

(1960) 01 CAL CK 0018
In the Calcutta High Court
Case No : O.S. Matter No. 5 of 1959

Burn and Company Ltd.

APPELLANT

Vs

The Second Labour Court of West Bengal

RESPONDENT

Date of Decision : 21-01-1960

Acts Referred:

Industrial Disputes Act, 1947 — Section 33

Citation : (1961) 1 ILR (Cal) 145

Hon'ble Judges : Sinha, J

Bench : Single Bench

Judgement

Sinha, J.—The facts in this case are shortly as follows: The Petitioner is a well-known company, having its registered office in Calcutta and its engineering factory and workshop at Howrah. At Howrah the Petitioner had at all material times, in operation, an "incentive bonus" scheme based on production, which was called by the name of "Puraskar". Under the said scheme, additional payments were made to workmen if the production target exceeded a particular figure. In respect of the month of May, 1956 a section of the Petitioner's workmen failed to achieve that target and on June 6, 1956 the company published a notice to the effect that no "Puraskar" will be payable. On the same day, the workmen of the said department suspended work and created a noisy demonstration, demanding the payment of "Puraskar". The case of the workmen was that in a particular department a new type of wagon, namely the BOBX type, was being introduced for the first time and it being a difficult operation, the production target could not be reached, but nevertheless the company should pay the incentive bonus. On June 7, 1956 the workmen of the said department and certain other departments, entered the factory premises, stopped work and started a stay-in-strike which was illegal. While certain of the Petitioner's officers were attempting to reason with the workmen, a deputation of whom was having talks with the General Manager, the illegal strike spread to other departments and the workmen began, behaving in a disorderly manner, started shouting slogans and finally entered into the power house of the factory and forcibly

stopped the transmission of power, as a result of which, the armed police had to be called in. On the same day, and the following day, the situation further deteriorated and there was tampering with the plant and machinery, as also threats of violence and intimidation of workmen, who were desirous of working. Meetings between the representative of the workmen and the Management were called, and also the Assistant Labour Commissioner intervened and asked the workmen to take recourse to conciliation. All this was, however, of no avail, and the situation became such that on June 9, 1959 the Management was compelled to declare a lock-out in so far as the hourly paid workmen were concerned. It was at this stage that the Deputy Labour Commissioner, Government of West Bengal, made certain suggestions to the company. These suggestions are contained in a letter, a copy whereof is annexed to the petition and appears at p. 58. The Deputy Labour Commissioner pointed out that in spite of various joint conferences no settlement could be reached, and as a result the works still remained closed and the workers were out of employment, a state of affairs which could not be allowed to continue indefinitely. He, therefore, made certain suggestions for acceptance of all parties concerned. A part of the suggestions which is relevant, is as follows:

On the assurance given by all the four Unions at the time of the negotiation for normal and peaceful resumption of work, I suggest to both the parties (Management and the Unions) to withdraw the strike and lift the lock-out and allow all the workers to resume work under the following conditions:

(a) The Management shall allow all the employees on roll, excepting those against whom they have prima facie charges of violation of their Standing Orders, to resume work. Such men, who will be charge-sheeted, will be notified earlier and they, immediately after resumption of work, shall proceed to the Labour Office to receive their charge-sheets. Such charge-sheeted persons shall remain suspended till the final decision of the Management.

(b) After receiving the charge-sheets, the workers shall promptly reply to their charges and await the decision of the Management. The Management on receiving the replies to the charges, shall start enquiry and finalise their decision within the shortest possible time which under no circumstances should be more than 10 (ten) days.

(c) I shall be in touch with the Management all the time and shall see that no innocent person is victimised.

(d) After the enquiry is completed, the Management shall notify to the individual workmen about their decision and those, against whom charges will not be proved, shall be asked to resume work forthwith. Such men shall draw the wages from the date of the re-opening of the works. But those, who will not be taken back by the Management, will be kept under suspension and their cases will be referred to the pending tribunal for necessary permission of their dismissal under the Industrial Disputes Act.

