

(1970) 08 SC CK 0037

In the Supreme Court Of India

Case No : Civil Appeal No's. 968-972 of 1966

Dalmia Dadri Cement, Ltd.

APPELLANT

Vs

Shri Murari Lal Bikaneria

RESPONDENT

Date of Decision : 19-08-1970

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(3)

Citation : AIR 1971 SC 22 : (1971) 21 FLR 201 : (1971) LabIC 1 : (1970) 2 LLJ 416 : (1970) 3 SCC 259

Hon'ble Judges : M. Hidayatullah, C.J;G. K. Mitter, J;A. N. Ray, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

G.K. Mitter, J.—These five appeals are by special leave from the judgment and order of the Industrial Tribunal, Punjab dated September 1, 1965. The Tribunal dismissed the appellant's applications u/s 33 of the Industrial Disputes Act for grant of permission to dismiss five employees of the company. They arose in the following circumstances.

2. The appellant is a public limited company engaged in the manufacture of cement with its registered office at Charkhi Dadri, District Mohindergarh. The respondents are all workmen employed by the appellant. One of them, Murari Lal Bikaneria, respondent in Appeal No. 968 of 1966 was, suspended by way of punishment for four days from May 26, 1964 by the appellant on the ground of serious acts of misconduct relating to falsifying the records of the company. This was referred for adjudication to the Industrial Tribunal Punjab and the appellant's action was upheld by an award dated May 24, 1965 published in the Punjab Government Gazette on June 11, 1965. On May 27, 1964 the then Prime Minister of India expired and on receipt of the news, the appellant closed the cement factory in the general shift as a mark of respect and called a condolence meeting of the workers and staff of the factory at 3.30 p. m. on the same day.

3. According to the appellant, after the conclusion of the condolence meeting

while the Works Manager of the appellant, was in discussion with other officers including one Ishwar Nath, Power House and Mill House Superintendent, the respondent appeared in their midst all of a sudden and demanded that work in the entire factory should cease and all production should stop. The said Superintendent remarked that in a continuous process industry like a cement factory total production in all the shifts could not be stopped. The respondent became insolent and used insulting language to the said Superintendent. He also threatened to call the workmen on strike and stop the factory within a minute if his demand was not acceded to. The Works Manager consulted the Delhi office of the appellant, over the telephone and came to learn that other sister factories were not going to stop their plants completely and that only the work in the office and in the general shift was to be stopped and that the same procedure should be adopted by the appellant's factory. The Works Manager called the representatives of the three unions of workers and communicated to them his decision on the basis of the advice received. Notice to this effect was put up on the notice board of the appellant on the night of May 27, 1964. On the day following when the work in the general shift was closed and work in the shift from 2 a. m. to 10 a. m. was going on, the respondent came to the factory at about 8 a. m. with a number of workers and asked the Works Manager who was then in the company of the said Superintendent about their decision regarding the closure of the continuous process units. On coming to learn from the Manager of the decision arrived at the previous night the respondent said that, it was not acceptable to him or to his followers. The respondent and three other workers called upon the Works Manager to address the workers and explain their standpoint. When this was done the respondent shouted to the workers that the Works Manager was a traitor, that they should not listen to what was said by him and that they should close the factory and stop work in all the units. The respondent in company with the said other persons went to the packing section and prevailed upon the workers to desist from working. After visiting different departments he went to the boiler fireman, Banwari Lal. (respondent in one of these appeals) and made him blow on the whistle three times as a signal to workmen all over the factory to leave off work. Banwari Lal blew the whistle as directed. The respondent along with other workers then picketed the time office entrance and stopped workmen from going inside to their duty at the change of shift. As a result of this, the kiln had to be stopped at 10-10 A. M. and could only get re-started at 2-10 P. M. Charge sheets were issued to the respondent and others including the said Banwari Lal. The first charge sheet to be issued was that on Banwari Lal on the 2nd June followed by that against Murari Lal and others on June 4.

4. The charge against Murari Lal in the charge-sheet dated June 4, 1964 was that he had not only misbehaved with Ishwar Nath, the Superintendent but also incited and instigated workmen to disobey the orders of the management in connection with the working of the factory on May 28, and further that he had incited the above strike during the pendency of proceedings before the Industrial

Tribunal. His acts were said to be subversive of discipline and amounted to indulgence in riotous and disorderly behavior, specially during the period of Ms suspension when he was not. supposed to enter the factory premises.

