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**(1994) 10 BOM CK 0071**

**In the Bombay High Court**

**Case No : Writ Petition No. 1964 of 1994**

Balmer Lawrie Van Leer Ltd.

APPELLANT

Vs

B.S. Gholap and Others

RESPONDENT

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**Date of Decision : 10-10-1994**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Penal Code, 1860 (IPC) — Section 323

**Citation : (1996) 1 LLJ 312**

**Hon'ble Judges : A.P. Shah, J**

**Bench : Single Bench**

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**Judgement**

A.P. Shah, J.—This petition under Article 226 of the Constitution of India takes exception to the Award Part-I passed by the Presiding Officer, 7th Labour Court, Bombay in Reference (IDA) No. 967 of 1990 holding that the domestic inquiry was not fair and proper.

2. Briefly, the facts giving rise to this petition are as follows :

The petitioner is a company registered under the Companies Act, 1956. The respondent No. 1 was working as a Quality Control Assistant in the Quality Control Department of the petitioner. The respondent No. 1 was charge sheeted by the petitioner under Clauses 24(k) and (1) of the Standing Orders applicable to him in respect of an incident which occurred on November 3, 1988.

3. The incident which allegedly took place on November 3, 1988 between 2:30 and 3:00 p.m. is that, on that day one D. M. Mule, an employee of the petitioner was working in the plating department as an operator. At about 2:40 p.m. he went to the dressing room for changing his work clothes. While changing his clothes, the respondent no. 1 was present in the dressing room waiting to join his duties in the IIInd shift. An altercation ensued between the respondent No. 1 and the said Mule, and the respondent No. 1 got furious, got up and started hitting Mule with a shoe on his face. While this assault on Mule was going on, there were about 25/30 workmen present and the respondent No. 1 was held

back when they saw that Mule was bleeding profusely as a result of the blows inflicted by the respondent No. 1. Mule lodged written complaint about the said incident concerning himself and the respondent No. 1 with the Shift Supervisor and the Production Superintendent. Thereafter Mule was administered first-aid and later on went to the R.C.F. Police Station within whose jurisdiction the incident occurred and lodged a complaint against the respondent No. 1 being N.C. Complaint No. 2615 dated November 3, 1988. An offence was registered u/s 323 of the Indian Penal Code. Mule was under treatment of the Rajawadi Hospital of the Bombay Municipal Corporation and the O.P.D. Form and the treatment case papers are marked as "Police case". Mule was under the medical treatment of Dr. N. S. Yadav of Krishna Clinic from November 4, 1988 to November 13, 1988. It was alleged that the conduct of respondent No. 1 amounts to riotous, disorderly and/or indecent behaviour on the premises of the establishment within the meaning of Clause 24(k) of the Standing Orders and that it also amounts to commission of an act subversive of discipline and/or good behaviour on the premises of the establishment under Clause 24(1) of the Standing Orders.

4. The respondent No. 1 filed his reply to the show cause notice on November 4, 1988 denying the charges levelled against him. The Management appointed one Mrs. Asha Gachke as the Inquiry Officer for holding disciplinary inquiry against the respondent No. 1. The petitioner filed documents before the Inquiry Officer in support of its case against the respondent No. 1 and examined witnesses. The respondent No. 1 was defended by one Rashidwadekar from the Union. Association of Engineering Workers. The proceedings of the inquiry were conducted and recorded in Marathi. The inquiry proceedings commenced from November 22, 1988 and concluded on November 29, 1989 after about 40 sittings. The Inquiry Officer submitted the findings dated January 16, 1990 holding the charges levelled against the respondent No. 1 were proved beyond reasonable doubt. Pursuant to the report of the Inquiry Officer, the petitioner issued an order dated March 13, 1990 discharging the respondent No. 1 from service with immediate effect.

5. The respondent No. 1 thereafter moved the Government and the matter was ultimately referred to the Presiding Officer, 7th Labour Court, Bombay for adjudication being Reference (IDA) No. 967 of 1990. The Labour Court framed the issue relating to the fairness and propriety of the domestic inquiry as the preliminary issue. The parties did not lead oral evidence on the preliminary issue and the Labour Court decided the said issue only on the basis of documents and arguments advanced by the parties. By its order dated May 7, 1994 the Labour Court held that the inquiry was not fair and proper as certain questions put to the Management's witnesses in their cross-examination were disallowed by the Inquiry Officer. It will be useful to reproduce the reasoning of the Labour Court which is rather cryptic and reads thus :

"After going through these questions and the relevant facts shown at the relevant pages Nos. shown by the learned Advocate for the workman shows that

those were the vital and important questions put by the workman before the enquiry officer and the enquiry officer disallowed those questions.

This shows that the enquiry officer was biased while conducting the inquiry. Under these circumstances, it can be said that the enquiry officer has not given proper opportunity to defend his case. It also appears from the evidence on record that the material questions were disallowed by the enquiry officer. Therefore, it can be said that the enquiry conducted by the said enquiry officer is not fair and proper and it is a biased enquiry. It can be also seen from the evidence on record that the workman was allowed to work when the enquiry was going on. This also shows that the misconduct of the workman is not of serious nature. However I will have to finding of fairness of the enquiry. I am of the opinion that the workman has proved that the enquiry conducted by the enquiry officer was not fair and proper."