2. So far as the company is concerned, it accepted the suggestions and ultimately all the Unions of workmen, excepting the "Burn Sramik Union" agreed to withdraw the strike, and ultimately the lock-out was lifted on or about July 24, 1956. Meanwhile pursuant to the suggestions abovementioned, the company proceeded to prepare charge-sheets against such persons in respect of whom there were prima facie charges of violation of the Standing Orders and charge-sheets were prepared against the persons including the Respondents Nos. 2 to 12. The charges were more or less similar and consisted not only of participation in an illegal strike but also of serious overt acts like incitement spreading false rumour, etc. Some of the overt acts complained of, are extremely serious. Thereafter on diverse dates, separate and detailed enquiries were held into the charges against each of the said Respondents, in their presence upon evidence. The Labour Welfare Officer of the Company who was the enquiring officer in these cases, after carefully considering the proceedings made reports to the Management, holding that the charges had been proved against the said Respondents. In some cases a minor charge or two was held not to have been proved, but substantially all the charges, both of taking part in illegal strike, as well as in the overt acts accompanying the same were held to have been proved. The reports are annexed to the petition and careful reasons for coming to such a conclusion are contained therein. Thereupon, the Management of the company decided to dismiss each of the said Respondents. As I have stated above, conciliation efforts made by the Labour Department were partially fruitful, and the lock-out was lifted with effect from July 24, 1956. All the Unions, excepting "Burn Sramik Union" joined work. A number of the workmen, however, belonging to the "Burn Sramik Union", not only continued the strike but began to incite others to continue the strike, and attempted forcibly to prevent the workmen desirous of resuming work, from doing so, by picketing, violence and intimidation of various kinds. In this respect, the company had prima facie evidence of such action on the part of the Respondents Nos. 13 to 17. The company accordingly issued charge-sheets to the said workmen. Charges preferred against the Respondents Nos. 13 to 15 consisted of certain actions prior to the lock-out and thereafter, whereas the charges against the Respondents Nos. 16 and 17 related exclusively to the period after the lock-out. In these cases also enquiries were held individually, and evidence was taken in the presence of the workmen concerned. After carefully considering the proceedings, the enquiring officer, who was the machine shop manager in this case, made a report that the said Respondents and each of them were guilty of the offences with which they were charged. Thereupon the Management of the company decided to dismiss the said Respondents and each of them.

3. At that time, references were pending between the company and its workmen before the 3rd Industrial Tribunal. Therefore, applications were made u/s 33 of the Act for permission to dismiss the Respondents Nos. 2 to 17. Before the applications could be heard, the said Tribunal made its award in respect of the main dispute, and due to lapse of the time the application u/s 33 were struck off.

When these applications were struck off, certain other proceedings were pending before the 1st Industrial Tribunal. Consequently, applications were made before the said Tribunal u/s 33. Here again, the same procedure was repeated, and the applications were struck off. In the meanwhile, certain other disputes were referred for adjudication before the 5th Industrial Tribunal. In view of the amendments effected in the said Act by Act XXXVI of 1956, which came into force on March 10, 1957 it was no longer necessary for the company to obtain prior permission in writing of the Tribunal before dismissing the said Respondents, it being necessary only to obtain the approval of the Tribunal. Accordingly by letters dated October 25, 1957 the company dismissed the Respondents Nos. 2 to 17 and offered them a month's wage each, in accordance with the provisions of the said Act. Thereafter, the Petitioner made an application to the 5th Industrial Tribunal for approval of the dismissals. In exercise of powers conferred by the said Act, the 5th Industrial Tribunal transferred the proceedings to the Second Labour Court being the Respondent No. 1 in this application. The applications were numbered as 23/33/58 and 24/33/58. By consent of the parties the first Respondent consolidated the two application and heard them together. Evidence was taken. The Respondent No. 1 has made an order dated November 15, 1958, a copy whereof is annexed to the petition and is to be found at pages 382 to 404. This application has been made challenging the said order. Coming now to the order of the Respondent No. 1 it is found that the facts have been set out elaborately and the cases made by the respective parties have been clearly indicated. Speaking of the evidence adduced before the Labour Court the order states that the only witness produced by the workmen was evidently "set up" by the Union to show that nothing in the way of subversive activities were carried out after the lock-out was lifted, and the situation was quite peaceful, yet the company singled out these workmen to award punishment. Regarding the departmental enquiries the Court held as follows:

The Company held regular enquiries. Departmental enquiries were held after the workers were fully charge-sheeted and they submitted their replies and the Company had stated that all possible opportunities were given to the workmen concerned in the departmental enquiry to defend themselves.

4. The Court correctly stated that in an enquiry u/s 33, the function of the Tribunal was either to grant or refuse permission, keeping in view the purpose of the section to ensure fair and satisfactory enquiry in the main adjudication. It was conscious that its hands were tied inasmuch as it did not constitute an Appellate Court over the enquiry and for the punishment accorded. Having indicated these correct principles, the Respondent No. 1 said as follows:

I will now take up the case of these workers individually and examine how far the charges levelled against these workers have been proved by the Company and how far the allegations against them are true.. I am not here to act as a rubber stamp, to accord my seal of approval for every action of dismissal as proposed by the company. The Tribunal is expected to hold an independent

enquiry of its own and to be convinced whether there was proper enquiry held by the company, whether there was lack of bonafides on the part of the company, victimisation or unfair labour practice and whether the workers concerned were really guilty of the offence committed.

