
(1993) 12 BOM CK 0004
In the Bombay High Court

Amar Dye-chem Ltd

APPELLANT

Vs

M.R. Bhope and Others

RESPONDENT

Date of Decision : 07-12-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (1994) 3 BomCR 436 : (1994) 68 FLR 1160

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Judgement

B.P. Saraf, J.—By this writ petition, the petitioner Amar Dye-Chem Limited, have challenged the award dated 9th February, 1989 of the First Labour Court, Bombay in a reference u/s 10(1) and 12(5) of the Industrial Disputes act in respect of the concerned workman. By the said award the Industrial Court decided against the petitioners the preliminary issue whether the enquiry was fair and proper and held that it was not fair and proper.

2. The facts of this case, briefly stated, are as follows :

Sometime in October-November, 1981, there was serious Labour trouble at the factory of the petitioners at Shahad leading to lockout of the above factory and suspension of all manufacturing activities. Immediately after the issue of lock out notice dated 5.11.1981 in respect of the above factory, on 8.11.1981 there was a flash strike by the workers at the headquarters of the petitioners, which was later declared illegal by the Labour Court. A number of incidents took place at that time. According to the Management, 17 workers were involved in severe assault on the purchase officer leading to the grievous injuries to him. In such a situation on 13.12.1981, the management issued charge-sheets against 17 workmen (including respondent No. 2 herein) for alleged commission of grave misconduct. By consent of the management and the workmen, a joint enquiry was held into the charges against all the 17 workmen. Initially the charge-sheeted workmen were made into two groups of 8 and 9 persons respectively. All charge-sheeted workmen nominated one Mr. Yagnik, who was also one of the

charge-sheeted workman, as their representative to conduct the proceedings. The modalities of enquiry were also settled between the parties. It was agreed that the proceedings would be in Hindi or Marathi but could be recorded in English. It was also agreed that the day-to-day record of the enquiry could be handed over to the charge sheeted persons or the defence counsel or their representatives. Later, however, by consent of the parties, the two sets of enquiries were merged into one. The enquiry was held on different dates between 2nd February to 5th July, 1982. A number of witnesses were examined by the management in support of the charges, who were cross-examined not only by the charge sheeted workmen's representative but also by many of the charge sheeted workmen themselves. Out of the 17 charge sheeted workmen, 15 deposed in their own defence as well as in defence of their co-charge-sheeted workmen. Mr. Yagnik, who was conducting the enquiry as representative of the charge-sheeted workmen, also examined himself as a witness. All those workmen were also cross-examined. On 28.6.1982, after concluding the evidence of the 15 charge-sheeted workmen, a prayer was made on behalf of charge-sheeted workmen for an adjournment to enable them to produce some further witnesses. Though the Enquiry Officer felt that it was the duty of the charge sheeted workmen to remain present if they wanted to do so, he adjourned the case till 30th June, 1982. While doing so, he made the following observations :

"However, I would like to give an opportunity to C. S. Ps (Charge-sheeted persons) concerned to put in their appearance in the enquiry if they desire to do so. I, therefore, would like to adjourn today's enquiry and resume the same on 30th July, 1982 at 10.30 p.m. In case anyone of the concerned C. S. Ps or both of them do not remain present on 30th June, 1982, for enquiry, the enquiry will be proceeded without any further adjournment. I am requesting Mr. S. E. Pereira to please take note of this position."

It may be observed that Mr. Z. E. Pereira, who was one of the charge-sheeted workman, was also acting as a representative of all charge-sheeted workmen in the absence of Mr. Yagnik. On 30th June, 1982, Mr. Pereira informed the Enquiry Officer that he was not able to produce any witness in the absence of Mr. Yagnik who was the real defence counsel for all the charge-sheeted workmen. He also stated that he had no ideas as to how Mr. Yagnik intended to conduct further proceedings or whether he had any witnesses or documents to produce. He further told that Mr. Yagnik was out of station and would be available only on 3rd July, 1982. The Enquiry Officer observed that the representative of the charge-sheeted workmen was not ready with the defence witnesses. However, in the interest of natural justice, he decided to give some more time to the charge sheeted workmen and their counsel to keep the witnesses ready. The hearing was adjourned to 5.7.1982. It was, however, made clear that no excuses will be entertained for not keeping the defence witnesses ready on the next date. On 5.7.1982, the charge-sheeted workmen informed the Enquiry Officer that Mr. Yagnik had met Mr. Pereira day before and informed him that he would attend

the enquiry a little later at about 2.00 p.m. because of his personal/union work at Ghatkopar. Mr. Pereira was also absent on that day. The Enquiry Officer noted that sufficient time and opportunities had been given to the charge-sheeted workmen. he also observed that no intimation had been given to him by Mr. Yagnik regarding his inability to attend the enquiry. He, however, adjourned the enquiry till 12.30 p.m. to give an opportunity to the charge-sheeted workmen to name their representative and to proceed with the enquiry. When the enquiry resumed at 12.30 p.m., the same earlier statement that their defence counsel Mr. Yagnik would attend the enquiry at 2.00 p.m., was reiterated before the Enquiry Officer. In such circumstances, the Enquiry Officer closed the enquiry, fixed a date for his report. The report was given on 10.8.1982. In pursuance of the said report, five charge-sheeted workmen, including the second respondent herein, were dismissed by the management. Applications were filed by the management before the Industrial Tribunal for approval of the order of dismissal. The charge-sheeted workmen did not appear in those proceedings also. The approval was granted and accordingly the workmen were dismissed.