6. Mr. Shetty, learned counsel for the petitioner strenuously contended that the reasoning of the Labour Court is completely illegal and perverse. Mr. Shetty urged that the respondent No. 1 was given ample opportunity to conduct his defence in every possible way and therefore, the Labour Court has committed a serious error in holding that the inquiry was not fair and proper merely because only few questions put to the witnesses of the Management were disallowed. Mr. Shetty pointed out that the Inquiry Officer disallowed only two or three questions which were found to be immaterial, unconnected and irrelevant. Mr. Shetty also made a grievance that the Labour Court was not justified in making an observation that the charge of misconduct levelled against the respondent No. 1 was not of a serious nature as the respondent No. 1 was allowed to work during the course of the inquiry. Mr. Shetty urged that the observation of the Labour Court is wholly irrelevant as far as the preliminary issue of the validity of the inquiry was concerned. Mr. Ganguli, learned counsel for the respondent No. 1 was unable to pinpoint any specific infirmity or lacuna in the inquiry proceedings. However, Mr. Ganguli submitted that this Court should refrain from interfering at this stage because it is still open for the Management to lead evidence before the Labour Court to establish the guilt of the concerned employee. Mr. Ganguli placed reliance on the judgment of the Supreme Court in *D. P. Maheshwari v. Delhi Administration & Ors.* (S.C.L.C.V-3 50).

7. At the outset, I may state that it is not disputed before me that the respondent No. 1 was given proper opportunity to conduct his defence before the Inquiry Officer. He was allowed to produce all documents in his defence. He was also given full opportunity to produce all witnesses in his defence. He was allowed to cross-examine thoroughly and exhaustively all the Managements' witnesses. Furthermore he was allowed to be defended by a Union's representative of his choice. The inquiry proceedings lasted for nearly one year and took about 40 sittings. The inquiry proceedings were held in Marathi and also recorded in Marathi. They are extremely voluminous and run into about 332 pages. To my mind, the principles of natural justice were fully complied with and

no fault can be found with the conduct of the departmental inquiry.

8. On careful scrutiny of the inquiry proceedings I find that the Inquiry Officer disallowed only four questions during the course of examination of the witnesses of the Management. The 1st question objected to by the Management was as follows :

"Before you changed your shift, for how many years did you and Mr. Gholap work together ?"

This question was objected to by the Management and disallowed but it appears that thereafter this question was in fact again put to the witness and allowed by the Inquiry Officer. The next question pertains to the allegation that Mr. Mule came to the canteen on March 29, 1989 and threatened respondent No. 1. This question was rightly disallowed by the Inquiry Officer because it relates to an incident allegedly occurred four months after the incident and therefore, the Inquiry Officer found the same to be irrelevant and immaterial. The 3rd question put by the respondent No. 1 was as follows :

"It is true that when Narendra Madgud was given transfer in a similar way, he was given all sorts of benefits which benefits Shri Gholap was deprived of ?"

This question was allowed by the Inquiry Officer inspite of objection raised by the petitioner. However, the Inquiry Officer ruled against the workmen as far as prayer for production of documents was concerned. The 4th and the last question reads thus :

"I put it to you that as no incident had happened with respect to Shri Mule, no "Panchnama" was made ?"

It appears that this question was objected to by the Management's representative on the ground that the case was treated by the Management as a matter of internal discipline and therefore, the Management did not file N.C. complaint. However, Mule had filed a N.C. complaint which was produced on record on February 14, 1989. In view of this, the Inquiry Officer disallowed the aforesaid question.

9. As already indicated, the few questions which were disallowed by the Inquiry Officer were of trivial nature and were not really germane to the main controversy. It is therefore, not possible to agree with the view taken by the Labour Court that the entire inquiry has been vitiated on account of the ruling of the inquiry officer disallowing certain questions during the cross-examination of the Management's witnesses. Mr. Ganguli was unable to explain as to how the respondent No. 1 was prejudiced in any manner by disallowing such questions during the course of the cross-examination. On the other hand, on perusal of the inquiry proceedings I find that the Inquiry Officer has given maximum latitude to the representative of the respondent No. 1 in the cross-examination of the Management's witnesses. In my opinion, the inquiry has been conducted in full compliance with the principles of natural justice. I also find considerable

substance in the grievance of Mr. Shetty that the observation of the Labour Court that the misconduct was not of a serious nature was totally unjustified and misconceived in the context of the preliminary issue with which the Labour Court was concerned. In view of the foregoing discussions, the petition must succeed and is accordingly made absolute in terms of prayer clause (a). The Labour Court is directed to proceed with the reference with regard to Part-II inquiry relating to the justifiability of the findings recorded by the Inquiry Officer as expeditiously as possible. No order as to costs.