5. While Banwari Lal submitted his explanation on June 3, Murari Lal delayed filing it on one ground or other e.g. , asking for Hindi translation of letters, taking objection to his being addressed in his personal capacity and not as the President of the Union etc. He even threatened the Works Manager with legal action for the alleged incorrect way of addressing him. Ultimately he submitted his reply to the charge-sheet of the 4th June on July 15. He did not deny therein that he had demanded the closure of the factory but disputed that he had collected the workmen on the morning of! 28th May. He admitted having asked for a complete holiday and said that the charge sheet against him of attempting closure of the entire plant and getting Banwari Lal to blow the whistle was false. He went further and charged the Special Officer of the appellant, one Kapoor, with having distributed sweets to the workers on the day of demise of the former Prime Minister. The appellant took exception to this and submitted another charge-sheet to him for making false allegations against an officer of the company. A reply to this was submitted only on August 25. On the 29th August the Works Manager enclosed copies of charge-sheets to the respondents in the five appeals and stated that as he himself was a witness to some of these incidents he was forwarding the papers for necessary action to higher authorities.

6. According to the appellant as a number of officers were in some way or other involved in the charges against the respondent and some of them might have to figure as witnesses in the enquiry it was felt proper to appoint an outsider, S. N. Bhandari, an advocate of Delhi, to conduct the enquiry. The Enquiry Officer issued notices fixing the date of the enquiry and adjourned the same from time to time; but notices of adjournment were all returned with the endorsement 'refused' by Murari Lal and the other respondents except Banwari Lal who attended the proceedings.

7. The report of the Enquiry Officer shows that he issued a notice on 9th September to each of the workmen to whom a charge-sheet had been given informing him that the enquiry would be held on the 16th September at 10.30 a. m. in the general office of the factory. On September 15 he received two telegrams asking for postponement one of which was from the respondent and the other from the respondents other than Banwari Lal. By his telegram the respondent asked for postponement of the enquiry by a month on the ground of serious illness of his wife while the telegram from the other workers contained a similar request in view of the respondent's inability to take part in the enquiry. On the 16th September the other workmen including Banwari Lal appeared before the Enquiry Officer. After hearing Vidya Sagar, the Management's representative the Enquiry Officer adjourned the matter till the 25th September as he did not think that a month's postponement was called for. He sent registered letters to the employees including the respondent about his decision.

The second meeting was held on the 25th September in the Directors' Office of the cement factory but not one of the workmen who had been given a charge-sheet turned up at the appointed hours. An employee of the factory was sent out to contact the nine workmen including the respondent. The respondent in this appeal and the respondents in other appeals excepting Banwari Lal refused to come on the ground that they could not participate in the enquiry before disposal of their letter of objection regarding the personnel of the Enquiry Officer. The Enquiry Officer made another attempt on the same day to go on with the proceedings and fixed 3.30 p. m. for the purpose and tried to notify the concerned workmen about it. The messenger who was sent out on this occasion reported that the respondent and the said three other workmen had refused to come. The Enquiry Officer directed that evidence should be recorded in the absence of these workmen and that if they desired to take part in the proceedings they could do so at the next meeting fixed for the 1st October. On that day workmen other than these four appeared. After recording the evidence adduced, the Enquiry Officer submitted his finding on October 17, 1964 taking the view that the respondent and the said three other workmen had behaved rudely with the manager and showed insolence to him. Murari Lal was described as the ring leader. The Enquiry Officer found on the evidence before him that the closing of the factory by Banwari Lal blowing the whistle three times was done at the instance of Murari Lal. He held Banwari Lal guilty of an act of insubordination in so acting under the direction of the respondent. Murari Lal's action" was held to be all the more reprehensible because he was not supposed to enter the factory on the 27th or 28th of May when he was under suspension. According to the Enquiry Officer these four workmen had combined together to stop the working of the factory and had actually stopped certain sections of it by their coercive tactics. In the result he held that the charges against Murari Lal had been proved. He also went into the evidence with regard to the allegation of distribution of sweets by the management and found against Murari Lal.

8. The appellant had yet another grievance against the respondent in that while the above enquiry was pending, the respondent Murari Lal; put in an application to the management for half a day's sick leave on September 30, 1964. This was granted by the Chief Chemist but the respondent absented himself from duty for the whole of that day. On the Head Time-keeper pointing this out to him, Murari Lal wanted to have a look at his application and on the same being produced made changes thereon unauthorisedly and initialled the same so that he could get a full day's leave on the basis of the amended application.

