

(1964) 08 MAD CK 0044
In the Madras High Court
Case No : Writ Appeal No. 216 of 1964

East Asiatic Co. (I) (P) Ltd., Madras

APPELLANT

Vs

The Workmen employed in E.A.C. (I) (P) Ltd., Madras and
Others

RESPONDENT

Date of Decision : 28-08-1964

Acts Referred:

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

Citation : AIR 1965 Mad 221 : (1965) 10 FLR 148 : (1965) ILR (Mad) 136 :
(1964) 77 LW 727

Hon'ble Judges : S. Ramachandra Iyer, C.J.; Venkatadri, J

Bench : Division Bench

Judgement

Ramachandra Iyer, C.J.

(1) This is an appeal under Cl. 15, Letters Patent, by the East Asiatic Co. (1) Private Ltd., Madras, referred to hereafter as the "management",

against the judgment of Veeraswami J. declining to issue a writ sought by them to quash the award passed by the Labour court at Madras,

directing the reinstatement of the worker S. V. Chandran with back wages by the management. S. V. Chandran entered the service of the

management as a clerk in its establishment in the year 1950. During the time material to the present dispute, he was employed in the X-ray

department at its godown in Royapuram, Chandran was an active member of the Employees Union and he had also been declared as a "protected

workman" within the meaning of S. 33 of the Industrial Disputes Act.

(2) On 11-7-1960, the employees of the Central Government went on strike with a view to obtain redress of certain grievances. Three days

earlier, the President of India had promulgated an Ordinance called the Essential Services Maintenance Ordinance, 1960. That enabled the Central

government, by a general or special order, to prohibit strikes in any essential service. The term "essential service" was defined by the Ordinance.

section 5 of the Ordinance penalised a person who instigated or incited other persons to take part in or otherwise act in furtherance of a strike,

which was made illegal under the Ordinance.

(3) The Management, in the instant case, apprehending a strike by its own employees, put up a notice on 13-7-1960 warning them from staging

any token or sympathetic strike or absenting themselves from duty without permission on 14-7-1960. But the notice had no effect. About 400

workers. of whom, Chandran was one, absented themselves. There can be little doubt that they did so in concert under a common understanding

not in respect of any grievance that they had against the Management, but for a wholly extraneous reason. It was further stated that Chandran went

to the show room of the management at Mount Road and tried to dissuade two of the workers there from attending to their work. On the very

same day the management issued individual notices to all the employees who did not attend that day, calling for an explanation why disciplinary

action should not be taken against them. Chandran, however, was dealt with separately, because he, according to them, not merely absented

himself from work that day, but also tried to prevent people, who were willing to work from so doing. after considering the explanation offered by

the other workers, the Management imposed a cut in their wages for the day on which they absented themselves. Chandran, as we said, was

called on to explain not merely in regard to his absence on 14-7-1960, contrary to the directions given by the Management, the previous day, but

also for actively preventing willing workers from reporting for duty. His explanation being found unsatisfactory, a charge was framed against him on

27-7-1960, in the following terms:

Contrary to the orders of the management conveyed through their notice dated 13-7-1960, you absented yourself without permission on 14-7-

1960 and acting in concert with ten or more members of the staff went on strike on 14-7-1960 without any notice or justification whatsoever. You

were also found present within the premises of our show room at Mount Road,

Madras, on 14-7-1960, engaged in instigating one or more employees not to work"".

It will be noticed that the first part of the charge was common to Chandran as well as to the other workers who absented themselves from duty on

that date. the second part, which is special to him, charged him with instigating others not to work. There is, however, nothing in that charge

accusing the worker of acting in furtherance of the strike, which was illegal under Ordinance 1 of 1960. Indeed it cannot be said that the

sympathetic strike of the workers under the Management in the instant case was one in furtherance of the strike staged by the employees of the

Central government on 11-7-1960.

(4) The charge against Chandran was enquired into on 29th and 30th august 1960. The management being of opinion that the charge in both its

aspects had been made out, came to the tentative conclusion that the services of the workers should be terminated. But Chandran was a protected

workman. Besides that, there was pending before the Conciliation officer, an industrial dispute about the bonus payable to the workers for the year

1958. The management therefore applied to that officer under s. 33 for permission to impose the punishment of dismissal on Chandran. By his

order dated 19-11-1960 the Officer granted the permission sought. Six days later the management passed an order dismissing Chandran from its

service"

(5) The propriety of the dismissal formed the subject matter of an industrial dispute, which was duly referred for adjudication by the Labour Court.