5. In laying down these principles, the Labour Court is partially correct, but much of it is erroneous. In my decision, in *National Tobacco Co. of India Ltd. and Others Vs. Fourth Industrial Tribunal and Others*, , I have set out all the cases bearing on the subject and have summarised the principles to be followed. I have stated there that the employer has to make out a prima facie case for permission (in this case approval), that where there has been a domestic enquiry the Tribunal to whom such an application is made, does not act as a Court of Appeal. A prima facie case does not mean a case proved to the hilt, but a case which can be said to be established if the evidence which is laid in support of the same were believed. In other words, the point of determination is as to whether, on the evidence laid, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence, or that the Tribunal itself would have arrived at a different conclusion. It has to consider whether the view taken on the evidence on record was a possible view. If the enquiry has been a fair enquiry, then the Tribunal is not concerned with the measure of punishment. The Tribunal can, however, interfere in the following cases:

- (a) Where there has been no fair enquiry and there has been a violation of the principles of natural justice.
- (b) Where there are malafides. The harshness or otherwise of the punishment, in so far as it goes to establish malafides may be considered.
- (c) Where there is vindictiveness or victimisation.
- (d) Where there is unfair labour practice.
- (e) Where there has been a basics error and/or upon the materials on record, the findings of the domestic enquiry are completely baseless or perverse.

6. Regarding victimisation, I have pointed out that it could mean one or two things: The first, is, where the workman concerned is innocent and yet he is being punished, because he has in some way displeased the employer, for example, by being an active member of the Union of the workers who are acting prejudicially to the employer's interests. The second is, where an employee has committed an offence, but he is given a punishment quite out of proportion to the gravity of the offence, simply because he has incurred the displeasure of the employer in a similar manner as mentioned above. But where it is found that the employee is guilty of gross misconduct, then there cannot be any question of victimisation, because it merits dismissal by itself. Coming back to the facts of this case, we find that the initial mistake made by the Labour Court was in thinking that it was its duty to examine the charges levelled against the workers

and to find out how far the allegations made against them were true, and to hold an independent enquiry of its own. These are the very things that have been held, should not be done by a Tribunal entertaining an application u/s 33. If, however, the Respondent No. 1 correctly came to the conclusion that any of the six grounds mentioned above existed, then indeed, it could have intervened. One of the grounds on which it has intervened is that although this strike was illegal and the workers participated in the illegal strike, the company waived it and allowed the rest of the workmen to join work, but had singled out these few workers concerned for punishment, and this amounted to victimisation. In this connection a decision of the Supreme Court has been cited which must be considered. *Messrs Burn Company Ltd. v. Their workmen* AIR (1959) S.C. 529. It is interesting to observe that this decision is between the same company and some of its workmen, although not the very same workmen concerned in this case. In that case also, there was an illegal strike and the charges were of taking part in an illegal strike, and incitement of the workers in connection thereof. Reliance was placed upon the following paragraph appearing in the judgment of Imam, J.:

Concerning the remaining four persons, it was strongly urged that they had participated in an illegal strike and had incited such a strike. The finding of the Tribunal, however, was clear that there was no dependable evidence against these workmen, that they had incited the workers to participate in the strike. The question, therefore, is whether mere participation in an illegal strike would be a sufficient ground on which we should reverse the award of the Tribunal that the order of suspension in the case of these persons could not be upheld. It is to be remembered that although the strike was illegal, a very large number workmen had gone on strike. All of them had been taken back when the works were reopened except seven persons converted by item 18. On the findings, the evidence was very weak to show that any overt action was taken by these four persons apart from their joining in the strike along with other workmen. Evidence did not specifically bring home any charge of incitement against these persons. It cannot be said that mere participation in the strike would justify their suspension or dismissal particularly when no clear distinction can be made between these persons and the very large number of workmen who had been taken back into service although they had participated in the strike.