9. The Head Time-keeper made a report of the incident to the Manager whereupon a further charge-sheet was issued on the 5th October 1964. In his reply thereto Murari Lal stated that he had got his leave application scribed by another person who had through mistake mentioned leave for half a day when he himself wanted a full day's leave. He admitted having taken the application from the custody of the Head Time-keeper and made some alteration thereon, at the same time stating that he had committed a mistake. He however, alleged that he

had done so at the instance of Head Time-keeper. Not satisfied with the reply the Manager of the factory appointed S. N. Bhandari i.e., the same person as the Enquiry Officer and asked the respondent to attend thereat. Murari Lal again refused to participate in the enquiry. The Enquiry Officer who recorded the statements of witnesses in support of the charges found Murari Lal guilty. The second finding of the Enquiry Officer was rendered on October 20, 1964.

10. The findings of the Enquiry Officer were forwarded to the Director-Secretary along with the record of the proceedings. The note by the Director-Secretary thereupon forwarded to the Works Manager shows that he had considered the report of the Enquiry Officer, had gone through the proceedings thereof and was satisfied that the charges had been brought home against the five workmen and that they should be dismissed from service. The report of the Enquiry Officer and the recommendation of the Director/Secretary were both sent to the Works Manager. By order dated 28th October 1964 the said Manager recorded that the charges proved against the respondent were of a grave nature and that considering all the circumstances of the case his dismissal from service had been decided upon.

11. As the appellant felt some doubt whether Murari Lal was a protected workman it submitted an application for permission to dismiss him under the provisions of Section 33(3) of the Industrial Disputes Act before the Industrial Tribunal. The other respondents were dismissed from service and tendered one month's wages. Applications for approval of the action taken against them were moved before the Industrial Tribunal on the same day.

12. Banwari Lal filed a reply confessing his guilt and did not take part in the proceedings.

13. The main grievance put forward in the reply Of Murari Lal dated November 11, 1964 was that the appointment of an outsider as an Enquiry Officer was unprecedented and that the Enquiry Officer was biased against the workers and wanted to conclude the enquiry hastily without giving a reasonable opportunity to the workers to conduct their case. Murari Lal complained that all this was 'done with a view to victimise him because he was president of a recognised Union affiliated to the I. N. T. U. C. namely, Dalmia Dadri Cement Factory Men's Union. His further case was that the enquiry conducted ex parte was perverse and held in disregard of principles of natural justice.

14. Before the Tribunal a number of witnesses were examined including the enquiry officer, S. N. Bhandari, Vidya Sagar, the Chief Chemist, Damodardas Vyas, the Factory Manager, Vishnu Kumar, the Director-Secretary and Murari Lal. The points urged on behalf of the workmen were:

(1) That the enquiry was vitiated in that the rules of natural justice were not observed and the workmen concerned were not given any real opportunity to contest the case.

(2) The enquiry was unauthorised inasmuch as the person who could legally decide to hold enquiry did not take any decision about it.

(3) The Works Manager of the concern did not apply his own mind to the case and did not come to any independent finding but had abdicated his authority in favour of someone else and accepted the latter's recommendations blindly.

At the hearing before the Tribunal the appellant did not lead any independent evidence about the guilt of the workmen but relied solely on the domestic enquiry and the report of the Enquiry Officer who was examined as a witness.

15. The Tribunal held the Management guilty of delay in the issue of charge-sheets to Murari Lal and some of the other workmen. It also commented on the fact that though the charges were sent by the Works Managers the orders for holding the enquiry were not passed by him but by Vishnu Kumar, Director-Secretary as late as August 29, 1964. He took exception to the Director-Secretary's approval of the report of the Enquiry Officer and his recommendation of the dismissal of the workmen. He was of the view that this should have been done by the Works Manager himself and although the orders of dismissal were nominally passed by the Works Manager, he had not applied his mind to the conclusions arrived at by the Enquiry Officer independently. Apparently he was impressed by the text of the order of the Works Manager and took the view that on the Enquiry Officer submitting his report to the Director the latter had accepted the findings and recommended the workmen's dismissal from service. The order of dismissal issued by the Works Manager in the case of the employees other than the respondent recorded inter alia:

The papers have been forwarded to me for necessary action. Having regard to the fact that the appropriate authorities have found you guilty of the charges and the fact that the charges proved against you are sufficiently grave...it has been decided to dismiss you. And you are accordingly dismissed from service with immediate effect.