That court found that there was no misconduct proved against Chandran by reason of his participation in the strike staged on 14-7-1960 and that

further he was not guilty of instigating the other workers to abstain from work, though he used method in peaceful persuasion to secure that end.

the court also held that although the legal forms of enquiry had been adhered to by the management, such an enquiry did not conform to rules of

natural justice and that the action taken against the worker was actuated by mala fide motives and the case was one of victimisation of the worker

for his trade union activities. An award was passed directing the reinstatement of the worker with back wages from the date of his dismissal.

(6) This award was challenged under Art. 226 of the Constitution in this court

before Veeraswami J. who held that inasmuch as Chandran had been specifically charged with having instigated an illegal strike, the second part of the charge against him should fall, and that there was sufficient material for the labour court to the conclusion that there as victimisation in the case. The management having failed to obtain the relief it sought before the learned Judge, has come forward with this appeal.

(7) The principal contention of Mr. Govan Swaminathan on behalf of the management is that the labour court did not appreciate the correct principles which regulate its powers in proceedings under S. 10 of the Industrial Dispute Act when it was investigating the propriety of the dismissal of a worker, after a domestic enquiry conducted by the management. In this connection learned counsel has invited our attention to the rule laid down by the Supreme Court in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, ; namely that an Industrial Tribunal, like the labour court, does not act as a court of appeal, against the order of the management and that so long as the disciplinary action taken against the worker was after a proper enquiry, it was not for the labour court except in certain specified circumstances to substitute its own judgment for that of the management. Founding himself on this rule, learned counsel contended that inasmuch as the disciplinary enquiry conducted by the management in the instant case was found to be a proper one in proceedings under S. 33 by the Conciliation Officer there was nothing for the Labour Court to investigate. In other words, the contention was that inasmuch as the proceedings under S. 33, the Conciliation Officer found that the domestic enquiry was a proper one and that permission to impose a punishment on the worker should be granted, the former finding should be taken as conclusively determining that there was no defect in the domestic enquiry and that, therefore, it was not open to the labour court, the proceedings under S. 10, to find that the enquiry was defective.

(8) It does not appear from the records that this contention was at all raised before the labour court. Indeed, the terms of issue 9 would appear to negative the possibility of such a question having been in the minds of the parties before the court. it does, however, appear that the contention was raised before the learned Judge but he did not deal with the same. It has no doubt been held that a person who applies for the issue of a writ of

certiorari, armed with a point, either of law or of fact, which would oust the jurisdiction of the inferior Tribunal elects to argue the case on its merits

before that Tribunal and thereby submits himself to the jurisdiction of that Tribunal, he could not be allowed afterwards to impugn such jurisdiction

before the superior court in discretionary proceedings like those coming under Art. 226 of the Constitution. But we are by no means satisfied that

this principle can be applied to the present case. The management filed before the labour court the order of the conciliation Officer passed under S.

33. The present contention that that order should be taken as conclusive or as res judicata cannot be regarded as one that will oust the jurisdiction

of the labour court altogether. It is more a question of law which if accepted will render one fourth of the enquiry unnecessary. Therefore, the

omission to raise that point before the labour court will not preclude the appellant from raising it for the first time before this Court.

(9) We are, however, not satisfied about the correctness of the contention. The order of the Conciliation Officer under S. 33 can in no sense be

regarded as a judicial order. On the other hand, the enquiry by the labour court under S. 10 is a judicial one. There is no provision in the Act

making the order under S. 33(1) binding on the judicial authorities under the Act. The duty of the officer who grants permission under S. 33 is

merely to see whether there is a prima facie case made out for imposing the punishment proposed by the management. In performing that duty he

has no doubt to see whether there has been a proper enquiry and the management was not actuated by any improper motives. But the conclusion

in that regard is to be reached by the officer not after any enquiry, but on prima facie, consideration of the material produced before him. On the

other hand, an enquiry in respect of reference made under S. 10, is a judicial one and it will be within the competence of the tribunal to go into the

question whether the domestic enquiry, as a result of which the disciplinary action was taken against the worker, was a proper one or not. The

exercise of such a judicial function cannot be hampered by the prima facie adjudication about the propriety of the domestic enquiry by the

Conciliation Officer under S. 33.

