

**(2022) 03 BOM CK 0048**

**In the Bombay High Court**

**Case No :** Writ Petition No. 2669, 2670, 2714 Of 2020

Birendra Mohan Jaiswal And Others

APPELLANT

Vs

Fouress Engineering (India) Ltd

RESPONDENT

---

**Date of Decision :** 17-03-2022

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10, 11A, 33, 33(2)(b)

**Citation :** (2022) 03 BOM CK 0048

**Hon'ble Judges :** Nitin B. Suryawanshi, J

**Bench :** Single Bench

**Advocate :** T. K. Prabhakaran, S. V. Dankh

---

## **Judgement**

Nitin B. Suryawanshi, J

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.
2. Since these petitions raise similar questions of law and facts, they were heard together and are being decided by this common judgment.
3. On the basis of domestic inquiry held, the petitioners were dismissed vide order dated 16th August, 2011. The respondent, therefore, filed application under section 33 (2) (b) of the Industrial Disputes Act, 1947 (hereinafter for short "the said Act") seeking approval to the dismissal of the petitioners.
4. The petitioners, by filing written statements and say, resisted the said application.
5. On 31st December, 2018, the respondent filed applications contending that as held by the Apex Court in the case of "M/s Cooper Engineering V/s P. P. Mundhe" 1975 (2) SCC 661, it would be expedient to decide legality and propriety of the domestic inquiry held against the respondents (present petitioners) as preliminary issue and in the event the Industrial Tribunal holds the inquiry in the present matter is vitiated and findings of the inquiry officer are perverse, the

employer has a legal right to lead evidence to prove the misconduct as held by the Apex Court in the matter of "KSRTC V/s Lakshmiddevamma" (2001) 5 SCC 433. It is further contended that right to lead oral as well as documentary evidence is reserved in paragraph No. 4 of the approval applications. Hence, the respondent prayed that issue, as regards to the legality and validity of the domestic inquiry held against the petitioners and legality of findings of the inquiry officer may be framed and decided as preliminary issue.

6. The said applications were resisted by the petitioners, by filing replies, contending that the applicant has an opportunity to lead oral or documentary evidence in support of the claim made by it in the main applications and it is not disputed that it can be done at this very stage of recording evidence. Reliance placed by the respondent in "M/s Cooper Engineering's case is misplaced. Said applications are filed with a view to prolong the matter, which is pending for last nine years. As per section 33 (2) (b) of the said Act, the applications ought to have been decided within 30 days from the date of filing. The matter is being prolonged, which is causing prejudice to the petitioners, who are unemployed. Hence, it was urged to reject the applications.

7. The Industrial Tribunal allowed the applications and framed preliminary issues i.e. -

"1. Whether enquiry conducted against the respondent is fair and proper?

2. Whether the findings of the Enquiry Officer are perverse?"

8. The petitioners are aggrieved by framing of preliminary issues. Hence, the present writ petitions.

9. Heard learned advocate for the petitioners and learned advocate for the respondent.

10. Learned advocate for the petitioners, by placing reliance on "Lakshmiddevamma" (supra) submits that the applications, which are belatedly filed after almost 9 years, after the evidence of the respondent is closed, ought to have been rejected at the threshold by the Industrial Tribunal. According to him, the Tribunal misread and misconstrued the decisions in "Shambu Nath Goyal V/s Bank of Baroda and Ors" (1983) 3 SCC 491 and Lakshmiddevamma (supra). He submits that the petitioners are unemployed, the applications filed under section 33 (2) (b) of the said Act, ought to have been disposed of with great promptitude, within thirty days from the date of the filing, however, the same are dragged for nine years' period. By relying on proviso to section 11-A of the said Act, he submits that, in any proceedings under section 11-A of the said Act, the Labour Court or Industrial Tribunal, as the case may be, shall rely on the materials only on record and shall not take any fresh evidence in relation to the matter. Further submission is that the complaints should be finally disposed of and preliminary issues should not be framed after lapse of nine years. He, therefore, submits that writ petition may be allowed by setting aside the

impugned order.