The Tribunal read the above as meaning that the Works Manager had not brought his independent decision to bear on the question but had merely accepted the recommendation of the Director/Secretary. According to the Tribunal this vitiated the order of dismissal. It may be noted that the Tribunal was not right in thinking that the Works Manager had used the same formula as quoted above in all the cases. The text of the order of dismissal in the respondent's case is entirely different; the material portion thereof reads-

I have gone through the enquiry proceedings and accept the findings of the Enquiry Officer. I am satisfied that proper opportunity was given to you to defend yourself and the charges have been duly proved in the enquiry.

16. The Tribunal also took exception to the appointment of an outsider as the Enquiry Officer. He noted that the Enquiry Officer was an advocate practising at Delhi and was a junior lawyer at times engaged to appear in cases with Anand

Prakash, counsel for the appellant. He remarked that the Enquiry Officer was at pains to prepare a very legalistic record which may ostensibly show that a very proper enquiry was made.

The Tribunal went further and observed:

The manner in which the record has been prepared puts me in doubts that this was the record of a genuine enquiry. The record as a whole gives me an impression that this was carefully prepared for the purpose of showing that an enquiry was ostensibly held and some of the workmen were also made to sign or make their thumb mark on the said record.

In this connection he noted that two of the witnesses, R. Ws. 3 and 4 had stated before him that they were made to sit outside the office for some days and were made to affix their signatures or thumb impression on the record of the proceedings although they were not present in the enquiry room and although no enquiry was ever held in their presence. It is worthy of note that it was R. W. 3 alone who had stated that he was made to sit outside the enquiry office. The Tribunal did not find any reason to disbelieve these two persons and on the strength of this took the view that the enquiry was a farce and a made-up affair.

17. The Tribunal also accepted the evidence of Sahib Dayal, R. W. 6, Sham Sundar, R. W. 7, and Ravi Dutt, R. W. 8 that they had been threatened by the Enquiry Officer on the very first date of hearing and that the said officer's attitude was hostile to the workmen. According to the Tribunal the manner in which the orders of the Enquiry Officer had been passed lent support to the statement of the said three persons. The Tribunal inferred therefrom that the enquiry was conducted in an atmosphere in which the workmen could not possibly expect any justice.

18. The Tribunal did not think it necessary to record any findings on the second and the third charges against Murari Lal. With regard to the last charge contained in the charge-sheet dated October 5, 1964 it took the view that the evidence of Vidya Sagar and the two other witnesses examined on behalf of the appellant before the Enquiry Officer was fantastic and per verse. It was not satisfied that the enquiry on this charge was genuine and concluded that at the worst there had been some misunderstanding about the alterations in the leave application of the respondent by changing it to a full day in place of half a day but whatever was done by the respondent was concurred in by the management. It was therefore disposed to accept the version of Murari Lal that the management was out to victimise him by issuing charges on lapses of a technical character. It further found that the Works Manager was biased against Murari Lal because of the insult alleged to have been offered to him and the noting by the manager in support of the last charge was that "this was not the first occasion on which Murari Lal had been indulging in tampering with records" was not borne out and no opportunity had been given to the respondent to show that the allegation was false.

19. We find ourselves unable to accept the conclusions arrived at by the Tribunal. The Tribunal seems to have been greatly impressed by the fact that instead of appointing someone in the appellant's factory itself as the Enquiry Officer the Works Manager had brought in an outsider who was no other than a junior advocate occasionally assisting Anand Prakash, their counsel in some matters. The Tribunal's view that this was wholly unwarranted and done with the purpose of loading the dice against the workmen appears to be unreasonable. Merely because the Enquiry Officer was a junior advocate and that he had on occasions been engaged by the appellant, it is not possible to take the view that he would necessarily be biased against the workmen. Evidently some of the workmen had behaved rudely to some members in the managerial cadre and it would not have been at all difficult for the Works Manager to appoint as Enquiry Officer some person of the factory itself over whom he was likely to have greater influence than on an outsider. As he himself was going to be a witness in the enquiry he entrusted the appointment of the Enquiry Officer to the Director of the Company. We find nothing unfair in this and are unable to take any exception to the course adopted.