The distinction between the nature of the jurisdiction exercised by the Conciliation Officer and by the labour court or Industrial Tribunal, acting

under S. 10 will be apparent from a reading of sub-secs. (1) and (3) of S. 11 on the one hand, and of sub-sec. (4) on the other. the Conciliation

Officer has no power apart from what has been conferred under the Act itself. Further, the approval or permission given under S. 33 relates only

to an individual dispute, whereas the adjudication envisaged by S. 10 is a collective dispute. The object of S. 33 as has been pointed out by the

Supreme Court in *The Punjab National Bank Ltd. Vs. Its Workmen*, is to provide for the continuance and termination of the pending proceedings

in a peaceful atmosphere undisturbed by any cause of friction between the employer and his employees. It envisages the maintenance of the status

quo pending disposal of the industrial dispute between the parties. But, at the same time, it also recognised that occasions may arise when the

employer should have the power of taking disciplinary action against his employees. With a view to balance the two conflicting considerations set

out above, it allows the employer to take such disciplinary action as he does so, he obtains the express permission, in writing, of the officer or

tribunal specified in S. 33.

Therefore, what S. 33 does, in the first instance is to impose a ban on the management from altering the status quo in regard to the relationship

between the management and the workers, who are concerned in the pending industrial dispute. That section then provides for lifting of the ban by

the grant of permission or approval, as the case may be, by the authorities specified in that section. For granting permission, that authority is

concerned only to see whether the domestic enquiry which had been conducted by the management against the delinquent workers, is without any

apparent defects and that the punishment proposed is prima facie just. Such a finding cannot obviously bind the Industrial Tribunal functioning

under S. 10, if the validity of the enquiry is impugned before it. We may, in this connection, refer to the decision of the Supreme Court, in

Mckenzie and Co. Ltd. Vs. Its Workmen and Others, where it was held that the jurisdiction under S. 33 of the Industrial Disputes Act was merely

to give or withhold permission and not to adjudicate the industrial dispute and that any finding reached in an application under that section would

not operate as res judicata and bar the raising of an industrial dispute in respect of the same misconduct. the same principle was recognised even

earlier in Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup, ; see page 24 (of Lab LJ): (at page 92 of AIR).

(10) In The Punjab National Bank Ltd. Vs. Its Workmen, the Supreme Court had occasion to consider in detail the true nature and the limits of

the jurisdiction of the authority functioning under sec. 33 of the Act. Gajendragadkar J. (as he then was) observed:

But it is significant that even if the requisite permission is granted to the employer under S. 33 that would not be the end of the matter. It is not as if

the permission granted under S. 33 validates the order of dismissal. It merely removes the ban; and so the validity of the order of dismissal still can

be, and often is, challenged by the Union by raising an industrial dispute in that behalf.....but in the case of S. 33, the removal of the ban merely

enables the employer to make an order of dismissal and thus avoid incurring the penalty imposed by S. 31(1). But if an industrial dispute is raised

on such a dismissal the order of dismissal passed even with the requisite permission obtained under S. 33 has to face the scrutiny of the Tribunal".

Mr. Govind Swaminathan, while conceding that the foregoing observations of the Supreme Court are decisive on the question raised by him has

tried to submit that later decisions of the Supreme Court have not accepted that principle, but, on the other hand, held that, in certain

circumstances, the conclusion reached as to the validity of a domestic enquiry in proceedings under S. 33(2) would be binding in proceedings

initiated under S. 10 of the Act. Learned counsel referred us, in this connection, to the decision in P.H. Kalyani Vs. Air France Calcutta, . But that

decision has merely enunciated the principles that should govern the authority functioning under S. 33 in granting permission to the management for

taking disciplinary action. B. B. Goal Co. v. Ram Prabesh Singh, AIR 1964 SC 486 was next cited. In that case, the Tribunal hearing a reference

under S. 10 held that the domestic enquiry in which the worker was punished by the management was properly conducted. While referring to that

finding, the Supreme Court observed:

It may be added that it could hardly do otherwise, for it had already approved of the action taken on applications made under S. 33(2)(b) of the

Act. If the enquiry had not been proper, the Tribunal would not have approved of the dismissals".

again,

We have already indicated that the Tribunal did not find that there was any basic error or violation of the principles of natural justice in the holding

of the enquiry; nor did it find that the findings of the enquiry officer were perverse or baseless. It could hardly do so in the face of its own approval

of the action taken on applications made to it under S. 33(b) of the Act for if it had found that the enquiry was not proper, it would not have

approved of the action taken against the workmen by the appellant when it was approached under S. 33(2)(b).

