(1999) 11 BOM CK 0046

Bombay High Court

Case No: Writ Petition No''s. 2069 and 2070 of 1995

M/s. Indian Hotels Company Ltd. — APPELLANT

Vs

Shri Bhaniram P. Chunera — RESPONDENT

Date of Decision: Nov. 1, 1999

Acts Referred:

- Constitution of India, 1950 - Article 227
- Industrial Disputes Act, 1947 - Section 11

Citation: (2000) 1 ALLMR 299 : (2000) 2 BomCR 226 : (2000) 2 BOMLR 296 : (2000) 84 FLR 458 : (2000) 1 MhLj 469

Hon'ble Judges: R.J. Kochar, J

Bench: Single Bench

Advocate: C.U. Singh, Jamshed K. Mistry, Kaizad Irani and Jatin Poro instructed by Mulla and Mulla, for the Appellant; N.M. Ganguly, R.S. Kulkarni Sr. A. and L.H. Acharya, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.J. Kochar, J.

The present matters reflect a glaring irresponsibility on the part of the trade unions which have caused irreparable damage to the employment of 22 workmen who have lost the best of the jobs available in this country under five star service conditions with extremely good payment. I am told across the bar that out of the 22 workmen 20 have amicable settled with the petitioner on monetary basis. The remaining two workmen are still continuing to fight the battle resulting in filing of this petition.

2. The whole dispute appears to have arisen in the process of the employees trying to shift their loyalty and allegiance from Bhartiya Kamgar Sena to the Union controlled by C.I.T.U. Both the unions wanted to establish their respective superiority and control over the workmen and in the process of their fight they have

taken toll of 22 workmen, who were thrown out from the five star establishment owned by the petitioner company.

3. Dr. R.S. Kulkarni, the learned Counsel being the experienced fighter for the cause of workmen has tried to give a theoretical base to the dispute by submitting that it was during the process of trade union agitation and the owners of the five star hotels i.e. the petitioner did not like the switch over of the workmen from the existing trade union Bhartiya Kamgar Sena (BKS), favoured by the petitioner''s management, to C.I.T.U. Short of saying that this was a class struggle, the learned Counsel for the respondent No. 1 indeed tried to raise the level of the dispute which originally the trade unions did not contemplate. According to me, the trade unions must also function in such a way that they save the valuable jobs of the workmen in their struggle or fight with the establishment. They should not take the battle to such an extent that they sacrifice the workmen and their families and throw them in the dustbin of existing unemployment. It is well known now that as soon as an active workman is out of employment, by and large, even the doors of his trade union are shut for him and he ceases to be a welcome visitor in the office of such a trade union. It is most unfortunate experience that while claiming right to work and right to live, as was argued by Dr. Kulkarni, the trade unions hardly care to preserve and protect such rights of those who are already enjoying them. They should take utmost care that those who are already in employment, are not sacrificed on the alter of the so called class struggle. According to me, now the days of class struggle are over and instead we should have class relationship till we usher into a classless society.

4. The present two respective respondents in the above petition were employed by the petitioner as watchman and Mazdoor from 1978 and 1980. It appears that a number of workmen along with above respondents forcibly entered the office of the General Manager demanding withdrawal of charge sheet issued against one of their colleagues. The aforesaid incident gave rise to the issuance of charge sheets and subsequent institution of domestic enquiry against 22 charge sheeted workmen, including the present two respondents. I am skipping the other details in respect of the appointment of Enquiry Officer and subsequent changes etc. I am also not mentioning the other details or other developments which took place in the process of the legal battle. In short, the Union filed several proceedings against the petitioner company and appropriate orders were passed at every stage by the respective courts.

