

(1980) 07 BOM CK 0021**Bombay High Court****Case No:** Special Civil application No. 1342 of 1977

Maharashtra State Road
Transport Corporation and
Another

APPELLANT

Vs

Kachru Saudagar and Another

RESPONDENT**Date of Decision:** July 31, 1980**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 33(2)

Hon'ble Judges: R.S. Bhonsale, J; M.N. Chandurkar, J**Bench:** Division Bench**Advocate:** C.J. Sawant, for the Appellant;**Final Decision:** Allowed**Judgement**

R.S. Bhonsale, J.

The petitioner Maharashtra State Road Transport Corporation (hereinafter referred to as the "Corporation") has in this petition challenged the refusal of the Conciliation Officer, respondent No. 2 herein to grant his approval to the action of dismissal taken by the Corporation against one of its employee by name Kachru Saudagar, Driver No. 1506 of Sillod Depot, who is respondent No. 1 herein.

2. The application which was filed by the Corporation before the Conciliation Officer on August 17, 1976, related to an incident of misconduct on the part of respondent No. 1 driver which occurred on January 21, 1976. In the application made by the Corporation, it was stated that respondent No. 1 was performing his scheduled duty on Jalana Sillod Route by driving Bus No. 5299. He started his bus at about 15.00 hours towards the direction of Sillod. However, as soon as the bus reached Bhokardan on the way, without any signal from the Conductor, he stopped the bus, got down and went to an illicit liquor shop on the road and again came back and started the bus. The travelling passengers shouted that the bus might meet with an

accident since they noticed that after resuming the forward journey the bus was being driven in a helter-skelter manner giving jolts to passengers. Some of the passengers alighted there and took another bus as they refused to travel by the bus driven by respondent No. 1 to Sillod.

3. The Depot Manager of Sillod, therefore, recorded statements of some of the passengers in respect of this incident. According to these statements, as a result of intoxication, the driver was not in a position to drive the bus properly. The passengers inside the bus were not only frightened, but had feared that the bus might meet with an accident as it was run in a zig-zag manner and the uniform statements recorded were to the effect that the driver was driving the vehicle under the influence of drink.

4. As this was a serious misconduct on the part of the driver, respondent No. 1, the petitioner Corporation served a charge-sheet on the driver on February 7, 1976. He was thereafter suspended from service. Respondent No. 1 driver did not care to reply to the charge-sheet. Ultimately the enquiry was held on February 18, 1976. Respondent No. 1 chose to remain absent and, therefore, the enquiry was postponed until March 1, 1976. The charge-sheet served on the driver was under Clauses 10, 11, 22 and 45 of the Corporation's Discipline and Appeal Procedure, Schedule A and the particulars of the head of the charges were (1) misbehaviour, (2) damaging the reputation of the Corporation, (3) breach administrative circulars, and (4) to be under the influence of liquor or alcohol while on duty.

5. During the enquiry, the petitioner Corporation examined one Bhika Patil and liquor vendor one Musakhan Ajibkhan. One Bandu Patil who was Police Patil of village Makheda was also examined. One of the persons who had voluntarily given his statement after the incident at Sillod by name Musakhan Pathan was also examined during the enquiry. The driver on his behalf led the evidence of one Tanhere, to the effect that while he saw other people drinking, the driver was not present at that time.

6. As a result of this enquiry, the competent authority came to the conclusion that there was possibility of danger to the life of the passengers and under the circumstances a show cause notice was issued to the driver as to why he should not be dismissed from service.

7. As some dispute was pending between the workmen and the petitioner Corporation, an application, as stated above, came to be filed before respondent No. 2, seeking approval to the action taken by the petitioner Corporation. The Conciliation Officer after briefly referring to the evidence recorded during the domestic enquiry came to a finding which we find it difficult to sustain. Firstly, according to the Conciliation Officer, the petitioner Corporation ought to have sent the driver for medical examination, as it was alleged that he was under the influence of liquor, either at the Sillod Depot or even after calling him from his residential

quarters. In this view, the passenger who was examined ought to have reaffirmed the drunken position of the driver by smelling his mouth and the Conciliation Officer found fault with the Corporation and the passenger that they have not done this. The Conciliation Officer observed that the statement of the driver was not recorded on the spot. Similarly neither the statements of the passengers were taken in the presence of the driver, nor his signatures were obtained on them in token of having taken the statements in his presence. The Conciliation Officer further observed that the very fact that the driver himself had taken the bus to the Sillod Depot shows that the petitioner Corporation had not made out any *prima facie* case against the driver in inflicting the punishment of dismissal from service. He also gave a finding that the enquiry did not appear to have been conducted in a fair and proper manner as the spot statement of the driver was not obtained. In view of this reasoning, the Conciliation Officer rejected the application of the petitioner Corporation and refused to grant his approval u/s 33(2)(b) of the Industrial Disputes Act, 1947. It is this refusal which is challenged by the petitioner Corporation in this petition.

