# Mr. Awadesh Singh Yadav, Mr. Shankar C. Vasava, Mr. Chetan M. Patel and Mr. Ashwin R. Singh Vs Labour and Enforcement Officer, IPCA Laboratories Ltd. and The Regional Dy. Commissioner (Labour Commissioner)

**Court:** Bombay High Court

**Date of Decision:** April 24, 2009

**Acts Referred:** Constitution of India, 1950 â€" Article 226, 227
Industrial Disputes Act, 1947 â€" Section 10, 33(1), 33(2)

**Citation:** (2009) 111 BOMLR 2168 : (2009) 122 FLR 547 : (2010) 1 LLJ 238 : (2009) 6 MhLj 842

**Hon'ble Judges:** V.M. Kanade, J

**Bench:** Single Bench

**Advocate:** Jane Cox, for the Appellant; R.V. Paranjpe, for the Respondent

## Judgement

V.M. Kanade, J.
By this petition which is filed under Articles 226 and 227 of the Constitution of India, the petitioners are challenging

order passed by the Labour Enforcement Officer/Conciliation Officer, Dadra and Nagar Haveli, Silvassa, dated 21st July, 2008 granting approval

for the dismissal of the petitioners u/s 33(2)(b) of the Industrial Disputes Act and seeking a direction directing the respondent No. 2 to reinstate the

petitioners with full backwages and continuity of service with effect from 30th March, 2007. Lastly, the petitioner is seeking a direction directing

respondent No. 1 to admit into conciliation the demand raised by the petitioners against the respondent company dated 28th February, 2008 and

further direction directing the respondent No. 3 to refer the matter for adjudication u/s 10 of the Industrial Disputes Act, 1947.

2. Shri Kulkarni, learned Counsel for respondent No. 3 submits, on instructions, that respondent No. 3 has decided to refer the matter for

adjudication u/s 10 of the Industrial Disputes Act, 1947 and an order of reference to that effect shall be issued within a short period of time.

3. In view of the submission made by the learned Counsel Shri Kulkarni appearing on behalf of respondent No. 3, a relief claimed under prayer

Clause (c) does not survive. The question which falls for consideration before this Court is whether pending order of reference being issued by

respondent No. 3, whether this Court can consider whether an order of approval which is passed by the Conciliation Officer u/s 33(2)(b), has

been passed in violation of principles of natural justice by exercising its writ jurisdiction under Articles 226 and 227 of the Constitution of India.

4. The learned Counsel appearing on behalf of the petitioners has submitted that the Conciliation Officer being quasi-judicial authority was under

statutory obligation to ensure that the enquiry which was conducted by the employer was fair and proper and he has followed the principles of

natural justice before considering the finding recorded by the Enquiry Officer. In support of the said submission, she has relied on the judgment of

the Apex Court in the case of Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another, and also the case between The Board

of Trustees of the Port of Bombay and Dilip Raghavendranath Nadkarni and others reported in Labour Law Journal, Volume 1 Page 1983. She

submitted that firstly, after the petitioners came to know that in the enquiry which was to be held by the Enquiry Officer, the management was being

represented by a person who was a Law graduate, an application was filed by the petitioners that the petitioners would be permitted to engage a

person having qualification of Law graduate to appear as the Defence Assistant. Pursuant to the said letter which was written by the petitioners

dated 23rd July, 2007, the petitioners were permitted to be represented by an office bearer of their trade union. It was further submitted that the

petitioners were informed that the enquiry will be conducted in accordance with the scale of Model Standing Rules. Inspite of the request made by

the petitioners, the permission was not granted by the Enquiry Officer to the petitioners to be represented by a person having Law graduate

qualification. However, by letter dated 22nd August, 2007, the petitioners were directed to appear alongwith a person who is a member of trade

union of the Company. Accordingly, a letter was written by the petitioners requesting the Enquiry Officer to allow Shri R.B. Jadhav, Secretary of

the Krantikari Kamgar Union to represent the petitioners since there are members of Krantikari Kamgar Union. A certificate and letter of authority

to that effect has been issued by the General Secretary of the Krantikari Kamgar Union. The grievance of the learned Counsel for the petitioners is

that thereafter when Shri Jadhav, Secretary of the Krantikari Kamgar Union appeared before the Enquiry Officer to cross-examine the witness of

the company, Enquiry Officer did not permit him to cross-examine the witness on the ground that he was not a member of the recognised trade

union. It was, therefore, submitted that the Enquiry Officer had violated the principles of natural justice for not permitting the member of the union

to cross-examine the witnesses though the Central Government standing orders clearly stated in Rule (ba) that the workman should be entitled to

be represented by an office bearer of a trade union of which he is a member. It was submitted that therefore, in the entire enquiry, an approval

which was granted by the Conciliation Officer on the basis of the said enquiry report was liable to be set aside. The learned Counsel further

submitted that the witness cross-examined by the petitioners did not give the relevant answer to the question which was asked to him and the

Enquiry Officer did not record the objection raised by the petitioners and as a result, the answers which were given to the questions posed by the

petitioners were totally irrelevant and therefore, the entire enquiry was vitiated.

