
(1984) 02 DEL CK 0040
In the Delhi High Court
Case No : Civil Revision No. 773 of 1983

Amarnath

APPELLANT

Vs

Swatantra Bharat Mills and Another

RESPONDENT

Date of Decision : 07-02-1984

Acts Referred:

Citation : (1985) 1 LLJ 39

Hon'ble Judges : N.N. Goswamy, J

Bench : Single Bench

Judgement

1. This petition, under Art. 227 of the Constitution of India, brings to light yet another unfortunate case where the employer has been able to evade decision of the industrial dispute on merits for over 15 years by adopting the devices similar to those noticed by the Supreme Court in D. P. Maheshwari v. Delhi Administration 1983 2 L.L.J. 425

2. Amar Nath, the concerned workman, was employed with Swatantra Bharat Mills for the last over 20 years on the date of the reference. The case of the managements is that he was showing less efficiency during the period from 1st December, 1965 to 13th December, 1965. He was called by Shri S. B. Saxena, shift in charge at about 12.45 a.m. on 14th December, 1965, to explain the reasons for showing less efficiency. When asked, the workman pointing out towards Mr. Mathur and Munshi Ram, who were also present, said that "in salon se puchho". When he was advised by the Shift In-charge to behave properly, he used filthy abuses against those persons and threatened to beat them outside the gate of the mill. Hearing commotion in the shift office, two other workers, namely, Jagan Nath Mistry and Raghu Nath, Asst. Trainees, also came into the office and advised Amar Nath to behave properly. He also abused them and left the office. Thereupon he was charge-sheeted. His Explanation was not found satisfactory and an enquiry was ordered. The enquiry was conducted by Shri K. K. Bhaglal who found the charge as proved against Amar Nath for misconduct under paragraph 29(ii)(f) of the Standing Orders of the company. Agreeing with

the finding of the Enquiry Officer, the management terminated the services of the workman on 17th September, 1968. The workman thereupon sought to raise the industrial dispute by filing a statement of claim before the Conciliation Officer. Since no settlement could be arrived at, the reference was made to the Labour Court for adjudication. The then Presiding Officer of the Labour Court came to the conclusion that the claim before the Conciliation Officer was made before the notice of demand was served on the management and as such the reference was invalid. He did not record any other finding on the issues framed by him.

3. Thereafter, the workman served a notice of demand and raised the industrial dispute. The Government made the reference to the Labour Court to the following effect :

"Whether the dismissal of Shri Amar Nath is illegal and/or unjustified and, if so, to what relief is he entitled and what directions are necessary in this respect ?"

4. The workman in his statement of claim challenged the domestic enquiry on the ground of victimisation and unfair labour practice. He also said that the Enquiry Officer was biased and that his findings were perverse. His case was that the management and the mistri used to run the mill during lunch interval and also 1 1/2 hours before the scheduled time, on every Monday. The management and the mistri greatly benefited by this extra production. The main burden was caused upon the weavers but they were not given overtime allowance and the profit which came to their share in the shape of over production was very meagre. The weavers resented this extra work. In the course of time, a union was organized of which the petitioner was an active member. The union took up the grievances of the weavers with the management several times but no suitable response came from the side of the management. As the said union gained strength, the management became repressive and belabored several of the active members of the said union. The management also hatched a conspiracy to get rid of the petitioner. It is needless to say that all these allegations were denied by the management and their case was that the enquiry had been conducted in accordance with law and by complying with the principles of natural justice. On the pleadings of the parties, the Labour Court framed the following issues :

1. Whether the reference is invalid and illegal as alleged in the preliminary objections ? Effect
2. Whether a notice of demand had been served on the respondent before raising the dispute ? Effect
3. Whether the domestic enquiry was defective and invalid and the charge was not pressed as alleged ?
4. As in the reference ?
5. Issues Nos. 1, 2 and 3 were treated by the Labour Court as preliminary issues. In this petition, I am not concerned with issues Nos. 1 and 2 which were decided

against the management since the finding on the said issues was not pressed at an stage. As regards issue No. 3, the case of the petitioner before the Enquiry Officer was that no such incident occurred at all in the office of Mr. Saxena during the night of 14th December, 1965, as alleged by the management. He also stated that the management were running the mills during the lunch hours and for 1 1/2 hours before the schedule on every Monday morning. The increased production was more beneficial to the management and the mistry. The share of profits which came to the weavers was negligible. No overtime was allowed to the weavers for the extra hours and they, Therefore, resented. There was confusion and disunity among the weavers. They were, Therefore, not able to take any effective steps to stop this extra work for which no overtime was paid to them. The petitioner formed a union amongst the weavers and made several complaints to the authorities against this extra and illegal work. The management paid no heed to them and decided to get rid of the petitioner in some way or the other. They concocted the story about the incident and terminated his services. The petitioner made repeated efforts before the enquiry officer to bring on record the documents to prove that this efficiency was not lower than that of other weavers. He also stated that he had been granted rewards for his good work. He made several requests for production of the documents to prove these points. However, his request was not acceded to on the ground that that was not the issue before the enquiry officer and the enquiry officer was concerned only with the incident which happened on 14th December, 1965. The Labour Court, after examining the entire evidence and records, came to the conclusion :