7. It will thus be seen that it has now been held that a mere participation in an illegal strike, where the employer has condoned the guilt of most of the workers, does not by itself, amount to an offence, provided however that the persons concerned are not guilty of any overt act like incitement to strike. To that extent the law hitherto declared, must stand qualified. Coming to the facts of this case, we find that against each of the workers concerned, it was definitely held that they were not only guilty of having taken part in an illegal strike, but they were guilty of various overt acts including incitement to other workers to strike, together with other overt acts, some which, as mentioned above, are serious. Thus, the exception laid down by the Supreme Court does not apply to the

present case. If these workmen were held to the guilty of offences against the Standing Orders which merited dismissal, it is no longer possible to hold that there was victimisation. The actual ground on which the Respondent No. 1 held that there was victimisation is as follows:

It is established that the strike was illegal and the workers participated in the illegal strike but the company have waived it and allowed the rest of the workers to join their work after the lock-out was lifted and have singled out these few workers, because they were in a group and many of them were more or less permanent members of the Union. It is in evidence that the company did not view the activities of the Union with good grace and the workers' view point that the company has gone further down and has encouraged goondas and hirelings to break down the solidarity of the Union and one of the workers Shri Mani Dutta had definitely asserted in his evidence before the Court, that he considered that the company is responsible for the murder of their Ex-Secretary, Nemai Mitra, a very sensational murder of Howrah Town in which even some of the culprits are still absconders. I do not find any reason, therefore, why these workers should be singled out for punishment where at the background of the events, the company was acting in a vindictive way.

8. In my opinion, these are very surprising grounds for coming to conclusion that there was victimisation. Firstly, the Court has not exercised its mind to find out as to which persons amongst the workers concerned had been members of the Union, but states that "many of them" were members. From this vague finding of fact, it is impossible to come to the conclusion that any particular workman concerned had been the subject of victimisation. In order to arrive at the conclusion that a workman was victimised by reason of the fact that he was a member of the Union, it will have to be found as a fact that he was such a member, and to connect therewith events and circumstances showing that the company was displeased with that person for the said reason and the punishment of dismissal could be fairly attributed to such displeasure. It will be remembered that there was a reason why these particular persons were singled out amongst the workers for departmental proceedings. I have set out above the suggestions of the Deputy Labour Commissioner, who himself suggested that the rest of the workers should be allowed to join excepting those against whom there was prima facie evidence of violation of Standing Orders, and that such men were to be charge sheeted and kept under suspension. The suggestion did not come from the company, which merely accepted the suggestion put forward by the Deputy Labour Commissioner. On the whole, this was a very reasonable view to take. The company would have to consider whether it was in a position to prove the commission of overt acts against any particular workman. When actions are taken by a large crowd, it is not always possible to bring home to any particular participant, the commission of any particular act. It is reasonable to proceed against only such persons against whom the company had sufficient evidence. It is because the company had evidence against these 16 workers, of the commission of overt acts, that it proceeded to institute departmental

proceedings. It had no such evidence against the others, and therefore, there was no point in charge-sheeting them. Thus, neither in fact nor in law had the Labour Court any justification for holding that the company had singled out these persons for punishment in a vindictive way. The second reason given by the Court is not only curious but must be condemned, as a reason which no judicial body should entertain. There was a certain case of murder of the Ex-Secretary of the Union. There was no evidence to show that the company was in any way connected with such a murder, excepting the opinion of Shri Mani Dutta, a person in respect of whom the Labour Court has itself, in this very judgment, held that he was definitely connected with the subversive activities which led to the strike and consequent lockout and who was found guilty of inciting strikers even when the lock out was lifted and/or preventing loyal workers in joining the factory, and whose dismissal has been upheld by the Labour Court itself. I can see no justification for a Court to rely on the mere opinion of such a person upon a very serious point like this, and to come to the conclusion that this was a valid reason for holding that there was victimisation. If this was to be supported, one must come to the conclusion that there was sufficient evidence before the Court to hold that the company was rightly connected with the murder of an Ex-Secretary of the Union, a conclusion which cannot be arrived at upon the evidence of a workman who merely stated that it was his personal opinion, without any evidence to establish it. The Court should, have rejected this evidence at once. It is impossible to say how far this very unacceptable evidence had coloured the mind of the Court in reaching its conclusion on the question of victimisation. There is not an iota of evidence to show that the company was suffering from a "psychological complex" to the effect that any of the workmen concerned were the ring leaders. Firstly, the overt acts being established against them there is no question of any psychological complex at all and secondly the premises by themselves are incorrect.

9. In the order, the Labour Court has found that with regard to two persons, namely, Sitaram Singh and Mani Dutta, approval should be given to dismiss, but with regard to the others, approval was refused. In my opinion, the whole approach of the Court is contrary to law and the conclusion arrived at was also not based on correct principles of whom approval to dismiss has been refused, must be quashed by a writ in the nature of certiorari and the Respondents must be directed by a writ in the nature of mandamus not to give effect to it. The Respondent No. 1 will now consider the applications in respect of the persons concerned, in accordance with law. There will be no order as to costs.