
(1970) 04 CAL CK 0019
In the Calcutta High Court
Case No : Matter No. 532 of 1966

Birpara Tea Co. Ltd.

APPELLANT

Vs

Fifth Industrial Tribunal

RESPONDENT

Date of Decision : 30-04-1970

Acts Referred:

Citation : (1970) 1 CALLT 240 : (1974) 2 ILR (Cal) 609

Hon'ble Judges : T.K. Basu, J

Bench : Single Bench

Advocate : Banamali Das, for the Appellant; Anil Das Chowdhury, for the Respondent

Final Decision : Allowed

Judgement

T.K. Basu, J.—The Petitioner Birpara Tea Co. Ltd. owns a tea estate called Birpara Tea Estate which is situated at Birpara, Jalpaiguri. The Respondents Nos. 4 to 10 were employed as ordinary workmen of the Petitioner company.

2. According to the Petitioner, on August 11, 1964, the Respondents Nos. 4 to 11 unlawfully and without any justifiable reason left their place of work and went to Joteswar Division of the tea estate and tried forcibly and otherwise to take the workmen engaged in plucking at the said division of the tea estate off their work and to resort to a strike. The said Respondents refused to leave the Joteswar Division to which they did not belong when they were ordered by the Manager of the tea estate to do so and, in defiance of the Manager's order and in utter disregard of the standing orders, they incited and induced the workmen engaged in plucking at the said division to strike work. They further held unauthorised meetings and aided or abetted in holding such unauthorised meetings on the estate premises during working hours in breach of the standing orders and the practice and convention of the tea estate.

3. In view of the various acts of misconduct committed by the Respondents Nos. 4 to 11 and in view of their defiant attitude in not carrying out the lawful and

reasonable orders of the management, they were accused of misconduct under Clauses 13(c)(1), (8), (12) and (18) of the standing orders. Individual charge-sheets were issued to each one of the said Respondents.

4. Thereafter the Respondents Nos. 4 to 11 submitted their written explanations individually.

5. One Sri S. Saksena, the then assistant manager of the tea estate, was duly authorised to hold departmental enquiries. After the conclusion of the enquiries, the Enquiry Officer submitted reports on the basis of each separate departmental enquiry and found each of the said Respondents guilty of the charges brought against them.

6. The Petitioner, after considering the charges, the explanations, reports of the Enquiry Officer and the representations made by the Respondents under Clause 13(g) of the standing orders came to the conclusion that the charges had been proved. The Petitioner dismissed the Respondents Nos. 4 to 10 from service and suspended the Respondent No. 11 by way of substantive punishment from September 19, 1964, to October 14, 1964.

7. By an order of Reference dated January 14, 1966, the following dispute was referred to the Fifth Industrial Tribunal by the Government of West Bengal for adjudication:

(i) Whether the dismissal of the following workmen is justified? To what relief, if any, are they entitled? Sarvasri (1) Lahassan of Buchua Sirdar, (2) Ghuran of Neez Sirdar, (3) Lachoo of Bollar Sirdar, (4) Sohan of Neez Sirdar, (5) Prayag of Neez Sirdar, (6) Managnoo of Neez Sirdar, (7) Soni and (8) Sm. Enimaya of Neez Sirdar.

(ii) Whether the suspension of Sri Sitaram from September 19, 1964, to October 4, 1964, is justified? To what relief if any is he entitled?

By its Award dated August 23, 1966, the Fifth Industrial Tribunal directed the Petitioner company to reinstate the workmen Nos. 1 to 7 in the list from the date of dismissal of each of them and pay them back wages from the date of dismissal till reinstatement. The Tribunal held that the workman No. 8 was not entitled to any relief by way of reinstatement or back wages. With regard to the Respondent No. 11 the Tribunal directed the Petitioner company to pay full wages to him for the period from September 19, 1964, to October 4, 1964.

8. It is this Award of the Fifth Industrial Tribunal dated August 23, 1966, which is challenged before me in this application.