"The evidence on the record of the enquiry officer shows that there were several other weavers whose efficiency during the relevant period was lower than the standard. None of them were called by the chief-in-charge. Only Amar Nath was singled out for questioning : why this ? The documents and the questions on this aspect of the case would have thrown a flood of light on the charge leveled against Amar Nath. I am, Therefore, convinced that a prejudice has been caused to Amar Nath by this act of the enquiry officer. There are some other factors in the enquiry report which also point to the prejudice caused to the workman. I need not go into the details with them because the ground mentioned by me above is sufficient to quash the domestic proceedings.

6. The domestic enquiry is found to be defective and invalid. No definite charge has been framed in this case. The management would frame a charge against the workman. He could be given an opportunity to file an Explanation to it. The management can, if it likes, produce evidence to prove the charge in court.

7. Let the charge-sheet be filed by 21st July, 1976, and the Explanation against it by the workman by 31st July, 1976."

8. Instead of complying with the directions of the Labour Court, the management challenged the order by way of petition under Art. 226 of the Constitution in this Court. The said petition being C.W. No. 1138 of 1976 came up for hearing before

a learned Single Judge of this Court in October, 1982. The learned Single Judge called for a chart from the management to see the efficiency of the petitioner as compared to the other weavers. After going through the said chart, the Learned Single Judge, records as under:

"The management produced a chart before me which shows that the efficiency of the petitioner was not less as compared to many of the workmen on many of the days. It, Therefore, follows that it was not for the reason of low efficiency rather, an excuse, that the petitioner was summoned by the Shift-in-charge for Explanation .Since the complaint made against him by the Assistant Weaving Master and the Loom Fixer was not justified, the natural reaction of the workman was that the Explanation was not due from him but was due from the persons who complained against him without any basis. But while reacting angrily, he contemptuously called them "Salon.""

9. The Learned Single Judge, after discussing the case law on the subject, came to the conclusion that there was no merit in the writ petition which was accordingly dismissed. The Learned Single Judge further held :

"I am rather inclined to support the impugned order upon an additional ground that it was a case of victimisation. The penalty imposed was disproportionate to the charge even if proved. One has to view the matter in the light of cultural and environmental reaction of a workman against an allegation made without basis by the men of the management."

10. The judgment of the learned Single Judge was challenged by the management in a Letters Patent Appeal which was also dismissed by this Court. The management did not stop there and took up the matter to the Supreme Court in a petition for special leave to appeal. The said petition was also dismissed.

11. After the dismissal of the petition for special leave to appeal by the Supreme Court, the petitioner herein filed an application before the labour court for review of the order dated 28th May, 1976, passed by the labour court presided over by Shri G. P. Satsangi only to the extent of giving further opportunity to the management to frame a fresh charge and produce evidence. This application was opposed by the management mainly on the ground that the labour court had no inherent powers to review its order. The Presiding Officer of the labour court agreeing with the management dismissed the application only on the ground that it had no power in law to review its earlier order.

12. It is the aforesaid order by the labour court which has been challenged in this petition. The contention of the learned counsel for the petitioner was that the labour court was not right in coming to the conclusion that it had no powers to review its orders. Reliance was placed on the case, Grindlays Bank v. Central Government Industrial Tribunal, [1981 1 L.L.J. 327. In that case the question was whether the Industrial Tribunal had the jurisdiction to set aside the ex parte award. The Supreme Court held that it is a well-known rule of statutory

construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. There is no statutory prohibition. On the other hand, there are indications to the contrary. The objection regarding the review of the order was also considered by their Lordships.

"..... The expression "review is used in two distinct senses, namely, (1) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal."

