

(1969) 03 CAL CK 0006
In the Calcutta High Court
Case No : Matter No. 153 of 1965

Associated Electrical Industries Manufacturing Company Pr. Ltd. APPELLANT

Vs

Second Labour Court RESPONDENT

Date of Decision : 07-03-1969

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33(2)

Citation : (1972) 2 ILR (Cal) 602

Hon'ble Judges : Arun K. Mukherjea, J

Bench : Single Bench

Judgement

A.K. Mukherjea, J.—This appeal arises in connection with an application made by the Associated Electrical Industries Manufacturing Company Private Limited (hereinafter referred to as the company) u/s 33(2)(b) of the Industrial Disputes Act. There are two registered trade unions of the company's workmen; one was the worker's union and the other was the staff union. In August 1960, there was a dispute between the company and its workmen as to bonus. There was a tripartite settlement of this dispute by which the dispute between the workmen represented by the workers' union and the company was settled. The staff union, however, pressed their demand after this settlement and Government referred the consequent industrial dispute to the Fifth Industrial Tribunal. We are not concerned here with the merits of this dispute or of the reference which are the subject-matter of another application before this Court. It appears that during the pendency of the proceedings arising out of the aforesaid reference, there were certain controversies regarding the method of a particular operation in the Fabrication and Welding Department and the Conciliation Officer of the State of West Bengal visited the company's factory to make a study of the operation personally. It is stated by the Petitioner company that on October 16, 1960, Sri S.B. Paul, the Assistant Industrial Engineer of the company, demonstrated this particular operation to the Conciliation Officer who visited the

company's factory. On the same day, i.e. on October 16, 1963, after the working hours the Respondent Radha-shyam caught hold of Sri Paul and challenged him for having demonstrated the method of operation to the Conciliation Officer. Further, at the instigation of the Respondent No. 2 Bhupendra Nath Bagchi, Respondent No. 3 Raghunandan Chawdhury and Respondent No. 4 Radhashyam Das assaulted Sri Paul. On October 17, 1963, Sri Paul made a complaint as a result of which charge-sheets were served upon the Respondents Nos. 2, 3, and 4 for major misdemeanor, namely, riotous or disorderly behavior and acts subversive to discipline. These charges, the Petitioner says, were framed under Clause 14(g) of the company's standing orders. There was after this a domestic enquiry in course of which these allegations and charges were investigated by the Personnel Officer of the company. The Respondents Nos. 2 to 4 were found guilty at this enquiry. Thereafter, on December 27, 1963, the Respondents Nos. 2 to 4 were dismissed. One month's wages were remitted to each of these Respondents by money orders which were, however, all returned with the endorsement "refused". On December 27, 1963, the company made an application before the Fifth Industrial Tribunal u/s 33(2)(b) of the Industrial Disputes Act for approval of the action taken by the company against these Respondents. The case was subsequently transferred from the Fifth Industrial Tribunal to the Second Labour Court for disposal. The Second Labour Court after hearing the parties has by a judgment dated March 19, 1965, rejected the company's application. The company has now challenged the finding of the Second Labour Court in this application under Article 226 of the Constitution of India.

2. The learned Second Labour Court has found that the act of dismissal of the three workers cannot be justified. In coming to this finding the Second Labour Court relies on the following criticisms of the enquiry of the Personnel Officer: (i) That Bhupendra Nath Bagchi, Raghunandan Chawdhury and Radhashyam Das have no interest in the dispute which was pending for adjudication before the Industrial Tribunal. Therefore, they could not be termed as "concerned workmen" within the meaning of Section 33(2)(b) of the said Act. (ii) That the evidence on which the Personnel Officer has come to his findings is not adequate. There are inconsistencies and contradictions in the evidence of the various witnesses examined by the Personnel Officer regarding the complicity of the delinquent employees, (iii) The Enquiry Officer had himself accompanied Sri Paul to the Thana after the occurrence and he was, therefore, prejudiced against the workers from the very beginning. I propose to examine these three grounds one by one.

3. So far as the first ground is concerned, the very first thing that strikes me is that if the learned Labour Court has been correct in its observation that Section 33(2)(b) of the Industrial Disputes Act is not attracted at all, the logical consequence would be that the Second Labour Court will have no jurisdiction to sit in judgment over the finding of the Personnel Officer. Having come to the finding that this is not a case where Section 33(2)(b) is attracted, the Second

Labour Court should have at once refused to go into the matter further and should have declined to give any opinion. At most, the Second Labour Court should have held that it was not necessary for the company to have the approval of the Second Labour Court for- sustaining the order of dismissal.

4. Coming to the second point regarding the question whether the evidence recorded by the Personnel Officer is adequate to sustain the finding of the Personnel Officer, I have carefully gone through the report of the Personnel Officer as well as the judgment of the Second Labour Court. After reading the arguments of the Second Labour Court, it is difficult to resist the impression. that he acted more or less like an Appellate Court and sifted the findings of the Enquiry Officer with reference to the evidence. It is now well recognised that the findings of a domestic enquiry cannot be thrown overboard on the ground that those findings cannot be substantiated by the evidence on record. It is not enough for the Labour Court or Tribunal to say that the Labour Court or Tribunal came to a different finding on the basis of the same evidence. It is only where the officer acting at the domestic enquiry violates the rules of natural justice or comes to a finding on evidence on which no man in his senses could come to the same finding that there would be justification for interfering with the Enquiry Officer's finding. From this point of view, it is impossible to uphold the verdict of the Second Labour Court. I am quite alive to the fact that the High Court in its extra-ordinary jurisdiction under Article 226 of the Constitution has also in its turn to work under certain specific limitations. It is not for the High Court to go into the correctness of the findings of the Industrial Tribunal u/s 33(2)(b) of the Industrial Disputes Act. Unless the Labour Court has overstayed the limits of its jurisdiction or has come to a perverse finding, this Court cannot also act as an Appellate authority. But, in order to find out whether the Labour Court is correct in justifying its finding by describing the report of the Enquiry Officer as perverse, it is impossible for me to do so unless I indicate briefly the finding of the Enquiry Officer and the judgment of the Second Labour Court with reference to the evidence before the Enquiry Officer.