11. Per contra, learned advocate for the respondent submits that the delay is not attributable to the respondent. By relying on the purshis dated 31st December, 2018, he submits that the said purshis is filed by the respondent reserving its right to lead evidence to prove misconduct in the event the Tribunal holds that inquiry is vitiated or findings of the inquiry officer are perverse. He, therefore, submits that the evidence of the respondent is not closed in the matter. According to him, in paragraph 4 of the applications filed in the Tribunal, the respondent has reserved its right to adduce oral and documentary evidence in support of its submissions. By relying on decision in "The Cooper Engineering Limited V/s Shri P. P. Mundhe" (1975) 2 SCC 661, he submits that the Tribunal was justified in framing the preliminary issues. He also relied on following judgments :

"1. "Workmen of the Motipur Sugar Factory Pvt. Ltd., V/s Thje Motipur Sugar Factory" AIR 1965 SC 1803

2. "The Cooper Engineering Limited V/s Shri P. P. Mundhe" (1975) 2 SCC 661

3. "Bharat Forge Co. Ltd., V/s A. B. Zodge and Another" (1996) 4 SCC 374

4. "Shambu Nath Goyal V/s Bank of Baroda and Others" (1983) 4 SCC 491

5. "Karnataka State Road Transport Corpn V/s Lakshmiddevamma and Another" (2001) 5 SCC 433

6. "Divyash Pandit V/s Management, NCCBM" (2005) 2 SCC 684

7. "Maharashtra State Road Transport Corporation, Beed V/s Syed Saheblal Syed Nijam" 2014 (4) Mh.L.J. 687"

12. In "The Cooper Engineering Limited" (supra), the Apex Court held -

"We are, therefore, clearly of the 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.

13. In "Shambhu Nath Goyal" (supra), the Apex Court held -

"16. 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 in 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 section 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 defeat in the domestic enquiry by the written statement of defence filed by him in the application filed by the management under section 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 Section 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 defeat 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 files its written statement of defence 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."

14. In "Lakshmiddevamma" (supra), the Apex Court held -

"16. While considering the decision in Shambu Nath Goyal case, we should bear in mind that the judgment of Vardarajan, J. therein does not refer to the case of Cooper Engineering (supra). However, the concurring judgment of D. A. Desai, J. specifically considers this case. By the judgment in Goyal case the management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it under section 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under section 10 of the Act, meaning thereby the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.

17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in Shambu Nath Goyal case need not be

varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambu Nath Goyal case is just and fair."

15. In "Divyash Pandit" (supra) it is held by the Apex Court that-

"It is true no doubt that the respondent may not have made any prayer for (sic submitting) additional evidence in its written statement but, as held by this Court in Karnataka SRTC v. Laxmidevamma [(2001) 5 SCC 433] this did not place a fetter on the powers of the Court/Tribunal to require or permit parties to lead additional evidence including production of document at any stage of proceedings before they are concluded. Once the Labour Court came to the finding that the enquiry was non est, the facts of the case warranted that the Labour Court should have given one opportunity to the respondent to establish the charges before passing an award in favour of the workman."

16. Coming to the facts of the present case, in the written statement, the petitioners have assailed the domestic inquiry having been held in violation of principle of natural justice and other grounds. It is also a matter of record that the respondent has reserved his right to lead additional evidence in paragraph No.4 of his application. In this view of the matter, it is the petitioners, who have to prove issues No. 1 and 2 framed by the Industrial Tribunal in the light of the crystallized position of law in "Indian Iron and Steel Co. V/s Their Workmen" AIR 1958 SC 180 : 1958 SCR 667; "M/s Sasa Musa Sugar Works (p) Ltd., V/s Shobрати Khan" AIR 1959 SC 928 : (1959) Supp. 2 SCR 836 and

"Workmen of Motipur Sugar Factory Private Ltd V/s The Motipur Sugar Factory Private Limited" AIR 1965 SC 1803 and catena of judgments delivered in last five decades. Unless the petitioners establish the two issues framed and succeed in getting the enquiry vitiated, it would not be the stage for the employer to conduct a denovo enquiry. If the enquiry is sustained and the findings of the Enquiry Officer are held to be fair and proper, the only issue that remains to be decided by the Tribunal is as to whether the punishment awarded to the petitioners is shocking disproportionate, as held in "Damoh Panna Sagar Rural Regional Bank V/s Munna Lal Jain" 2005 (104) FLR : AIR 2005 SC 584.

17. In "Laxmidevamma" (supra), it is held, "that there is no fetter on the powers of the Courts / Tribunals to require or permit parties to lead additional evidence including production of document at any stage of proceedings before they are concluded",

18. In the result, I do not find that the impugned orders dated 20th September, 2019, passed by the Member, Industrial Court, Aurangabad, thereby framing preliminary issues, could be termed as being perverse or erroneous. The same are perfectly in tune with the settled position of law. As such, the petitions are dismissed.

19. Taking into consideration the fact that the proceedings are pending before the Industrial Tribunal since 2011, the same shall be decided expeditiously and in any case, within a period of six months from the date of receipt of writ of this order. Rule is made absolute in aforesaid terms.