5. The learned Counsel for the respondent company, on the other hand, vehemently opposed the said submission. It was firstly submitted that since

the matter has now been referred to the Industrial Court on account of statement being made by the respondent company, there was no occasion

for this Court to come into the conclusion of approval which was granted by the Conciliation Officer u/s 33(2)(b) of the Industrial Disputes Act

since the said issue would be considered by the Industrial Court in the reference. Secondly, it was submitted that the word "member of the trade

union" was to be interpreted to mean "a member of a recognised trade union". It was submitted that Krantikari Kamgar Union was not authorised

to operate as a trade union in the Union Territory of Dadra and Nagar Haveli and therefore, the Enquiry Officer was justified in not permitting the

member of Krantikari Kamgar Union to represent the petitioners herein.

6. I have heard both the learned Counsel at length. In my view, though respondent No. 3 has made a statement that the dispute between the

parties will be referred for adjudication before the Industrial Court, yet this Court would have jurisdiction to entertain a writ petition challenging the

order passed by the Conciliation Officer u/s 33(2)(b) granting approval to the order of the termination of the petitioners herein pursuant to the

report submitted by the Enquiry Officer who had inquired into the charges levelled against the petitioners. Section 33(2)(b) reads as under:

33. Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings.-

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders

applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract,

whether express or implied between him and the workman-

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the

commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish whether by dismissal or otherwise, that workman:

7. Perusal of the aforesaid Section reveals that the Conciliation Officer has to pass quasi-judicial order while granting approval to the order of

termination which is passed by the company during the pendency of any dispute between the employee and the company. In the present case, it is

an admitted position that the charter of demand which is made by the petitioners through the union and during the pendency of the said demand,

the respondent company wanted to terminate the services of the petitioners and therefore, it was incumbent upon the Conciliation Officer to decide

whether approval to the said termination should be granted or not. Since the Conciliation Officer was not acting as a quasi-judicial authority, he

was bound to follow the principles of natural justice. The Apex Court in the case of Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd.

and Another, has laid down the jurisdiction of the Tribunal u/s 33(2)(b). In para 12, the Apex Court has observed as under:

12. The position that emerges from the above quoted decisions of this Court may be stated thus: In proceedings u/s 33 (2) (b) of the Act, the

jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant

rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced

before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the

dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the

decisions of this Court in Bengal Bhatdee Coal Co. Vs. Ram Prabesh Singh and Others, ; Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar

(1961) 1 Lab LJ 511 (SC) ; Hind Construction and Engineering Co. Ltd. Vs. Their Workmen, ; The Workmen of Firestone Tyre and Rubber Co.

of India (Pvt.) Ltd. Vs. The Management and Others, and Management of Eastern Electric and Trading Co. Vs. Baldev Lal, that though generally

speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not

required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in

certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the

employer had paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such

reasonable short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for

approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to

the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour

authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds

it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had

paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before

which the main industrial dispute is pending for approval of the action taken by him.

8. In view of the ratio laid down by the Apex Court, it is apparent that while exercising power u/s 33(2)(d), the Conciliation Officer would also be

duty bound to consider whether the domestic enquiry suffers from any defect or infirmity. The petitioners in present case are challenging the said

finding of the Conciliation Officer who has held that the Enquiry Officer had followed the principles of natural justice and that the enquiry was fair

and proper. In my view, the submission made by the petitioners will have to be accepted. Rule (ba) of the Model Standing Orders (Central) Rules

reads as under:

(ba) In the inquiry, the workman shall be entitled to appear in person or to be represented by an office bearer of a trade union of which he is a

member.