5. In the present case the domestic enquiry was boycotted by the workmen and the petitioners held an ex parte enquiry in the absence of the charge sheeted workmen and finally dismissed them. As usual those dismissal orders were challenged by the workmen who raised industrial dispute praying for reinstatement with full back wages and continuity of service and the said disputes were referred for adjudication to the Labour Court, where both the parties filed their pleadings and documents. On

the basis of the said material, the Labour Court framed a preliminary issue regarding the legality, validity and fairness of the domestic enquiry held by the petitioner. On the basis of the oral evidence recorded on that point and on the basis of the documents available before the learned Judge, it was held by him that the enquiry was vitiated as principles of natural justice were not complied with, and therefore, by his Part I award dated 29th July, 1994, quashed and set aside the domestic enquiry and directed the petitioners to adduce evidence before the Court to prove the misconduct alleged in the charge sheet and to justify the dismissal orders. The petitioners were aggrieved by the said Part I award, and therefore, they filed the present petition challenging the said findings recorded by the Labour Court.

6. I am also not referring to what transpired after the petitions were filed as I am not very much concerned with the orders passed by the learned Judges at the stage of admission which were carried into appeal and finally they have landed before me for final hearing. I will confine myself to the point, whether the Part I award passed by the Labour Court is legal and valid.

7. Dr. Kulkarni, the learned Counsel for the respondents has raised a basic preliminary objection to the maintainability of the petitions at this stage. His contentions are supported by a judgment of the Supreme Court in the case of The Cooper Engineering Limited Vs. Shri P.P. Mundhe, . The learned Counsel for the respondents submits that the Supreme Court has in very unequivocal terms cautioned the High Courts not to exercise its writ jurisdiction to stall the final adjudication of the dispute by the Labour Court. The law laid down by the Supreme Court is in the paragraphs 19 and 20 of the judgment which are as under :---

19. "We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.

20. "In the present case, however, besides the long delay that has already taken place, since the law laid down by this Court was not very clear at the time of the

award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

There is absolutely no quarrel with the said proposition of the law laid down by the Supreme Court. The Supreme Court had proceeded on the basis and presumption that the delinquent workman participates in the enquiry and conducts the same bona fide without any motive to stall the enquiry and in a regular course of the enquiry allows the Enquiry Officer to record the evidence and allows him to complete the enquiry in a disciplined and civil manner, without any untoward incident during the course of the enquiry. If both the sides carry on the enquiry in accordance with the rules of the game, in that case, the judgment of the Supreme Court would strictly be attracted. Their Lordships have contemplated the normal course of the enquiry wherein the employer appoints an Enquiry Officer and the charge sheeted workman submits to the Enquiry Officer and permits the course of the enquiry to take place in accordance with rules, that is to say, he submits his explanation to the charge sheet, he attends the enquiry regularly as and when appointed by the Enquiry Officer, he cross examines the witnesses and thereafter he examines his own witnesses and submits his own statement and thereafter walks out peacefully without creating any trouble, hindrance or any untoward scene by behaving disorderly or righteously during the course of the whole enquiry.

8. I am afraid, the law laid down by the Supreme Court will not apply in the kind of enquiry which is before me. In the present case, the behaviour or the conduct of the workmen in the domestic enquiry, to say the least, was not proper. The 22 charge sheeted workmen were continuously obstructing the proceedings of the enquiry, they were creating ugly scenes using filthy and abusive language and in a very indecent and disorderly manner and they were not controlled at all by their representative, an advocate, who was present in the enquiry to defend them. They appear to have forgotten that they were the members of a responsible trade union and the employees of a five star hotel. They should not have behaved in a manner in which they have behaved during the entire course of enquiry. The Enquiry Officer has recorded the manner in which they were behaving making it almost impossible for the Enquiry Officer to carry on the business in a reasonably disciplined and smooth way. It appears from the record that their main object was to create obstructions in the enquiry. It is further unfortunate that even their representative instead of giving reasonable and responsible co-operation in the statutory work of domestic enquiry tried to create hurdles. It is unreasonable for a representative defending the delinquent workmen praying for an adjournment of more than one month in the holding of the enquiry on the ground that he was not available. It is also found on the record that he had boycotted the enquiry and had walked out without cross-examining the management''s witnesses. It is recorded by the Enquiry Officer on 17th September, 1984 at page 115 of the enquiry proceedings (W.P. 2069). The Enquiry Officer had warned the workmen that they would lose the right