5. The Enquiry Officer examined various witnesses of whom the most important witness was, of course, Sukhendu Bikash Paul, the Assistant Industrial Engineer, who was actually assaulted. He named R.N. Chaudhury as his assailant. He identified R.N. Choudhury in the presence of the Enquiry Officer and also that Choudhury had hit him with an umbrella. Another witness C. D. Ray deposed that he had seen R.N. Choudhury striking Paul with an umbrella. P.P. Bhaduri and Asoke Kundu corroborated this evidence and identified R.N. Choudhury. One Mr. D"Lahey, the Security Officer of the company, also stated that he had seen Choudhury at the place of occurrence at the material time. This is the evidence about Raghunandan Choudhury.

6. As for Radhashyam Das, S.B. Paul named him as one of the assistants and also identified him. He said specifically that R.S. Das had dealt him a few blows on the right jaw. C. D. Ray saw R.S. Das catching hold of Paul's hand. The

Security Officer D"Lahey confirmed that R.S. Das was present at the material time. As regards Bhupendra Nath Bagchi, S.B. Paul said that he was inciting R.S. Das and R.N. Choudhury when the latter was assaulting him. He identified Bagchi. P.P. Bhaduri and Asoke Kundu corroborated this evidence. All these witnesses were cross-examined before the Enquiry Officer. The learned Judge constituting the Labour Court rejects the findings of the Enquiry Officer as perverse. He says that there is no evidence worth-the-name against the worker R. Das. This the learned Judge says because some of the witnesses stated that, though they had been present at the time of occurrence, they had not seen R. Das on the spot. This is not quite the correct way of assessing the evidence at a domestic enquiry. It is not possible to say in this case that there was no evidence. The learned Judge says that he is not satisfied with the evidence against R.S. Das because it is not corroborated by some of the witnesses present on the spot. This is hardly the correct approach in these matters. Another person weighing the same evidence could easily come to the view that in a melee it is not likely that all witnesses would notice exactly the same persons. In fact, anybody who has tried a case of unlawful assembly knows" that all witnesses can never depose as to the presence of a particular person or as to his doings in that assembly even if that person was admittedly involved in the assembly. In such cases, the witnesses would severally see only some of the persons present. So, if three persons are the witnesses of one man assaulting another, some other persons present there may easily not notice the part played by this particular assailant. Their attention may be riveted on another assailant. Where this is the perspective which even an Appellate Court should take with regard to the evidence as well as the finding of a trial Court in regard to such incidents, it is difficult to justify the criticism made by the learned Labour Court of the findings of the Personnel Officer in the instant case where the Labour Court is not supposed to act as an Appellate authority and substitute its own judgment for the judgment of the Enquiry Officer.

7. I am not dealing with the learned Tribunal's observations regarding the evidence about the complicity of Bagchi and R.N. Choudhury. They are full of equally objectionable observations. Were I to act as an Appellate authority over the Tribunal's decision, I would not have agreed with the Tribunal's assessment of the evidence that had been recorded before the Enquiry Officer. On the same evidence I would have come to a different finding. That, of course, does not make any difference. All that matters is the assessment of the Enquiry Officer. So long as the Enquiry Officer takes a view which it is possible for a reasonable man to take and so long as he gives all reasonable opportunities to the delinquent persons to defend themselves, the finding of the Enquiry Officer cannot be thrown overboard. From this point of view, the learned Judge was completely wrong in rejecting the finding of the Enquiry Officer.

8. I now pass on to the next argument of Mr. Ghosh. He contended that in this particular case the Enquiry Officer had accompanied Paul to the Thana on the date following the assault. He, therefore, had personal knowledge about the

incident and should not have conducted the enquiry himself. Since, however, he has done so his findings are vitiated. I am afraid this contention cannot be sustained either. The Supreme Court has held in various cases that in domestic enquiries all that is necessary is that the enquiries are "conducted honestly and bona fide with a view to determine whether the charge framed against a particular employee is proved or not": *Associated Cement Company Ltd. v. Workmen* (1963) 3 S.C.R. 652, 659. The Supreme Court has also in *Satan Motors v. Biswanath* (1964) II L.L.J. 139 held that even if such enquiries are held by the officers of the employer the enquiry would not be vitiated unless one could attribute any special individual bias to the particular officers. The Supreme Court has reiterated this rule again in the *M.G. Wagh and Others Vs. Jay Engineering Works Ltd.*, . The Supreme Court has made only one exception with regard to this principle, namely, that it is desirable that an eye-witness should not enquire into a case. In the instant case the Enquiry Officer who held the enquiry was not an eye-witness. On the day following, the day of occurrence, he accompanied the person who had been assaulted to the Police Station, because that was one of his duties as a Personnel Officer. Apparently, after the assault, the Assistant Industrial Engineer was slightly demoralized and required some persons to accompany him to the Police Station. That, by itself does not, in my opinion, make the officer who accompanied him incompetent to hold the enquiry.

9. I have, therefore, disposed of all the three points canvassed by Mr. Ghosh. They are all without substance. In this view of the matter, I make the rule absolute. Let a writ in the nature of certiorari issue for quashing the order dated March 19, 1965, passed by the Second Labour Court. I make no order as to costs. Let "the records now go back to the Second Labour Court or the appropriate Tribunal for passing an order in accordance with law.