9. It is an admitted position that the entire enquiry was being held under the Model Standing Orders (Central) which is apparent from the copy of

the charge-sheet served on the petitioners dated 11th April, 2007. In the said charge-sheet, it has been mentioned as below:

The above act on your part, if proved, amounts to serious acts of misconduct under the Model Standing Orders (Central) applicable to you

10. That being the position, the Enquiry Officer ought to have permitted the office bearer of the trade union of which the petitioners were member

to represent them in the enquiry. Initially, the petitioners by letter dated 23rd July, 2007 had requested the Enquiry Officer to permit them to

engage a person having Law graduate qualification to appear as Defence Assistant in the domestic enquiry. The enquiry Officer, however, declined

this request and informed the petitioners that they could appoint office bearer of the union as per Model Standing Orders and that permission had

been granted to that effect. The said permission was granted in the proceedings which had taken on 22nd August, 2007, copy of which is annexed

at Exhibit-E to the petition. However, when the Secretary of the Krantikari Kamgar Union of which the petitioners were members appeared

before the Enquiry Officer, the Enquiry Officer did not permit him to represent the petitioners herein and asked the petitioners to get office bearer

of a registered trade union. Surprisingly, no further opportunity was given to the petitioners to engage the services of the so called office bearer of a

recognised trade union and as a result, though the respondent company was represented by one Shri Dubey who was a person having Law

graduate qualification, the petitioners could not get the assistance of either a person having a Law graduate qualification or officer bearer of their

trade union of which they were members. It is an admitted position that the petitioners are illiterate persons. The petitioners have not completed

their secondary school certificate examination. In the first place, the Model Standing Orders clearly said that the employee should be permitted to

appoint an office bearer of the trade union of which he is a member. It does not modify the word ''trade union'' to mean ''a registered trade union''.

An Enquiry Officer, therefore, had patently erred in not permitting office bearer of a trade union of which the petitioners were the members to

represent the petitioners. It is obvious that the purpose of Model Standing Rule (ba) is to ensure that the employee gets proper representation

before the Enquiry Officer. Under these circumstances, in my view, the entire enquiry, therefore, is vitiated on account of principles of natural

justice not being followed by the Enquiry Officer and on that ground alone, the entire enquiry stands vitiated and finding of the Enquiry Officer,

therefore, could not have been relied upon by the Conciliation Officer. It is a well settled position in law that if reasonable opportunity to defend is

not granted, that would clearly violate the essence of principles of natural justice. The Apex Court in the case between The Board of Trustees of

the Port of Bombay and Dilip Raghavendranath Nadkarni and others reported in Labour Law Journal, Volume 1 Page 1983 has observed in para

10 as under:

10. Even in domestic enquiry there can be very serious charges and adverse verdict may completely destroy the future of the delinquent employee.

The adverse verdict may so stigmatize him that his future would be bleak and his reputation and livelihood would be at stake. Such an enquiry is

generally treated as a managerial function and Enquiry Officer is more often a man of the establishment. Ordinarily he combines the role of a

Presenting-cum-Prosecuting Officer and an Enquiry Officer, a Judge and a prosecutor rolled into one. In the past it could be said that there was an

informal atmosphere before such a Domestic Tribunal and that strict rules of evidence and pitfalls of procedural law did not hamstring the enquiry

by such a Domestic Tribunal. We have moved far away from this stage. The situation is where the employer has on his pay rolls labour officers,

legal advisers, lawyers in the garb of employees and they are appointed presenting-cum-prosecuting officers and the delinquent employee pitted

against such legally trained personnel has to defend himself. Now if the rules prescribed for such an enquiry did not place an embargo on the right

of the delinquent employee to be represented by a legal practitioner ,the matter would be in the discretion of the Enquiry Officer whether looking to

the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order

to afford reasonable opportunity to defend himself should be permitted to appear through a legal practitioner. Why do we say so? Let us recall the

nature of enquiry, who held it, where it is held and what is the atmosphere? Domestic enquiry is claimed to be managerial function. A man of the

establishment does the robe of a Judge. It is held in the establishment office or a part of it. Can it even be compared to the adjudication by an

impartial arbitrator or a court presided over by an unbiased Judge. The Enquiry Officer combines the Judge and prosecutor rolled into one.

Witnesses are generally employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehensions. Add

to this uneven scales, the weight of legally trained minds on behalf of employer simultaneously denying that opportunity to delinquent employee. The

weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer enjoys. Justice

must not only be done but must seem to be done is not an euphemism for courts alone, it applies with equal vigour and rigour to all those who must

be responsible for fair play in action and a quasi-judicial Tribunal cannot view the matter with equanimity on inequality of representation.

Therefore, apart from general propositions, in the facts of this case, this enquiry would be a one-sided enquiry weighted against the delinquent

Officer and would result in denial of reasonable opportunity to defend himself. He has pitted against the two legally trained minds and one has to

just view the situation where a person not admitted to the benefits of niceties of law is pitted against two legally trained minds and then asked to

defend for himself. In such a situation, it does not require a long argument to convince that the delinquent employee was denied a reasonable

opportunity to defend himself and the conclusion arrived at would be in violation of one of the essential principles of natural justice, namely, that a

person against whom enquiry is held must be afforded a reasonable opportunity to defend himself.