3. A demand was made by the workmen for reinstatement in service. ultimately the demand was referred by the Deputy Commissioner of Labour Bombay to the Labour Court u/s 10(1) and 15(5) of the Industrial Disputes Act, 1947. One of the grounds of challenge to the order of dismissal on behalf of the dismissed workmen was that the enquiry was not fair and proper as they were denied sufficient opportunity to defend themselves. This controversy was decided as a preliminary issue by the First Labour Court, Bombay, who by its award dated 9.2.1989, held that the enquiry was not fair and proper. This was done mainly on three grounds. First, that the list of witnesses was not furnished to the charge-sheeted workmen. Second, day-to-day proceedings were given to the representative of the workmen and not to each individual workmen. Third, no reason was given by the Enquiry Officer as to why on 5th July 1982, on being informed that the workmen representative would come at 2.00 p.m., it was not possible for him to wait till 2 p.m. The labour Court held that the refusal to adjourn the enquiry amounted to violation of principles of natural justice. The employer has challenged the above award of the First Labour Court.

4. The submission of the counsel for the petitioners is that the enquiry was most fair and proper. The modalities of the enquiry were settled with the consent of the parties and adjournments were given from time to time to the parties to take care of all their difficulties. Enquiry was held on 37 dates. The management witnesses were duly cross-examined by the representative of the charge-sheeted persons and in many cases, also by the charge-sheeted persons themselves. 15 out of 17 charge-sheeted persons examined themselves who were also cross-examined by the management. No information was given to the Enquiry Officer as to who were the further witnesses to be examined on behalf of the charge-sheeted persons. The prayers for adjournment on the last 2-3 occasions were absolutely vague and were intended only to stall the enquiry. According to the learned counsel for the management, the enquiry officer was liberal enough to

adjourn the enquiry as and when asked for to enable the charge-sheeted persons or their representative to produce any witnesses they liked. On the last occasion, it was also made clear by the enquiry officer, that no more adjournment would be given and in the event of their failure to produce the witnesses, he would proceed on the basis of the available materials. Despite that, on the next date of hearing, the enquiry officer waited till 12.30 p.m., but none appeared. Under the circumstance, the enquiry was closed. The counsel submits that the enquiry officer was fully justified in doing so and no fault can be found in his action. According to the counsel, it is wrong to contend that the enquiry officer was bound to accept literally each and every request of the charge-sheeted workmen for adjournment and by not doing so he acted illegally and in violation of the principles of natural justice. So far as the non-filing of the list of witnesses and supply of day-do-day proceedings to the representative of the workmen is concerned, it is submitted that the respondent never raised any objection on that count and proceeded with the enquiry. No prejudice was caused on that count. So far as refusal to wait till 2.00 p.m. on the particular date is concerned, the learned counsel submits that the Enquiry Officer gave more than adequate opportunities to the workmen, on every occasion making it clear that it was a last chance. On the last day also, he waited till 12.30 p.m. for the representative of the respondent to appear and only thereafter closed the enquiry. Under the circumstances, the counsel for the management submits that no fault can be found with the action of the Enquiry Officer. In such a case, the learned Labour Court, was not justified in holding that the enquiry officer had not recorded any reason for not waiting upto 2.00 p.m., as desired by the respondent, because the reason is self-evident from the orders of the Enquiry Officer on the said date as well as on earlier occasions.

5. Counsel placed reliance on the number of decisions of the Supreme Court, more particularly the decisions in *K.L. Tripathi Vs. State Bank of India and Others*, and *Chandrama Tewari Vs. Union of India (UOI)* (through General Manager, Eastern Railways), .

6. The learned counsel for the respondent, on the other hand, submits that there was a violation of rules/principles of natural justice in the instant case. The procedural requirements were not complied with and the workmen were denied the opportunity to examine their witnesses by refusing the adjournment upto 2.00 p.m. on the last date. The counsel submits that procedural fairness is the essence of natural justice and procedural violations cannot be lightly brushed aside. The learned counsel submits that in case of violation of principles of natural justice it is not necessary to establish prejudice to the party concerned. Reliance was placed on the decisions of the Supreme Court in *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, , *S. E. & Stamping Work v. Workmen* 1963 SC 1914, *Vinayak Bhagwan Shetye v. Kismet Pvt. Ltd.* 1983 (47) FLR 390, *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* (1975) 1 LLJ 299 and *State Bank of India and others Vs. D.C. Aggarwal and another*, .

