the petitioner for which he has been convicted constitutes an offence involving moral turpitude ? The term "moral turpitude" by its very nature is somewhat nebulous because it involves an examination of an action in the light of the prevailing moral norms. Unlike legal norms, moral norms are somewhat nebulous. They can vary from time to time, from society to society and even from individual to individual. Hence it is quite possible that and action which may be violative of moral norms in one society may appear acceptable to another society. Hence one can only judge the action in any given case in the light of what one considers to be the prevailing moral norms of the society in which such in action has taken place. Secondly, the action should involve turpitude. Hence, the action should not merely be contrary to moral norms but it should involve a violation of the moral code in such a manner that it indicates business or depravity of character. The term "moral turpitude" has been discussed in a number of cases. Thus, in Durga Singh Vs. The State of Punjab, while discussing the conduct of a police constable, the Court has held that "the term ("moral turpitude") has generally been taken to mean to be a conduct contrary to justice, honesty modesty or good morals and contrary to what a man owes to a fellow-man or to society in general." A similar test has been propounded in Baleshwar Singh Vs. District Magistrate and Collector, Banaras and Others, where the Court has once again reiterated that ""moral turpitude" means anything done contrary to justice, honesty, modesty or good morals. It implies, depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude but it would be so if it discloses villains or depravity in the doing of any private and social duty which a person owes to his fellow-men or to the society in general." The above tests are couched in a language which is capable of embracing acts which one would not normally consider as acts of moral turpitude; e.g., every breach of duty which a man owes to his fellow-men or to the society may not necessarily involve moral turpitude. A man may commit a breach of his civic duties and harm his fellow-men. His action may be in violation of the duty which he owes to the society. Nevertheless the act may not involve any moral turpitude. A standard example is a breach of the traffic rules. It is quite possible that by committing a breach of the traffic rules a man may violate his duty to the other road users and put them in unnecessary jeopardy. But violation of traffic rules is not normally considered as an action involving moral turpitude. Basically all laws, rules and regulations are framed for an orderly conduct of transactions in a complex society. It is

quite possible that every breach of such laws, rules and regulations would involve a violation of duty to others. But every such violation does not involve moral turpitude. Hence a more precise test for determining whether a particular offence involves moral turpitude or not, is required. Srivastava, J., expressed such a view in Mangali Vs. Chhakki Lal and Others, In his judgment he has laid down the following tests which could be applied for judging whether a certain offence does or does not involve moral turpitude. These are : (1) whether the act leading to a conviction was such as could shock the moral conscience of society in general, (2) whether the motive which led to the act was a base one and (3) whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society. The Full Bench of Allahabad High Court in Buddha Pitai Vs. Sub-Divisional Officer Malihabad and Others, , has referred to these observations of Srivastava, J. The tests prescribed in the above judgment by Srivastava, J., have also been cited with approval in the case of Risal Singh Vs. Chandgi Ram and Others, The Supreme Court, however, in its judgment reported in AIR 1963 S.C. 1313 In re "P" an advocate, while discussing the conduct of an advocate, has observed that the term "moral turpitude" should be interpreted in the widest possible manner in considering the behavior of an advocate. That observation cannot be of much assistance while considering whether the petitioner has committed an offence involving moral turpitude. From the discussion in the above cases it becomes clear that in order that an offence may be considered as involving moral turpitude it is necessary that there should be on the part of the petitioner, a transgression of the moral code coupled with business or depravity of character.

7. Can it be said in the present case that the action of the petitioner in being a member of an unlawful assembly and in preventing the engineers of the 1st respondent from proceeding to Budhgaon in a jeep results in any transgression of morality or constitutes base or depraved behavior ? The learned Government Pleader has emphasised that as a result of the action of the petitioner, the engineer were prevented from going to the water works at Budhgaon for effecting repairs. As a result, water supply to Budhgaon village could not be restored and the villagers had to suffer. This, according to him, constitutes a gross act of moral turpitude. In my view, it would not be correct to say that the action of the petitioner in preventing the engineers of the 1st respondent from proceeding to Budhgaon to effect repairs to the water works can be considered as involving moral turpitude. It is true that as a result of this action, water supply could not be restored to Budhgaon village. But such an act does not involve violation of any moral or ethical code, nor does it involve depravity. If we apply the tests laid down by Srivastava, J. to the facts of the present case, the action of the petitioner does not shock the moral conscience of society in general. Secondly, the motive which led to the action was not a base one. Basically, the motive was the same motive which led to the strike of the employees. Thirdly, it cannot be said that the petitioner is to be viewed as of a depraved character or as a person who was to be looked down upon by the society in general. Hence the Tribunal committed a basic error in not viewing the action of the petitioner in the light of

the offence for which he was convicted.

8. The learned Government Pleader has forcefully argued that if the view taken by the Tribunal is a possible view, its finding should not be interfered with in a writ petition. In the first place, the Tribunal has failed to take into account the language of Regulation 89(c) and has committed an error of law apparent on the record. Secondly, the Tribunal has proceeded on a basis which was neither pleaded in the written statement nor argued at the stage when the Tribunal of M. G. Chitale considered the nature of the order passed on 2-12-1968. Whether the order was based under Regulation 88 or under any other regulation was directly in issue before the Industrial Tribunal of M. G. Chitale. At that stage, the stand taken by the 1st respondent was, that their order was made under Regulation 24. The 1st respondent had not argued in the alternative that the order was under Regulation 89(c). Thereafter the Tribunal gave a finding that the order was punitive and it was governed by Regulation 88. After this finding, only at the stage of arguments before the 2nd respondent, the plea that the order was under Regulation 89(c), was taken by the 1st respondent. The Tribunal was not correct in taking the view that it was a plea of law and it could be raised even at the stage of argument. A plea of moral turpitude is essentially a mixed plea of law and fact. It may be that the relevant facts were not in dispute. Nevertheless, it cannot be said that the plea that the order was passed under Regulation 89(c) was a plea of law only; or that it could be taken even after a finding to the effect that the order was governed by Regulation 88. The Tribunal also failed to examine the action of the petitioner in the light of the offence for which he was convicted. On all these counts there is a clear error of law apparent on the fact of the record in the finding given by the Tribunal.

9. The learned Government Pleader also argued that Regulation 89(c) should be construed as a punishment for misconduct. The Regulation should be held to govern the misconduct of the petitioner. Hence the Tribunal''s finding should not be interfered with. He cited a decision of the Kerala High Court reported in 1973 Labour and Industrial Cases, Part 11, p. 1131 Premier Tyres Ltd. Kalamessery v. The Workmen of Premier Tyres Ltd. This case, however, has no application to the facts of the present case. The Standing orders in question in that decision are quite different from the Regulations in the present case. Hence, the application of Regulation 89(c) must be confined to the circumstances laid down in Regulation 89(c). Thus, unless the petitioner has been convicted for an offence involving moral turpitude, he cannot be dismissed or removed for misconduct without following the procedure prescribed in Regulation 88.

10. Under the circumstances, Rule is made absolute in terms of prayer (a). The Tribunal should proceed with the complaint of the petitioner in the light of its Order of 20-12-1974.

11. There will be no order as to costs.