These observations, it is contended, impliedly lay down that a finding given under S. 33(2)(b) as in the present case, would be binding on any

Tribunal before whom the question of the propriety of the enquiry falls to be decided under S. 10. We are unable to agree with the contention.

What the Supreme Court does in that case is to point out, that the finding of the Tribunal functioning under S. 33(2)(b). We are unable to regard

the decision as in any way casting a doubt on the clear enunciation of the principle in *The Punjab National Bank Ltd. Vs. Its Workmen*, . We are,

therefore, of opinion that the granting of permission by the Conciliation Officer under S. 33(2)(b) in the instant case cannot preclude the labour

court, from considering a reference made to it under S. 10 and adjudicating upon the question whether the domestic enquiry conducted by the

management as against the worker was proper or defective.

(11) The next point that falls for consideration is the contention of Mr. Govind Swaminathan that there are no materials in the record to justify the

labour court to come to the conclusion that the enquiry conducted on the 29th and 30th August 1960 by the management was anything but a

proper one. In this connection learned counsel invited our attention to the fact that full opportunity was given to the employee at the enquiry to

cross-examine the witnesses. But it is seen from the record that, Chandran was not shown, at the enquiry, the report made in regard to his

instigating the two employees in the Mount Road show room, in spite of his request for being shown the same. The labour court had come to the

conclusion that there were defects in the enquiry and that finding, in the circumstances of the case has got to be accepted.

(12) Even so, learned counsel for the appellant argues that as the delinquency of

Chandran is patent on the face of the record, the labour court should, in spite of there being some defects in the inquiry, have accepted the ultimate conclusion reached by the management. We have earlier referred to the charge framed against the appellant. In the notice issued on 14-7-1960, the management stated that Chandran had prevented other workers from attending to their work. But the actual charge as ultimately laid against him only stated that he was engaged in instigating one or two employees not to work. The labour court had found that even that had not been made out, inasmuch as what Chandran did was nothing more than peaceful appeal with a view to persuade two employees in the Mount Road show room to join the other workers in the strike. His exhortation did not meet with any response and the labour court found that the second part of the charge had not been proved. As regards the first part, Chandran was certainly guilty along with the other 399 workers in not attending to work on 14-7-1960. but in respect of that charge, those workers were treated lightly by imposing a cut of a day's wages alone. Chandran was dealt with differently for the reason that he instigated the other workers to join the strikers. The latter aspect of the charge not having been made out, the punishment imposed cannot be sustained. It is not the case of the management before us that there has been any violation of the Ordinance by staging a strike by the workers of the appellant company. As the learned Judge has pointed out, the charge itself does not say anything about the illegality of the strike. If, as the labour court, has pointed out, the strike itself is not illegal, we fail to see how there can be any misconduct in Chandran asking two persons, ineffectually at that to join the strike. there is nothing in the standing orders of the appellant company precluding the workers from resorting to strike.

(13) But Mr. Govind Swaminathan would argue that the warning issued by the management on 13-7-1960 was a lawful direction by the management, the contravening of which could be regarded as illegal. But that warning merely stated that any strike by the employees in sympathy with the illegal strike staged by the Central Government employees, would amount to an incitement and support and be one in furtherance of the said strike. This is not now sought to be justified as the correct legal position. At the same time, the notice dated 13-7-1960 was also a warning to

the workers of the company not to absent themselves without permission on the 14th. But they did so and for that appropriate punishment was awarded to them. The important point in the present case is that Chandran has been more severely dealt with than others. The labour court has found that in as much Chandran was engaging himself in Trade Union activities, he was thought of by the management for a discriminatory punishment. There could however be no discrimination if the second part of the charge had been proved. In as much that charge is unfounded, that finding should stand. We are therefore of opinion that there is no case for interference by this Court under Art. 226 of the Constitution. The appeal fails and is dismissed with costs.

(14) Appeal dismissed.