of cross-examination, if they boycotted the enquiry. It is also found from the record of the enquiry proceedings that the workmen along with their representatives were merely asking for adjournment on one or the other ground. I have perused the roznama maintained by the Enquiry Officer and there is no dispute over this fact that many adjournments were sought on one ground or the other by the workmen. On 17th October, 1984, such an application for adjournment was rejected and the examination-in-chief of the management witnesses Ms. Shirin Batliwala in the absence of the workmen was conducted as they were absent. Similarly on 17th, 18th, 19th and 20th October, 1984, the management''s witnesses were examined and they remained to be cross-examined as the workmen and their representative continued to boycott the enquiry. On 28th October, 1984, the workmen remained present and requested to recall the witnesses as they were examined in their absence. Naturally this request was rejected by the Enquiry Officer. It is also borne out from the record of the enquiry that the workmen refused to make their statements and to examine their witnesses. They made a rather unusual request to the Enquiry Officer to call one Ms. Mona Chawla as their witness. The Ms. Mona Chawla was in the employment of the company, and therefore, the Enquiry Officer recorded that he had no powers to summon her as a witness of the workmen. He however told the workmen that they were free to examine any witnesses and he would record their statements. He, therefore, gave his ruling that he would not call Ms. Mona Chawla, and thereafter, he was constrained to close the enquiry finally as the delinquent workmen refused to call any other witnesses. In this behalf the Enquiry Officer has recorded his findings.

9. It has also come in the evidence of one of the workmen before the Labour Court that "it is correct to say that we and Mr. Sawant boycotted the enquiry on 17th September, 1984. The enquiry was fixed on 4 days from 17th September, 1984." The workman has further stated thus "on 17th we boycotted the enquiry but I do not remember the month. I did not remain present in enquiry on 18th, 19th, 20th October, 1984. I do not remember thereafter the enquiry was fixed for leading evidence from our side. After 17th I did not remain present in the enquiry on any date." This is oral evidence recorded before the Labour Court. The Enquiry Officer has recorded verbatim the conduct of the delinquent workmen who were present in the enquiry. At one place the abuses which were given are recorded. The abuses are really shocking and which could not have been given by the members of the responsible trade union. It is also recorded by the Enquiry Officer that one of the workmen Shri Wania abused the Enquiry Officer as also the management representative and gave threat that he will break their bones. He even went to the extent of challenging the Enquiry Officer, if he had such guts to record the abuses. It is very unfortunate that the representative of the workmen had expressed his inability to control the workmen who were behaving in this uncultured and uncivilised manner. The workmen even went to such an extent that they abused in filthy language Shri A. Limaye about his paternity whether he was really the son of

Shri Madhu Limaye, a well known socialist leader. The workmen had absolutely no business to abuse Shri Limaye, his father Shri Madhu Limaye in the manner that is recorded by the Enquiry Officer verbatim. It appears from the entire record of the Enquiry Officer that he was recording all the abuses by the workmen hurled at the witnesses. The Enquiry Officer has by name recorded the abuses and misbehaviour of the charge sheeted workmen who were present in the enquiry. It was the last straw on the back of the camel on 29th November, 1984 when the Enquiry Officer could not make any progress in the enquiry and was compelled to conclude the enquiry. This ugly and unbecoming behaviour of the charge sheeted workmen is verbatim narrated by the Enquiry Officer on page 341 of the proceedings. I am resisting my temptation to reproduce the entire verbatim story penned down by the Enquiry Officer. At one place the verbatim abuses against Ms. Shirin Batliwala are recorded, which no civilised man would even be able to read loudly. Mr. Singh the learned Counsel for the petitioners could not read the same in open Court and in fact requested me to read the same by myself. It would have been cruel and oppressive on the part of the Enquiry Officer to have recalled her at the instance of the workmen.