9. In the Award, as mentioned in the petition, the Tribunal has found that the complaint of the workmen to the effect that the enquiry is vitiated as the Enquiry Officer commences his enquiry with the cross-examination of the charge-sheeted workmen had no substance. The Tribunal also found that the complaint of the workmen that they had been victimised for their trade union activities was of no

substance. It further found that the complaint of the workmen that the enquiry was conducted by an officer not competent to do so had no substance. It further found that the complaint of the workmen that the Enquiry Officer took the signatures of the workmen on the record statement which was not read over or explained to them at the time was without substance. Finally, the Tribunal found that the complaint of the workmen that the decision was vitiated as the final orders were not passed by the management within ten days of the commission of the alleged misconduct in terms of the standing orders was without substance.

10. Having found all these the Tribunal thereafter proceeded to observe as follows:

Thus, in the result, the Tribunal decides that the enquiry in each of the cases was vitiated because the enquiring officer did not ask the workmen to explain the circumstances appearing against him in the evidence recorded at the enquiry. As the enquiries are held vitiated, dismissals resting on the result of such enquiries should also be held not justified.

11. At another portion of the Award the Tribunal observed as follows:

It is thus seen that the enquiring officer did not ask any of those 7 workmen to explain the circumstances appearing in evidence against him at the conclusion of the employer's evidence. It is well-settled in law that that opportunity should have been given in order to make the enquiry fair. This vitiates the enquiry. It is, however, contended that the Tribunal will ignore this slight infraction on the part of the enquiry officer as the workmen were not prejudiced in defence due to that. It is also said that it was a sufficient compliance to ask the workmen to call their witnesses. The Tribunal is unable to accept this contention as sound. To ask a charge-sheeted workman to explain the circumstances appearing in evidence against him is something quite different from asking him to call his witness. An opportunity required to be given to a workman to explain circumstances is a salutary provision to safeguard his interest by giving him the opportunity for the purpose. If that had been done, the workman would have known what had been stated against him by the witnesses and he would have been in a position to say why that evidence or circumstance should not be held against him.

12. Mr. Banamali Das appearing on behalf of the Petitioner company submits that the Tribunal was in error in thinking that the principles of a fair domestic enquiry could be reduced to a mechanical formula. According to this contention, it is all a question of justice and fair play. What is to be looked into is whether a fair hearing and opportunity, in substance, has been given to the delinquent workmen concerned. If that test is satisfied, then whether a few preliminary questions have been asked or whether specific questions have been asked about the circumstances appearing in the evidence against him at the conclusion of the employer's evidence will not make any difference. The important test is whether any prejudice has been really caused to the workmen concerned.

13. In support of this contention Mr. Das relies on a decision of the Supreme

Court in the case of Firestone Tyre and Rubber Co. Ltd. v. Their Workmen (1967) II L.L.J. 715 (718) Hidayatullah J. (as he then was) observed as follows:

This leaves over the contention that before examining the witnesses Subramaniam was subjected to cross-examination. This was said to offend the principles of natural justice and reliance was placed on (1963) XI L.L.J. 367, 392, 396 and 452. These cases no doubt lay down that before a delinquent is asked anything all the evidence against him must be led. This cannot be an invariable rule in all cases. This situation is different where the accusation is based on a matter of record or the facts are admitted. In such a case it may be permissible to draw the attention of the delinquent to the evidence on the record which goes against him and which, if he cannot satisfactorily explain, must lead to a conclusion of guilt. In certain cases it may even be fair to the delinquent to take his version first so that the enquiry may cover the point of difference and the witnesses may be questioned properly on the aspect of the case suggested by him. It is all a question of justice and fair play. If the second procedure leads to a just decision of the disputed point and is fairer to the delinquent than the ordinary procedure of examining evidence against him first, no exception can be taken to it. It is, however, wise to ask the delinquent whether he would like to make a statement first or wait till the evidence is over, but the failure to question him in this way does not ipso facto vitiate the enquiry unless prejudice is caused. It is only when the person enquired against seems to have been held at a disadvantage or has objected to such a course that the enquiry may be said to be vitiated.