11. In my view, therefore, the Conciliation Officer clearly erred in granting approval to the order of termination which was passed by the

respondent company on the basis of the enquiry held by the Enquiry Officer and further erred in holding that there was no violation of principles of

natural justice. Since the order passed by the Conciliation Officer is quasi-judicial order, he was duty bound to follow the principles of natural

justice. This Court can entertain the petition under Article 226 of the Constitution of India to consider whether there was any breach of principles

of natural justice. The approval granted by the Conciliation Officer u/s 33(2)(b) to order of termination to the petitioners herein is set aside and

quashed.

12. It was strenuously urged by the learned Counsel appearing on behalf of the respondent that at this stage, this Court should not interfere with the

order of approval granted by the Labour Court.

13. Counsel for the petitioner submitted that this Court while exercising its jurisdiction under Articles 226 and 227 could even at this stage interfere

with the enquiry held by the Labour Court under an application u/s 33(2)(b). In support, he relied on the judgment of the Calcutta High Court in

Tushar Kanti Ray v. The Second Industrial Tribunal, West Bengal and Ors. reported in 2004 III CLR 699.

14. Counsel appearing on behalf of the respondent, on the other hand, relied on the following judgments:

1) The Lord Krishna Textile Mills Vs. Its Workmen, ,

2) The Punjab National Bank Ltd. Vs. Its Workmen, ,

3) one judgment of the Gujarat High Court in the case between Navalbhai Karsanbhai Chauhan Vs. Shri Digvijay Woolen Mills Ltd., ,

4) another judgment of the Gujarat High Court in the case between Echjay Industries (P) Ltd. Vs. M. Shivubha and Others, ,

5) The Cooper Engineering Limited Vs. Shri P.P. Mundhe, ,

6) M/s Cipla Ltd. and Others Vs. Ripu Daman Bhanot and Another, .

15. In my view, the judgments on which reliance is placed by the Counsel for the respondent will not apply to the facts of the present case. In my

view, the ratio of the judgment in Tushar Kanti Ray (surpa) will squarely apply to the facts of the present case. The issue before the Calcutta Court

was regarding the scope and jurisdiction of Section 33(2)(b) and 33(1)(b) and whether the writ petition was maintainable since the petitioner had

an alternate remedy. After having considered the rival contentions, the Calcutta High court in paras 15 and 16 has observed as under:

15. I think in my view this argument may not have universal application as it depends upon each and every individual fact and circumstances of the

case. The scope of the aforesaid Section in my view obliges the Tribunal to apply its mind to find prima facie as to whether the disciplinary enquiry

by the employer has been done in accordance with rules of natural justice or not and further punishment imposed based on lawful findings, meaning

thereby the same reached with the support of legal evidence. If it is found that the learned Tribunal granting approval, ignored this infirmity then

certainly the Writ Court has power to examine the same and for this purpose the workmen need not wait for reference u/s 10 of the said Act. The

Larger Bench of the Supreme Court in the case reported in Karnataka State Road Transport Corpn. Vs. Smt. Lakshmidevamma and Another,

has observed amongst other in paragraph 17 that:

Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the

opinion that the directions issued by this Court in Shambhu Nath Goyal case 1983 LIC 1697 need not be varied, being just and fair. There be no

complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an

alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen in as much as

they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence

ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before

the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambhu Nath Goyal case is just and fair.

16. Therefore, if it is found at least prima facie, that the Tribunal itself has committed an error or failed to discharge its statutory obligation by not

following the proper procedure conforming to the principle of natural justice, the workman can very well come with the writ petition though he can

raise an industrial dispute u/s 10 of the said Act. In my view this will be his option, he may come at the first instance, or may reserve his right for

taking action u/s 10 of the said Act. This can be done in rare case, when it is noticed that the learned Tribunal granted approval on perverse

findings reached by the employer, or on the strength of its own finding having no basis of legal evidence or of any evidence. The power of the Writ

Court is to see that there shall not be miscarriage of justice at any stage of the proceedings.

The ratio of the judgment, therefore, will apply to the facts of the present case. Therefore, the writ petition can be entertained at this stage if it is

found that there is a breach of principles of natural justice.

16. Since the matter is now being referred by respondent No. 3 to the Industrial Court, all other questions are kept open and the respondent

company is entitled to prove the alleged misconduct to the Industrial Court by leading evidence.

17. Writ Petition is disposed of.