8. Mr. Sawant, the learned Counsel who appears on behalf of the petitioner Corporation, has rightly, in our view, assailed the reasoning of the Conciliation Officer. The statements recorded in the oral enquiry clearly lead to an inescapable and uniform conclusion that after taking liquor on the way, the respondent driver was driving the bus in a rash and negligent manner and in such a way as to create a fear in the minds of the passengers that the bus might meet with an accident. First such statement was that of Harichand Rajput who has stated that he saw the driver going to the liquor shop and driving the bus in a zig-zag manner and the bus was going down the road. All the passengers got down and travelled by another bus to Sillod. To the same effect is the evidence of the Conductor Jillani. What the driver did in the liquor shop is not a matter of inference in this case because after all the liquor shop vendor Musakhan Ajibkhan was examined and he has stated in an unambiguous manner that the driver of Jalana-Sillod bus at the relevant time consumed liquor and paid 80 paise in his shop. It is true that he was not able to identify the driver, but he had clearly stated that the driver was of Jalana-Sillod bus at the relevant time. There were other witnesses including the Police Patil and some passengers travelling in that bus had stated that the driver had gone to the liquor shop after the bus had left Bhokardan and he had consumed liquor in that shop and was driving the vehicle in a dangerous manner. Bhika Patil also stated in the oral enquiry that he saw Jalana-Sillod bus near Bhokardan. The passengers of the bus near Bhokardan. The passengers of the bus were shouting that the driver of the bus was drunk and that they were not prepared to continue their journey by the said bus. They, therefore, boarded the bus by which he was travelling and continued their journey upto Sillod.

9. All this evidence leaves no doubt in our mind that the driver had not only visited the liquor shop, but the manner of his subsequent driving showed that he had consumed liquor in that shop while on duty. If this was the evidence actually

recorded by the Enquiry Officer at the domestic enquiry, the Conciliation Officer has not only erred but has adopted faulty reasoning for not coming to the same conclusion which the competent authority had come. After scrutiny of the evidence, we do not see that any of the reasons given by the Conciliation Officer for refusal to grant his approval can rationally and legally be sustained. It is enough, in our opinion, if the petitioner Corporation makes a *prima facie* case before the Conciliation Officer on the basis of the report of the competent authority. It was not necessary that the petitioner Corporation ought to have sent the driver for medical examination or the statement of the driver ought to have been recorded on the spot. Besides all these reasons, we do not see any other reason which would have compelled the Conciliation Officer to hold the enquiry as unfair and deprived the driver of reasonable opportunity to defend himself. Whether a delinquent has reasonable and fair opportunity in a domestic enquiry are questions of facts in each case and, in our opinion, the evidence of number of witnesses in this case clearly shows that a fair and reasonable opportunity was given to the delinquent.

10. The Supreme Court has exhaustively dealt with the requirements for giving approval by the Industrial Tribunal to an action of dismissal taken by the management in Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another, where the Supreme Court has pointed out that when the Tribunal is asked to give its approval to the order of dismissal u/s 33(2)(b) of the Industrial Disputes Act, 1947, it can disregard the finding of the Enquiry Officer only if the findings can be called perverse. It is now well established from the series of decisions of the Supreme Court that such a test of perversity is indicated when the finding is not supported by any legal evidence at all. The question is whether it can be said that the finding of the Enquiry Officer or the Domestic Tribunal was one which no reasonable person would have arrived at on the material before him. If the enquiry is not defective, the Labour Court has only to see whether there was *prima facie* case for dismissal and whether the employer had bona fide come to the conclusion that the employee was guilty of misconduct.

11. We have ourselves assessed the evidence produced before the Enquiry Officer and we cannot persuade ourselves to accept that on the evidence so recorded before the Enquiry Officer, the punishment of dismissal was not warranted or justified. We fail to understand as to why the Conciliation Officer had refused to grant his approval to the order of dismissal of the driver in question. As we have held above that fair and reasonable opportunity was given to the driver to defend himself and there was a *prima facie* case made out by the petitioner Corporation for dismissal based on the legal evidence produced before the Enquiry Officer, in our opinion, the Conciliation Officer was in error in not granting his approval to the action of dismissal of the respondent driver.

12. We, therefore, allow the petition, set aside the order of the Conciliation Officer and direct that approval be granted to the action proposed by the petitioner

Corporation to dismissal respondent No. 1. Driven from its service with effect from May 26, 1976.

13. The rule is made absolute. However, in the circumstances of the case, there will be no order as to costs.