14. In the background of the above principles laid down by the Supreme Court, Mr. Das invited me to look at the facts of the present case. As mentioned above, the case of the different workmen were separately enquired into. But the pattern of the enquiry is similar for all practical purposes. Therefore, it will be useful to take as a specimen the case of Lahassan of Buchua Sirdar, the Respondent No. 4 herein. The enquiry proceedings with regard to Respondent Lahassan appears at pp. 66 to 71 of the annexures to the petition. At the outset of the enquiry the following questions and the answers were recorded:

Q. Did you receive the charge-sheet?

Ans. Yes.

Q. Did you reply to the charge-sheet?

Ans. Yes.

Q. Do you know the contents of the charge-sheet and your reply?

Ans. Yes.

(At this Lahassan was read out his charge-sheet in Hindi as well as his reply, he confirmed its correctness. Lahassan was asked if he wished to alter or modify his written reply but he said there was nothing to add or modify his statement as

earlier presented. After this the enquiry commenced.) The principal question to Lahassan was in the following terms:

Q. to Lahassan: Now you know the charge-sheet and your written reply which has been read out to you--do you admit your guilt to the charges as framed against you?

Ans. I do not admit my guilt.

Thereafter it appears that one Pius Duffadar was examined in presence of Lahassan. He was cross-examined by Lahassan. At the end of the cross-examination the following answers were recorded:

Q. Do you admit that when you were ordered by the Manager to go away, you did not leave?

Ans. Yes. I admit but I did not leave because I thought there might be a breach of peace and mara-mari.

Q. Do you wish to add more?

Ans. of Lahassan. No.

It may be noted that similar statements of Lahassan had been recorded at the conclusion of the examination of each of the witnesses who was cross-examined by Lahassan. Each of the depositions of the witnesses appears to have been signed by Lahassan testifying to the correctness of the depositions without any kind of protest or objection whatsoever.

15. In the light of the nature of enquiry as mentioned above, Mr. Das submitted that in reality no prejudice has been caused to the workmen. After all, it is a matter of substance and not a mere form. Mr. Das also commented on the fact that Lahassan's admission as to having refused to leave Joteswar Division was itself enough to warrant a conclusion of guilt on one of the charges.

16. Mr. Anil Das Chowdhury, appearing on behalf of the workmen, drew my attention to a decision of the Supreme Court in the case of Jagdish Prasad Saxena v. State of Madhya Bharat (1963) 1 L.L.J. 325 (330). The following passage occurs:

The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove enquiry; it would not be fair to strain facts against the Appellant and to hold that in view of the admissions made by him the enquiry would have served no useful purpose.

17. In my view, this proposition cannot be disputed. In the present case, however, since an enquiry was held I do not see how this decision is of any assistance to Mr. Das Chowdhury's client.

18. My attention was next drawn to another decision of the Supreme Court in the

case of *Khardah Co. Ltd. Vs. Their Workmen*, where the following passage occurs:

The learned Solicitor-General suggested that we might consider the evidence ourselves and decide whether the dismissal of Jadav is justified or not. We are not prepared to adopt such a course. If industrial adjudication attaches importance to domestic enquiries and the conclusions reached at the end of such enquiries, that necessarily postulates that the enquiry would be followed by a statement containing the conclusions of the enquiry officer.... Indeed, if the argument urged before us by the learned Solicitor-General is accepted, it is likely to impair substantially the value of such domestic enquiries. As we have already observed, we must insist on a proper enquiry being held, and that means that nothing should happen in the enquiry either when it is held or after it is concluded and before the order of dismissal is passed, which would expose the enquiry to the criticism that it was undertaken as an empty formality.

This proposition again is not in dispute.