7. I have carefully perused the orders passed by the enquiry officer on different dates relevant for the purpose of present controversy. I have also carefully considered the award of the Labour Court. On perusal of the same, in the light of the facts and circumstances of the instant case and the rival submissions of the counsel for the parties, I find that the Labour Court was not justified in holding that the enquiry was not fair and proper. He took too hypertechnical view of the matter in holding that the refusal to wait till 2.00 p.m. for the representative of the workmen to appear without recording any reasons therefore is absolutely erroneous. In fact, from the various orders, it is clear that more than adequate opportunities were given to the workmen and even on the last date the enquiry officer waited for the workmen representative to appear till 12.30 p.m. Repeated warnings had been given in the past while adjourning the case that no more adjournment would be given. In such no more adjournment would be given. In such circumstances, it is not possible to hold the enquiry to be not fair and proper on that count because it is not a right of a charge-sheeted workman to ask for a adjournment as and when he likes or the duty of the enquiry officer to act as per his dictates. As observed by the Supreme court in *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, , it would be unreasonable to suggest that in a domestic enquiry, it is the right of the charge-sheeted employee to ask for as many adjournments as he likes. In the case before the Supreme Court, the Enquiry Officer had refused to adjourn the hearing at the instance of the charge-sheeted persons. The Supreme Court observed (at p. 159) :

"..... it is true that if it appears that by refusing to adjourn the hearing at the instance of the charge-sheeted workman the Enquiry Officer failed to give the said workmen a reasonable opportunity to lead evidence that may in a proper case be considered to introduce an element of infirmity in the enquiry; but in the circumstances of this case we do not think it would be possible to draw such an inference. The record shows that the Enquiry Officer went out of his way to assist Raghavan (the workman); any it the witnesses did not turn up to give evidence in time it was not his fault....."

It was accordingly held that the Tribunal was in error in coming to the conclusion that the enquiry suffered from the infirmity that it was conducted contrary to the principles of natural justice.

The above decision of the Supreme Court squarely applied to the facts of the present case. Here also it is evident from the records of the case that the Enquiry Officer gave abundant opportunities to the workmen and their representative to produce the witnesses they liked. He adjourned the case from time to time as desired by them. On the last date also, he waited till 12.30 p.m. Despite all that no witnesses having been produced before him, he was left with no option but to close the enquiry. No fault can be found in such a case with the action of the Enquiry Officer.

8. I may now turn to the challenge to the fairness of the enquiry not he ground of non furnishing of list of witnesses alongwith the charge-sheet and furnishing of

day-do-day proceedings to the representative of the workmen only. I do not find that this by itself in any way violated the principles of natural justice.

There is nothing to show that during the enquiry, any grievance was made by the workmen on that score at any stage. Similarly, the day-do-day proceedings were given to the representative of the charge-sheeted persons regularly and the charge-sheeted persons regularly and the charge-sheeted persons themselves were also present in the enquiry on most of the occasions. No grievance was ever made by any of them on that count. It will, therefore, be unreasonable to suggest now that there was violation of principles of natural justice in conducting the enquiry in the manner it was done in this case. Evidently, no prejudice was caused to the charge-sheeted workmen. Reference may be made in this connection of the decision of the Supreme Court in *K.L. Tripathi Vs. State Bank of India and Others*, . In this case the order of dismissal of an employee was challenged on the ground that the materials against him were gathered in his absence and he was not allowed to cross-examine the witnesses. Evidence against him was not recorded in his presence. The order was challenged on the ground that it violated the principles of natural justice. The Supreme Court held :

"The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular facts, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no dispute regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement."

The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statement. Where there is no dispute as to the facts or the weight to be attached on established facts but only an explanation of the facts, absence of opportunity to cross-examination does not create any prejudice in such cases."

The Supreme Court further observed;

"It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the

question whether there has been any infraction of the application of that principle has to be judged in the light to that and circumstances of each particular facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objection manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed."

The Supreme Court referred with approval the following observations of Hidayatullah, C.J. in Jankinath Sarangi Vs. State of Orissa, :

"There is no doubt that if the principles of natural justice are violated and there is a gross case this court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right."

9. To the same effect is the decision of the Supreme court in Chandrama Tiwari v. Union of India 1988 I CLR 154, where also it was held that non-supply of copies of some of the documents which were not relevant or material did not amount to violation of principles of natural justice as no prejudice was a caused to the delinquent in cross-examining the concerned officer.

10. Applying the ratio of the above decisions to the facts of the present case, it is clear that non-furnishing of list of witnesses alongwith charge-sheet and supply of day-to-day proceedings to the representatives of the charge-sheeted workmen who were conducting the enquiry on behalf of all of them, having not in any way prejudiced the charge-sheeted workmen do not amount to violation of principles of natural justice.

11. In view of the foregoing discussion, I am of the clear opinion that the learned Labour Court was not justified in holding that the enquiry was not fair and proper. The award of the Labour Court is, therefor, set aside and the case is remanded to him to decide the matter afresh on merits in accordance with the provisions of law.

12. As this matter is very old one, the Labour Court is directed to dispose of the same as expeditiously as possible, at any rate within a period of six months from today.

13. In the result, this writ petition is allowed in the above terms.

14. Under the facts and circumstances of the case, there shall be no order as to costs.

15. Certified copy expedited.