

(1989) 12 RAJ CK 0042

In the Rajasthan High Court

Case No : Civil Writ Petition No. 454 of 1989

Capstan Meters (India) Ltd.

APPELLANT

Vs

Judge, Labour Court and Others

RESPONDENT

Date of Decision : 21-12-1989

Acts Referred:

Citation : (1991) 2 LLJ 290 : (1989) 2 RLW 274 : (1990) 1 WLN 345

Hon'ble Judges : N.C. Sharma, J

Bench : Single Bench

Advocate : N.L. Jain, for the Appellant; Suresh Kashyap, for the Respondent

Final Decision : Dismissed

Judgement

N.C. Sharma, J.—is a writ petition by Capstan Meters (India) Ltd., under Article 226 of the Constitution of India for quashing the order dated December 6, 1988 passed by the Judge, Labour Court, Jaipur holding that the domestic enquiry held by the petitioner against respondent Nos. 3, 4 and 5 was against the principles of natural justice on the ground that the Enquiry Officer was not a person competent to hold enquiry in accordance with Standing Orders of the petitioner.

2. Facts leading to this writ petition lie in a narrow compass. The petitioner is a Company incorporated under the Companies Act with its workshop and office at Tonk Road, Jaipur and it is engaged in manufacturing of meters. Respondents Nos. 3, 4 and 5 were employed as workmen in the petitioner Company. On May 18, 1985, individual charge-sheets were served upon respondent Nos. 3, 4 and 5. The charges against all these respondents, broadly, were that on May 17, 1985 at about 9.30 a.m. these respondents along with some other workmen entered into the office of the Manager of the Company, misbehaved with him and abused him. They also assaulted the Manager alongwith Ram Swaroop, Shrimal and Sohan Lal. This according to the Standing Orders of the Company, amounted to serious misdemeanour. Shri. A.B.L. Bhargava, Advocate, was appointed as Enquiry Officer by the petitioner. He held domestic enquiry and gave his report

on April 7, 1986. Finding all the three respondents guilty of the charges, the Management of the petitioner Company accepted the report of the Enquiry Officer and after considering the matter had decided to terminate their services with effect from April 15, 1986. Capstan Meters Mazdoor Union (respondent No. 2) raised an industrial dispute with respect to the termination of service of the above three workmen and the dispute was referred by the State Government u/s 10(1) of the Industrial Disputes Act, 1947 (hereinafter, for short, "the Act") to the Court of Judge, Labour Court, Jaipur. The Judge, Labour Court heard both the sides on the question as to whether the domestic enquiry held by the Enquiry Officer appointed by the Management was fair, proper and in accordance with the principles of natural justice. By his order dated December 8, 1988 (Annex. 1), the Judge, Labour Court held that the enquiry was not fair on the ground that the officer appointed to hold enquiry was not an officer of the petitioner Company but was an Advocate. This according to the Judge, Labour Court, was against the Standing Orders and also violated the principles of natural justice. This order has been attacked by the petitioner Company by this writ petition.

3. It was contended by the learned counsel for the petitioner that it was not obligatory for the Company only to appoint an officer in its employment as Enquiry Officer to hold the aforesaid enquiry. It could appoint even an outsider, including an Advocate, for the purpose. It was also urged that merely because the Enquiry Officer was an Advocate, it could by no stretch be said that the enquiry was not fair or was violative of the principles of natural justice. Lastly it was urged that respondent Nos. 3 and 5 having participated in the enquiry, they are estopped from challenging the appointment of Shri A.B.L.Bhargava as Enquiry officer.

4. As against this, it was urged by the learned counsel for the respondent Nos. 2 to 5 that the Standing Orders issued by the petitioner Company and certified have statutory force and they govern the service conditions of the workmen, including the procedure to be followed when it is intended to hold domestic enquiry in connection with a major misconduct. It was contended the Clause 16(e) of the Standing Orders of the petitioner Company clearly provides that if a major misdemeanour is alleged against the workmen, the Management before taking any action against the workmen will hold an enquiry by an Officer or Officers appointed for the purpose. It was urged that the expression "Officer or Officers" used in Clause 16(e) of the Standing Orders can only mean "Officer or Officers" of the petitioner Company and not an Advocate who was not under employment of the petitioner Company. It was then argued that the Judge, Labour Court, was not right in holding that Shri A.B.L Bhargava was not competent to hold enquiry and that there had been violation of principles of natural justice.