19. Reference was next made to a decision of the Kerala High Court in the case of *Workmen of Madura Company, Ltd. and Others Vs. Labour Court and Others*, as an authority for the proposition that if there is a likelihood of bias of the person who conducted the enquiry, the Labour Court would consider such question without there being any specific plea in the statement filed by the union before it. This decision, in my view, is irrelevant, because there is no question of bias involved in the present case.

20. My attention was next drawn to a decision of the Supreme Court in the case of *Associated Cement Co. Ltd. Vs. The Workmen and Another*, when the following passage occurs:

The other infirmity in the present proceedings flows from the fact that the enquiry has commenced with a close examination of Malak Ram himself. Some of the questions put to Malak Ram clearly sound as questions in cross-examination. It is necessary to emphasize that in domestic enquiries the employer should take steps first to lead evidence against the workmen to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that, at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases employees are likely to be ignorant, and so it is necessary to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings. Therefore, we are satisfied that Mr. Sule is right in contending that the present enquiry proceedings by which Malak Ram was elaborately cross-examined at the outset constitutes another infirmity in this enquiry.

21. Reference was next made to another decision of the Supreme Court in the

case of Meenglas Tea Estate Vs. Its Workmen, . The relevant passage is as follows:

It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then, he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him.

22. In my view, the principles laid down in the above decisions on which Mr. Das Chowdhury relied are not in dispute. If the enquiry is an empty formality or if injustice has been caused by the procedure adopted at the enquiry or if the Enquiry Officer is biased, then undoubtedly the domestic enquiry is vitiated. But, I do not think that any particular part of the procedure of a domestic enquiry can be reduced in terms of a mechanical formula. Nor it can be postulated in every case that, after the conclusion of the evidence on behalf of the employer, the whole case of the management must be put to the employee and he must be asked to make a statement. It is to be noticed that some of the earlier decisions of the Supreme Court on which Mr. Das Chowdhury relies were considered by Hidayatullah J. (as he then was) in the case of Firestone Tyre and Rubber Co. Ltd. v. Their Workmen Supra. Having considered those decisions, Hidayatullah J. came to the conclusion that it was all a question of justice and fair play. With utmost respect, that appears to be the correct approach to be adopted in dealing with a particular case.

23. It is further to be noted that no objection was raised by the workmen in course of the enquiry to the procedure adopted.

24. Applying the principles laid down by Hidayatullah J. in the decision of Firestone Tyre and Rubber Co. Ltd. Supra I do not think that I can find any prejudice or injustice has been caused to the workmen by the procedure adopted at the domestic enquiry in the present case. Consequently, it must be held that the Tribunal was in error in holding that the domestic enquiry was not fair. This contention of Mr. Das must, therefore, succeed.

25. It is further to be noted that the case which the Tribunal has made out, viz., the domestic enquiry was unfair as the evidence against the workman was not put to him at the conclusion of the examination of the company's witnesses is not a case which was made out by the Respondent workmen before the Industrial Tribunal. This is evident from a perusal of the written statement of the union before the Tribunal which is annex. L to the petition. I have held in the case of The Legan Jute Machinery Co. Pvt. Ltd. v. The Second Industrial Tribunal

of West Bengal and Ors. Unreported judgment delivered on June 13, 1969 following certain decisions of the Supreme Court, that it is not open to the Tribunal to come to a finding on a case which had not been made out by the parties before it. On this ground also it must be held that the Tribunal was in error in coming to this finding as there was no pleadings before the Tribunal on this point.

26. Mr. Das made various other grievances with regard to the findings of the Tribunal. Having regard to my finding on these two questions, however, it is not necessary for me to express any opinion on those contentions.

27. In the result, this application succeeds and the rule is made absolute. There will be a writ in the nature of certiorari quashing and setting aside the Award of the Fifth Industrial Tribunal dated January 14, 1966, in Reference No. 125-I.R./IR/9L-7/64 and a writ in the nature of prohibition restraining the Respondents from giving effect to the Award in any manner whatsoever.

28. There will be no order as to costs.