13. The same view was expressed by a Division Bench of this Court in *Metal Fabrics India Ltd. v. B. D. Gupta* (1975) 32 L.R. 118, and by the Calcutta High Court in *Grindlays Bank Ltd. v. Central Government Industrial Tribunal* (1978) 62 F.J.R. 505. In this Calcutta case, Mukharji, J. (as his Lordship then was) at pp. 510-511 of the report held as under :-

"The question is, whether in this case in view of sub-s. (1) of S. 11 which provides that the Tribunal shall follow such procedure as it thinks fit, the Tribunal had authority to review or recall its previous order for the reasons mentioned in its order. I am not concerned in this application with the propriety of the order but I am concerned with the validity or the jurisdiction to make the impugned order. Unlike the superior courts, the Tribunals being the creatures of statutes derive powers from the statute and the Tribunals, as such, unlike superior courts, have no inherent power but the Tribunal's powers may be either express or implied. Apart from the powers expressly mentioned. the Tribunal's powers may be which are incidental or ancillary. Such incidental or ancillary powers might be derived by the Tribunals either from the express provisions of the statute creating such bodies or by necessary implication of the powers conferred. It is also a well-known canon of construction that such construction should be made which will facilitate the object of the statute but such construction again must not be against the express provision of the statute or the express will of the legislature. The powers conferred by an enabling statute include not only such as are expressly granted but also by implication powers which are reasonable necessary for the accomplishment of the object intended to be secured (see *Halsbury's Laws of England*, 3rd Edition, volume 36, Article 657, at page 436). The question here is, whether in view of S. 11(1) and in view of S. 17 read with

S. 17A of the Act, such power of reviewing or recalling can be implied in his case."

The learned counsel for the respondent wanted to refer to certain authorities for the proposition that power to review is not an inherent power and it must be conferred by law specifically or by necessary implication. There is no doubt about this proposition and it is not necessary to deal with these authorities. The authorities referred to above, after interpreting S. 11 of the Industrial Disputes Act, have laid down the law that the Industrial Tribunal/Labour Court has got an implied power to review its own orders, particularly when the orders are only procedural. The judgments are binding on me and as such I hold that the impugned order passed by the Labour Court is not sustainable in law.

14. After having held that the impugned order is not sustainable in law, there are only two options open to me. One is to send back the case to the Labour Court for fresh consideration and the other is to decide myself whether the application for review should have been allowed or not. Sending back the case would involve further time and, in my opinion, I will not be justified in prolonging the agony of the petitioner-workman because already more than 15 years have passed since the date when his services were terminated and the dispute has not yet come to an end. In this view of the matter, I have heard the learned counsel for the parties at length.

15. The contention of Mr. Rameshwar Dial, learned counsel for the respondent is that the order of the Labour Court for framing fresh issues was in accordance with law and as such no review is called for. He relies on the case of *Delhi Cloth & General Mills v. Ludh Budh Singh* 1972 1 L.L.J. 180. In that case, the case of the workman was that the departmental enquiry against him was vitiated while the management stood by the departmental enquiry. The parties did not lead any evidence and the matter was considered on the basis of the enquiry report itself. After hearing the arguments, the Labour Court had reserved its judgment. Thereafter, before the judgment was pronounced, the management filed an application and stated therein that in case the enquiry was found to be vitiated, the management should be permitted to adduce evidence before the Tribunal. Without considering the said application, the Labour Court held that the enquiry was vitiated and reinstated the workman. The grievance was made before the Supreme Court that though the management had asked for an opportunity to lead evidence, the opportunity was denied to them and thereby they were prejudiced. It is true that the Supreme Court held that the management had the right to file such an application during the course of the proceedings before the Tribunal and if such an application was filed, the Tribunal was bound to give an opportunity to the management to lead its evidence to prove the charge. However, that judgment was again considered in a later case, *Shankar Chakravarti v. Britannia Biscuit Co. Ltd.* 1979 2 L.L.J. 194. In *Shankar Chakravarti's* case (supra), the Supreme Court, after discussing the entire case law on the subject including the decision in *Ritz Theatre's* case 1962 2 L.L.J. 498

and Cooper Engineering's case 1975 2 L.L.J. 379, came to the conclusion that if it had either been pleaded in the written statement or an application had been filed by the management for permission to lead evidence independent of the enquiry at an appropriate stage, the Labour Court was to consider the said application and accord permission if the circumstances justified it. The decision in Ritz Theatre's case (supra), where the Labour Court had declined to afford an opportunity in spite of an application having been filed, was also approved. The entire case law on the subject including the case of Shankar Chakravarti (supra), again came up for consideration in a recent case of Shambhu Nath, Goel v. Bank of Baroda [1983 2 L.L.J. 415 Varadarajan, J., speaking for the Court, held, as under :

"We think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to adduce further evidence to substantiate the charge or charges framed against the workman referred to in the above passage is the application which may be filed by the management during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its permission under S. 33 of the Industrial Disputes Act, 1947, to take a certain action or grant approval of the action taken by it. The management is made aware of the workman's contention regarding the defect in the domestic enquiry by the written statement of defense filed by him in the application filed by the management under S. 33 of the Act. Then, if the management chooses to exercise its right, it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay. But when the question arises in a reference under S. 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for, the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it filed its written statement of defense in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage, it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do."

