

(1976) 04 CAL CK 0016
In the Calcutta High Court

Britannia Biscuit Co. Ltd.

APPELLANT

Vs

Third Industrial Tribunal and Another

RESPONDENT

Date of Decision : 22-04-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 33

Citation : 80 CWN 676 : (1977) 1 LLJ 197

Hon'ble Judges : S.P. Mitra, C.J.; Salil Kumar Dutta, J

Bench : Division Bench

Judgement

This Judgment has been overruled by : Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another, AIR 1979 SC 1652 : (1979) 39 FLR 70 : (1979) LabIC 1192 : (1980) 2 LLJ 78 : (1979) 2 LLJ 194 : (1979) 3 SCC 371 : (1979) 3 SCR 1165

Salil Kumar Datta, J.—This is an appeal against the judgment and order of Masud, J dated February 20, 1974 whereby the connected rule obtained by the employer-company was discharged.

2. The proceedings arose out of an application u/s 33(2)(b) of the Industrial Disputes Act. The appellant petitioner riled an application before the Third Industrial Tribunal, West Bengal for approval of the order of dismissal passed by it against respondent No. 2 who was a workman of the appellant. It was stated in the application that the workman was guilty of various misdeeds for which an explanation sheet was sent to him informing him that the employer -company proposed to initiate disciplinary proceedings against him. The workman replied to the said notice denying the allegations of misconduct against him. The Enquiry Officer fixed July 8, 1971 for holding the enquiry as the explanation was considered not satisfactory. On the date of hearing the workman could not be present as he was detained under Prevention of Violent Activities Act. The Enquiry Officer thereafter fixed the date of enquiry on September 16, 1971 on which date also the workman could not appear as he was still in jail nor did he

authorise any fellow worker to represent him. The Enquiry Officer thereafter proceeded ex parte and evidence was adduced on behalf of the employer-company and the workman was found guilty. The appointing authority accepted the finding and dismissed the workman by an order dated September 22, 1971. As a dispute was then pending before the Third Industrial Tribunal an application was filed u/s 33(2)(b) for approval of the action.

3. The workman filed his written statement denying the allegations against him and further stated that the enquiry was held in his absence against "all canons of justice, equity and good conscience" as also against principles of natural justice, fair-play and rule of law. At the hearing of the application before the Tribunal the company examined its then Labour Adviser as also its Personnel Officer to prove the enquiry report and also to establish that the enquiry was duly held. The Tribunal was of opinion that the Enquiry Officer's finding on the materials on record were not perverse. Even so the order of dismissal could not be approved as the enquiry was held in violation of the principles of natural justice as the workman was not given reasonable opportunity to appear and defend himself in the enquiry. By order passed on September 15, 1973 the application u/s 33(2)(b) was rejected.

4. The appellant company thereafter moved an application under Article 226(1) of the Constitution for quashing the above order and on this application rule nisi was issued on November 12, 1973 giving rise to Matter No. 765 of 1973. This rule came up for hearing before Masud, J. and his Lordship by his judgment and order held that the management did not take steps to prove the allegations against the employee before the Tribunal and accordingly as the original enquiry was held in the absence of the principles of natural justice, the rule was discharged. This appeal is against this decision.

5. Mr. S. Banerji appearing for the company has drawn our attention to the decision in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*. In this decision while referring to the observations made in earlier cases on this subject the Court observed in paragraph 22 as follows :

We are, therefore, clearly of 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.

On the law as enunciated in this decision it is thus obvious that when there is a controversy between the parties about the dismissal, the Tribunal has to decide

the same as a preliminary issue, and after the decision on the preliminary issue is pronounced, it will be for the management to decide whether it will adduce any evidence before the Labour Court in support of its action. In the case before us, the Tribunal by the same order has held that the enquiry proceeding was defective in that the principles of natural justice were not followed. On the decision on this issue which should have been pronounced as a preliminary issue it would be for the management to decide if they would adduce any evidence before the Tribunal. Unfortunately the Tribunal did not decide this question as a preliminary issue and the decision on the preliminary issue as well as the final order rejecting the application was passed on the same date by the same order. This we consider to be a violation of the principle of law enunciated in the case as indicated above.

6. Mr. Banerji has also contended that as the workman did not appear in the enquiry proceeding for no fault of the company it was not necessary for the company to wait indefinitely for the appearance of the workman in the enquiry proceedings. In the view we have taken as indicated above, we do not consider it necessary to express any opinion on this aspect of the case.

7. Mr. Dasgupta appearing for workman has submitted firstly that the decision in the Cooper's case *supra*) was in regard to a substantive dispute of dismissal whereas in the case before us the matter was not such substantive issue but only an incidental one being one u/s 33(2)(b) of the Industrial Disputes Act. It will "however", appear from decision in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, that the principles indicated therein relating domestic enquiry and Tribunal's jurisdiction apply whether the matter is u/s 10 or by way of an application u/s 33 of the Act.

8. Mr. Dasgupta has further submitted that the Tribunal in the instant case is no longer in seisin of the matter as the industrial dispute which was pending before it at the time of the dismissal of the workman has come to an end. It is said that in this state of affairs the Court cannot create jurisdiction in the Tribunal to adjudicate the issue once again if it was inclined to do so. It, however, appears from the reading of Section 33 that the jurisdiction of the Tribunal relates to an order of dismissal if such order is passed during the pendency of any proceeding before it under the Act. If, therefore, the decision on the application u/s 33 is not made before the disposal of the pending proceeding it cannot be said that the Tribunal thereby loses its jurisdiction to decide the application u/s 33. Such jurisdiction extends till final and conclusive orders are passed in such proceeding by the Tribunal. Further the Tribunal's order u/s 33(2)(b) was subject to the result of the application under Article 226 which was made to this Court by the employer company before the dispute came to an end.

9. In the view we have taken the order of the Tribunal so far as it relates to the rejection of the application u/s 33(2)(b) cannot be sustained and is set aside. As the decision on the preliminary issue has been given, the Tribunal will now fix a date for further orders in the proceeding on which date the management may

take such steps as they consider fit and the Tribunal will dispose of the matter in accordance with law.

10. In the result this appeal is allowed as indicated above and the judgment and order under appeal are set aside and the case is remanded to the Tribunal for disposal in accordance with law in the light of observations indicated above.

11. Let a writ in the nature of cineraria issue quashing the order in so far as relates to the rejection of the application u/s 33(2)(b). As the employer-company has become entitled to an opportunity to adduce further evidence if so advised in view of the law as laid down in the decision indicated above, we direct that the workmen concerned be paid a total sum of Rs. 5,000 (Rupees five thousand) only irrespective of the result of the proceeding before the Tribunal except as stated hereinafter. We are told that a sum of Rs. 2,600 has already been paid to him and balance sum of Rs. 2,400 out of the amount held by the Solicitor of the employer, company will be made over to the workmen through his advocate on record within a fortnight from this date. The Solicitor will be at liberty to return to his client the balance of the sum of Rs. 5,000 held by him after payment of Rs. 2,400 as aforesaid. In case the workman succeeds this amount of Rupees 5,000 will be adjusted against his dues from the company.

12. There will be no order of costs in this appeal in the circumstances.

Sankar Prasad Mitra, C.J.

13. I agree.