20. The other grounds mentioned by the Tribunal for holding that the enquiry was not a bona fide one appear to be equally unsustainable. The Enquiry Officer, as already noted, was a lawyer and if he made a report which bore the stamp of a Lawyer's work it would not be unexpected. The circumstances do not justify the conclusion that he had acted unduly hastily. He started the enquiry on the 9th September and concluded it nearly a month thereafter. He held several sittings; he adjourned the case to 25th September to suit the convenience of Murari Lal whose request for adjournment for a month to the middle of October does not appear to have been based on any genuine ground. He sent for the workmen when they failed to turn up and noted what the messenger deputed to summon them had stated. We have referred in some detail to the correspondence which passed prior to the enquiry merely to show that Murari Lal's attitude throughout was to delay the proceedings and to frustrate them if possible. His excuse for not appearing in the proceedings was frivolous. He purposely delayed giving his reply to the charges and raised all sorts of frivolous objections from time to time to hold up the enquiry. Moreover the delay in the holding of the enquiry, if any was not made a ground of complaint by Murari Lal and the Tribunal's comment in regard thereto appears to be unjustified.

21. We do not accept the view of the Tribunal that the Works Manager did not apply his mind to the facts before ordering dismissal of the workmen and that he was simply following the suggestion of "the approved authorities". The order passed by the Works Manager does not bear that interpretation and the mere fact that he had referred to the opinion of others in some of the orders did not exclude his having formed an opinion of his own and when his own view was the same as that of the Director no exception could be taken to the fact that he had also referred to such opinion.

22. In *Saran Motors v. Vishwanath* (1964) 2 Lab LJ 139, this Court rejected the objection as to bias of the enquiry officer upheld by the Tribunal on the ground that the enquiry officer had at times been engaged by the appellant as a lawyer in industrial matters and had been entrusted with the work of holding enquiries on some previous occasions observing that the mere fact of a person's occasional employment as a lawyer by the employer did not render him incompetent to hold a domestic enquiry.

23. In our view there was sufficient evidence before the enquiry officer to come to the conclusion arrived at by him. Banwari Lal admitted that he had blown the whistle at the instance of Murari Lal leading to the stoppage of work in the factory. Such an act of indiscipline on the part of a worker could hardly be expected to be tolerated by any employer who attaches any value to discipline in his factory whatever be the reason for the demand for cessation of work. The more so, because Murari Lal was then under orders of suspension and was not supposed to enter the factory premises. Leaving out of account the second and the third charges which were not pressed before the Tribunal, there was ample evidence before the Enquiry Officer to arrive at the conclusion he did. There was certainly a *prima facie* case established by the employer which could be controverted by Murari Lal adducing evidence to the contrary.

24. It was argued before us that the Tribunal's finding ought not to be upset in view of the fact that Murari Lal had been in service of the appellant for 27 years without any blemish on his record and that the incidents of 27th and 28th May, 1964 even if proved, were not of such a grave nature as called for dismissal and the management might have overlooked the fault, if any, committed by Murari Lal. In the evidence before the Tribunal, Murari Lal had stated that some charge-sheets had been issued to him during the years 1947-50 and also thereafter and that he could produce the charge-sheets if given an opportunity to do so. He could not however state the nature of the charges contained therein. Counsel for the appellant appears to have stated that the management had never issued charge-sheets to the respondent except on two occasions to which the dispute related and wanted Murari Lal to produce any charge-sheets particularly any after 1960. From the record of the case it is not possible to come to any conclusion whether any charge-sheets had in fact been issued to the respondent before 1964. We cannot hold that the issue of four charge-sheets in the year 1964 between 4th June and early in October was evidence of motive to victimise. The charge regarding the incidents of 27th and 28th of May was sufficiently serious for the management to have proceeded in the way it did and merely because the respondent admitted that he had himself made the amendment to his leave application it cannot be said that the appellant should not have pressed that charge. It was said that for an incident like this no greater punishment than withholding of a day's pay was called for. There would have been much to be said in favour of the workman if that was the only charge on which he was being proceeded against.

25. In the result we hold that the Tribunal was not justified in coming to the conclusion on the facts of the case that there was no reason for according permission to the management for dismissing Murari Lal Bikaneria as a result of the enquiry held against him. We set aside the order and allow Appeal No. 968/1966. In the circumstances we make no order as to costs.

26. With regard to the other appeals, it is sufficient to state that the respondents have expressed regret for the part played by them as mentioned in the charge-sheets issued to them and the appellant is satisfied therewith and does not want to proceed with these appeals. The said appeals Nos. 969 to 972/1966 will therefore stand disposed of as not pressed without any order as to costs.