16. D. A. Desai, J., in his separate but concurring judgment in 1983 2 L.L.J. 415 slightly watering down the proposition that the permission could be asked for only in the written statement held :

"The statement that if an application is made during the pendency of the proceedings does not mean that some independent right to make an application at any time is conferred on the employer. Ordinarily, where a party claims relief,

it must plead for the same. The pleadings can be incorporated in a statement of claim or a written statement of defense. It was not for a moment suggested that an application at any stage of the proceedings without explaining why the relief was not claimed in the original pleading has to be granted. If a separate application is made, it would be open to the Labour Court/Industrial Tribunal to examine the question whether it should be granted or not depending upon the stage when it is made, the omission to claim the relief in the initial pleading, the delay and the motivation for such delayed action. Without being specific, it can be said that such an application has to be examined as if it is an application for amendment of original pleadings, keeping in view all the aforementioned considerations and if it does not appear to be bonafide or has been made after a long unexplained delay or the Explanation for the omission of claiming the relief in the initial pleading is unconvincing, the Labour Court/Industrial Tribunal would be perfectly justified in rejecting the same"

17. Applying the aforesaid principles laid down by their Lordships of the Supreme Court to the facts of the present case, it is clear that the respondent-management did not raise any such claim of producing additional evidence in the original written statement which was filed on 5th April, 1973. After the written statement was filed, the issues were framed on 7th June, 1973. A part of the evidence of the workman was recorded on 20th October, 1973, and the workman examined himself on 19th March, 1974. After examining, himself, the workman closed his case. It is after the case was closed by the workman that the respondent-management filed its application on the same day and did not lead any evidence before the Labour Court.

18. The said application has been placed on record by the Counsel for the respondent. It will be useful to reproduce the entire application :

"1. That the case is fixed for evidence on preliminary issues of the parties. One of the preliminary issues framed challenges the validity of the enquiry proceedings.

2. That it is the contention of the management that the enquiry held against the workman concerned culminating in his dismissal was fairly and properly held and that in the present proceedings the management justifies his action of dismissal on the basis of the aforesaid enquiry and relies upon it in the first instance.

3. That the management does not wish to lead any evidence at this stage and that in case during the course of the trial, the Hon"ble Addl. Labour Court comes to the conclusion that the enquiry proceedings were vitiated for any reason whatsoever, then the management may kindly be permitted to lead evidence afresh in support of the action of dismissal taken by it."

19. It appears that the Labour Court did not call for any reply to the application and proceeded to hear the arguments on the validity of the domestic enquiry. It was specifically held that the enquiry was vitiated and impliedly held that it was a case of victimisation since the petitioner had been singled out. In spite of that,

the Labour Court permitted the employer to frame fresh charges and lead evidence to prove the said charges. This was in 1976. Instead of taking an opportunity to comply with the directions, the management challenged the order by filing a writ petition in this Court. The writ petition remained pending till 1982, i.e., for a period of about six years. Finally, the learned Single Judge of this Court dismissed the petition and upheld the findings recorded by the Labour Court. The Learned Single Judge further went into the entire record and after calling for a chart from the management relating to the efficiency of various workmen, came to the conclusion that it was a case of victimisation. The findings recorded by the learned Single Judge have already been reproduced in the earlier part of the judgment. The findings regarding victimisation recorded by the learned Single Judge were specifically challenged by the respondents in Letter Patent Appeal as also in the Petition for Special Leave. The appeals were, however, dismissed by this Court as also by the Supreme Court.

20. A perusal of the application filed by the management, reproduced above, would indicate that the same was filed after the evidence of the workman had been closed. The application does not give any reason for not making such a request either in the written statement or at an earlier stage. In fact, the management even in the application took the stand that the domestic enquiry conducted by it was in order and relied on the same. Considering the matter from all aspects, I am of the opinion that this case is clearly covered by the latest judgment of their Lordships of the Supreme Court in the case of Shambhu Nath Goel, (supra). It was held by a majority in that case that an opportunity could be asked for at the stage of filing the written statement itself and not later. However, D. A. Desai, J., in his concurring but a separate judgment, held that if the opportunity was sought at a later stage and the delay stood explained, the matter could be considered by the Industrial Tribunal/Labour Court whether such an application should be permitted. In my view, the respondent-management is not entitled to any further opportunity, firstly, for the reason that no such request was made in the statement-of-claim and the application was filed at a belated stage without explaining any reason for the delay and, secondly, in view of the findings of victimisation recorded by the learned Single Judge of this Court and upheld by the Division Bench of this Court as also by the Supreme Court.

21. For the reasons recorded above, this petition is allowed and the impugned order dated 2nd June, 1983, passed by the Presiding Officer, Labour Court-II, Delhi, is hereby quashed. The Labour Court is directed to make an award within a period of three months from today and without affording any further opportunity to the respondent-management to adduce any further evidence in the matter. The petitioner will be entitled to his costs. Counsel's fee Rs. 500.