5. I have given my due consideration to the rival contentions of the learned counsel for the parties. Section 11A was inserted in the Industrial Disputes Act, 1947 by Section 3 of the Industrial Disputes (Amendment) Act, 1971. This

amendment had been made in the Act to give effect to the recommendations of the International Labour Organisation. In the *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, a question relating to proper interpretation of Section 11A of the Act came for consideration before the Supreme Court. The line of argument adopted by Shri Deshmukh appearing for the petitioner was that it was now obligatory on an employer to hold a proper domestic enquiry in which all material evidence will have to be adduced. In cases wherein an employer had not conducted any enquiry or when the enquiry conducted by him is held to be defective the employer will not be given any opportunity to adduce evidence before the Labour Court for justifying his action. Various decisions of the Supreme Court had laid down that the enquiry should conform to certain well-defined principles and that it should not be an empty formality. If the Management being fully aware of this position in law, does not conduct an enquiry or conducts a defective enquiry, the order passed by it is illegal and it cannot take advantage of such illegality or wrong committed by it and seek further opportunity before the Tribunal of adducing evidence for the first time. Generally the Standing Orders also provide for the conduct of an enquiry before imposing punishment. The Standing Orders have been held to be statutory terms and conditions of service. If an employer does not conform to the provisions of the Standing Orders, he commits an illegality and an order passed, which is illegal, has only to be straightway set aside by the Tribunal. Decisions of the Supreme Court while recognising that an opportunity has to be given to an employer to adduce evidence before the Tribunal for the first time, have not given due importance to the effect of a breach of a statutory obligation committed by an employer in not conducting a proper and valid enquiry as per the Standing Orders. This anomaly has now been removed by the Legislature, by insertion of Section 11A of the Act. As already stated, this was the line of arguments adopted on behalf of the Company in the above case. Mr. Setalvad appearing for Larsen & Toubro Ltd. had put forth the argument that Section 11A would come into play after a Tribunal held the enquiry proceedings conducted by the Management was proper and the findings of guilt justified. It is then that the Tribunal would consider whether the punishment imposed is justified. After review of various decisions of the Supreme Court and the contents of Section 11A of the Act, Vaidialingam J. speaking for the Court, deduced, inter alia, the following principles (pp. 293-294):

"2. Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

3. When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are

perverse or the management is guilty of victimisation, unfair labour practice or malafide.

4. Even if no enquiry has been held by the employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it."

It would appear from the above principles deduced that before imposing punishment, an employer is expected to conduct proper enquiry in accordance with the provisions of the Standing Orders and the principles of natural justice. In *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, it was held that in a number of cases, conditions of service for industries are laid down by Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946 and it has been held that, though such Standing Orders are binding between the employers and employees of the industry governed by these Standing Orders, they do not have such force of law as to be binding on Industrial Tribunal adjudicating an industrial dispute.

6. Reference may be made to the decision of their Lordships in the case of *Workmen of The Food Corporation of India Vs. Food Corporation of India*, . In that case on the introduction of system of direct payment by employer, by abolishing contract labour system, workmen acquired status of direct workmen of the employer. In that context, the question was examined whether once on the introduction of the direct payment system the workmen acquired the status of the workmen of the Corporation, was it open to the Corporation to unilaterally discontinue the system without the consent of the workmen and reintroduce contract labour system. Dealing with that aspect of the matter, it was observed by Desai J. that no employer since the introduction of the Industrial Disputes Act, 1947 and contrary to its Certified Standing Orders as statutorily required to be drawn up under the Industrial Employment (Standing Orders) Act, 1946 can dispense with the service of any workman without complying with the law in force. Any termination of service contrary to the provisions of the Standing Orders and the provisions of the Industrial Disputes Act, 1947 would be void. In *Glaxo Laboratories Ltd. v. Labour Court, Meerut and Ors.* 1984 ILL 16 the appellant Company had declared a lock-out on 6th May, 1977 and as negotiations for settlement of pending dispute were afoot the lock-out was lifted and was actually lifted from 8 a.m. of 30th May, 1977. On the very day during the second shift, some of the workmen again resorted to an illegal strike, gathered near the gate of the factory and intimidated and obstructed other workmen desiring to report for duty. On May 27, 1977 some of the workmen who had not joined the strike boarded the bus chartered by the appellant Company exclusively for the use of those workmen. The striking workmen boarded the bus during the journey in the bus at different places manhandled the workmen who had not joined the strike. Accordingly, the appellant Company served a charge-sheet on second respondent. One of the issues was that, can the appellant Company take