10. This is certainly not a trade union culture and working class civilisation. Let all the trade union functionaries and even the active trade unionist never forget what the Doyen of the Indian Trade Union movement Comrade S.A. Dange had advised them in 1952 :---

"The trade union functionary himself must develop culture, must be modest and patient with the masses. Even while negotiating and dealing with the "enemy" at the conciliation and negotiation table, he should be polite and dignified, though sharp and firm in his approach. Rudeness is not an attribute of the class struggle."

Contrast this great sermon with the behaviour of the workmen concerned in the enquiry. When we have accepted the constitutional frame work and those who demand right to work under the constitution, must strictly observe the constitutional ethos and culture and must respect others'' rights also.

11. The record of enquiry reflects the abuses and obstruction by the charge sheeted workmen. Instead, they could have participated in the enquiry to defend themselves. But their motives from the beginning were absolutely clear to not to allow the management to hold the domestic enquiry but frustrate it finally and indeed they have "succeeded" in doing so. In their "success", I however, find their suicide.

12. I, therefore, do not agree with the findings of the Labour Court that the domestic enquiry suffers from violation of the principles of natural justice. The Labour Court ought to have gone through each and every page of the enquiry proceedings. It could have then realised the terrorist approach of the workmen who never had even the slightest inclination to participate in the enquiry. They were

aided and abetted by their representative also. Any union representative worth his name as a "Soldier of the trade union movement" would never allow such a behaviour of the workmen. He would never tolerate any filthy language or abuses against a lady. All this was going on in his presence and he finally told the Enquiry Officer that he was not able to control them and that he was not a police officer. If the workmen themselves had boycotted the enquiry knowing fully well the consequences, according to me, there is no violation of principles of natural justice if the Enquiry Officer refused to recall the witnesses and to re-call for what? Again to allow these workmen to abuse the ladies and other management witnesses? To accept and hear their filthy language? The witnesses were already terrorised by the threatening conduct of the 22 delinquent workmen.

13. The workmen had no right to request to recall the witnesses. When they were being examined, the workmen deliberately boycotted the enquiry proceedings. I, therefore, do not find any slightest breach of principles of natural justice. The workmen themselves did not want to take part in the enquiry. The delinquent workmen were offered an opportunity of hearing which they denied to themselves. They did so deliberately and after calculations. In these circumstances, the workmen cannot make any grievance that no opportunity was given to them to cross-examine the witnesses and that the petitioners should be directed to prove the misconduct by leading evidence before the Labour Court. This is not what is contemplated by the industrial adjudication and labour jurisprudence.

14. I do not agree with the submissions of Dr. Kulkarni on behalf of the respondents that I should not interfere with the award of the Labour Court. I also do not agree with the submissions of the learned Counsel that there was no error of jurisdiction when the Labour Court had held that enquiry was not fair and proper. I do not have even the slightest doubt that the workmen never wanted to attend the enquiry, and therefore, had with open eyes and clear understanding deliberately walked out of the enquiry. It was, therefore, not open to them to say that the witnesses should be recalled or should be examined before the Labour Court and that there was no effective participation on their part in the domestic enquiry. The learned Counsel for the respondents tried to submit that much is made about their misbehaviour. Fortunately, the learned Counsel has merely and mildly submitted that much was made about their misbehaviour, which implies that misbehaviour was there in the enquiry and if there is any misbehaviour in the enquiry on the part of the workmen, it cannot be said that the enquiry was wrongly closed or concluded.

15. It is to the credit of the learned Counsel for the respondents that he did not defend the misbehaviour or filthy language of the workmen in the enquiry, and according to me, rightly so. The learned Counsel had tried to raise the level of the dispute to the constitutional level that the workmen have right to work and that, that right should be protected. The right to work was given up by the workman themselves, and therefore, there is no question of my protecting their right to work.

16. In the aforesaid circumstances, I quash and set aside the Part I award of the Labour Court holding the enquiry not fair and/or proper. It would, however, be open to the parties to approach the Labour Court for deciding the question of punishment u/s 11A of the Industrial Disputes Act, 1947. The Labour Court shall decide the question of punishment in accordance with law.

17. With the above discussion, the petition is allowed. Rule is made absolute with no costs.

18. Petition allowed.