disciplinary action against the second respondent for acts of misconduct said to have been committed at the places, referred to in the charge-sheet in that case ? Their Lordships of the Supreme Court considered Clauses 10, 16 and 30 of the Standing Orders of the Company, which referred to the various acts or omissions to be considered as misconduct. That was a case arising u/s 13-C of the U.P. Industrial Disputes Act, 1947, which conferred jurisdiction on the Labour Court constituted under the Industrial Disputes Act, 1947 to entertain an application for interpreting the Standing Orders certified under the Act. After considering various provisions contained in the Industrial Employment (Standing Orders) Act, 1946, it was observed that the scheme of the Act shows that certified standing orders have more or less statutory flavour. If that be so, ordinary canons of construction of a statute would be attracted where a dispute arises about the construction or interpretation of a certified standing Order. On the construction of the relevant Standing Orders, it was held that it should not be left to the vagaries of management to say ex-post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is none the less a misconduct. From this decision all that can be said is that it was held that Standing Orders have more or less a statutory flavour. This view was reiterated by their Lordships of the Supreme Court in *Rasiklal Vaggajibhai Patel v. Ahmedabad Municipal Corporation and Anr.* 1985 (50) F.L.R. 201 . I have already referred to the decision in *Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. v. The Management and Ors.* (supra)., wherein it has been laid down that before imposing punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and the principles of natural justice.

7. That brings me to Clause 16(e)(1) of the Standing Orders of the petitioner Company, which has already been reproduced above. The sole question for determination, therefore, is as to what interpretation should be placed on the expression "Officer or Officers" in this clause. The word "Officer" has not been defined in the Standing Orders. According to the Webster's Third International Dictionary the word "Officer" means one charged with a duty, one charged with administering and maintaining the law, a chief official engaged in domestic management or service in a large household or a college, sometimes an employer is distinguished from official. This word is more connected with the office and the person who is charged with duty or charged with administration and maintaining the law, or in domestic management or service. He must be engaged in the employment or an office, management or household. In the Shorter Oxford English Dictionary, Vol. II. the word "Officer" has been defined to mean, one to whom a charge is committed, or who performs a function; one who holds an office, post or place; a person engaged in the management of the domestic affairs of a great household or collegiate body, or a private estate; a person holding the office of president, treasurer, secretary etc. of a society or institution; an office bearer would. It appears from these dictionary meanings that officer or officers should be some one to whom a charge is committed by the

management and in that sense the management must have some control over them. If the intention would have been that the management could appoint any person to hold a domestic enquiry, the word would have been "to get held an enquiry through any person engaged by the management for the purpose", and not the words "Officer or Officers". The words "Officer or Officers" cannot be used conjunctively with the word "enquiry" as after the word "enquiry" the word "by" has been used. The word "by" connotes agency and, therefore, the word "enquiry" is not a qualifying word to words "Officer or Officers". An Advocate cannot be regarded as an officer of the management and therefore, according to Clause 16(e)(i), the management could not get the domestic enquiry conducted through an Advocate. It could only get the enquiry conducted by an Officer of the management.

8. The next question that remains for determination is as to what is the effect of the holding of the domestic enquiry by Shri A.B.L. Bhargava to whom the enquiry was entrusted by the Management. The learned counsel for the petitioner relied upon the decision in *Saran Motors (Pvt.) Ltd. New Delhi v. Vishwanath and Anr.* 1964 II LLJ 39. In that case before the Industrial Tribunal it was urged by the workman that the enquiry held by Shri Chadha, Advocate was unfair and his conclusions were perverse. The Tribunal accepted the contention of the workman. The serious question before the Supreme Court was whether the Industrial Tribunal was justified in holding that Shri Chadha had a bias in favour of the management, and so, was incompetent to hold enquiry. It appears that Shri Chadha was some time engaged by the appellant as a lawyer in Industrial matters and the workman's case was that he had been entrusted with the work of holding such enquiries on four or five occasions. The question regarding bias was decided by the Supreme Court against the workman. It was stated by Gajendragadkar C.J., speaking for the Court, that it has repeatedly been pointed out that domestic enquiry in industrial relations must be fairly conducted. When the Court is satisfied that any enquiry was not fairly conducted or its conclusions were not supported by evidence, the Court ignored the findings recorded at such an enquiry and held that the tribunal must deal with the merits of the dispute for itself. It was further stated that it is well-known that enquiries of this type are generally conducted by the officers of the employer and in the absence of any special individual bias attributable to a particular officer, it has never been held that the enquiry is bad just because it is conducted by an officer of the employer. If that be so, it is obviously unsound to take the view that a lawyer, who is not a paid officer of employer, is incompetent to hold the enquiry because he is the employer's lawyer and is paid remuneration for holding the enquiry.

9. The next decision relied upon is in the case of *N. Ratichand v. R.K. Venu Nair* (1973) Lab. I.C. 536 which relied upon *Saran Motor's* case (supra) in which it was held that a lawyer must normally be presumed to be a man who can act with a sense of detachment and without bias or prejudice as he is trained in law and the view has been taken by the Supreme Court that an enquiry cannot be said to be vitiated by the mere fact that the employer's lawyer conducted the enquiry.

The Supreme Court again followed its decision in *Saran Motors(Pvt.) Ltd. New Delhi v. Vishwanath (supra)* in *D.D. Cement Ltd.. v. Murari Lal* 1970 I LLJ 416. In *Shiv Sakthi Bus Service v. P. Gopal* .A.I.R 1971 Mad. 434 it has been laid down that it is now well-settled that the Management can appoint an independent person, not necessarily one who is inside the Management's activities, to hold a domestic enquiry.

10. As against this, learned counsel for respondent Nos.2 to 5 relied upon the decision in *R.B. Lachmandas Sugar Mills v. Chhedi Lal and Ors.* 1977 S.L.J. 370. In this case, Standing Orders No. M(4) provided that no order of dismissal shall be made unless the workman concerned is informed of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him and a proper enquiry has been made by the Manager. It was held that the domestic enquiry conducted by Shri T.N. Kapoor, who was not Manager or Acting Manager of the factory concerned was not a legal enquiry.

11. Although, it is true that two decisions of the Supreme Court referred to above have held the domestic enquiry conducted by Advocates to be not illegal, in those cases, the question was more of bias and the matter was not governed by any standing Order. In the present case the matter is governed by standing orders, which clearly provide that the enquiry will be held by an officer or officers appointed for the purpose. As stated above, these Standing Orders are Binding between employer and the workman and have flavour of statutory force. Thus, the Management was bound under the Standing Orders to get the domestic enquiry held by an officer of the petitioner Company and not from an Advocate. It may here be mentioned that majority of the Judges of this Court in *Bhanwar Lal etc. v. Rajasthan State Road Transport Corporation* 1985 I LLI 111 have gone to the extent of holding that the Standing Orders have statutory force. In any event, they are binding between employer and workmen. Though I do not agree with the Judge, Labour Court that on that account there was violation of principles of natural justice but there was of course, violation of Standing Order No. 16(e)(1) of the petitioner Company. On that account, the domestic enquiry held by Shri A.B.L. Bhargava, Advocate, was rightly held to be illegal.

Consequently, this writ petition has no merit in it and it is hereby dismissed. In the circumstances of the case, I leave the parties to bear their own costs.