
(2007) 03 KL CK 0090

In the High Court Of Kerala

Case No : Original Petition No. 29689 of 2002

Edayar Ksheerolpadaka Sahakarana Sangham

APPELLANT

Vs

Industrial Tribunal

RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11(1), 11(3), 33, 33(2)

Citation : (2007) 114 FLR 301 : (2007) 2 ILR (Ker) 84

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : A.V. Xavier, Jolly John and J. Joseph, for the Appellant; P. Ramakrishnan and Santhosh, G.P., for the Respondent

Judgement

S. Siri Jagan, J.—A question of law which had gained the attention of the Supreme Court of India in several cases including a Constitution Bench decision, has again been raked up by a management in an industrial dispute relying on an observation by a recent Supreme Court decision by a bench of lesser strength.

The issue relates to the point of time at which a management has to seek opportunity to adduce fresh/additional evidence for justifying the disciplinary action taken against a workman, in the event of the domestic enquiry conducted by the management, on the basis of which punishment was imposed on the workman, is held to be not valid and proper. The question is whether such an opportunity should be requested for by the management at the threshold of the proceedings before the Industrial Tribunal/Labour Court, namely at the time of filing of written statement itself by the management, or whether it is sufficient if the request for the opportunity is made at any time before the conclusion of the proceedings before the Industrial Tribunal/Labour Court.

2. In the present case this issue cropped up before the Industrial Tribunal, Alappuzha, in I.D. No. 49 of 1999, in the following factual scenario. The legality of the dismissal of the 2nd respondent-workman, a Milk Tester, attached to the petitioner-management, which is a Milk Society, was referred for adjudication to

the Tribunal. The 2nd respondent-workman was dismissed from Service by the petitioner-management after conducting (a domestic enquiry. Therefore, the Tribunal considered the validity of the enquiry as a preliminary issue. The management adduced evidence in support of the enquiry by examining the enquiry officer and marking the enquiry file. Arguments on the preliminary issue were heard and the Tribunal took up the matter for passing orders, on 19.7.2002. Thereafter, apparently, apprehending adverse orders from the Tribunal on the preliminary issue and realising that they had not sought opportunity to adduce additional evidence to prove the misconduct of the workman in case the Tribunal finds that the enquiry was not valid, in the written statement filed before the Tribunal, the management on 22.7.2002 filed two petitions, I.A. Nos. 7/2002 and 8/2002, the latter for permitting them to incorporate additional pleadings in the written statement to the effect that in case the Tribunal finds that the enquiry is vitiated, the management may be permitted to adduce fresh evidence to substantiate the charges against the workman through a de novo enquiry and the former to accept the petition for amendment of the written statement (Copies of these two petitions are produced as Exts. P-4 and P-5. Although in the original petition and in the preliminary order of the Tribunal, it is stated that the former petition is for re-hearing the matter after effecting amendment of the written statement as prayed for in the other, from Exts. P-4 and P-5, I find that the former petition is only for accepting the petition to amend the written statement). Although these petitions are referred to in the preliminary order of the Tribunal, there is no mention therein as to the order passed by the Tribunal on those petitions except that the pleas as raised in those I. As. cannot be entertained in view of the Supreme Court decision on the issue. In any event, relying on the decision of the Supreme Court in Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, a portion from which stated as paragraph 14 (at page 210) thereof was extracted in the order, the Tribunal by Ext.P-6 preliminary order held that the enquiry was vitiated for want of compliance with principles of natural justice and that the plea, of the management for de novo enquiry is unsustainable since the request for the same was not made in the written statement of the management. This Ext. P-6 order is under challenge before me.

3. Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, is also reported in. I shall be referring to the text of the said, decision hereinafter as it appears in the SCC since there appears to be some difference between the two journals in numbering the paragraphs of the decision going by the number of the paragraph mentioned in Ext. P-6 order.

4. At the outset, I must state that the only contention advanced before me by the petitioner at the time of hearing is that the Tribunal ought to have given the management an opportunity to adduce evidence to prove the misconduct of the workman by allowing them to amend the written statement. No other contentions were advanced before me. In this context I may also note that on the basis of the preliminary order, the Tribunal is stated to have passed award in

the I.D. and forwarded it to the Government for publication in the Official Gazette, which apparently was not done in view of the order dated 22.10.2002 of this Court in C.M.P. No. 50289/2002 staying operation of Ext. P-6 and publication of the award in the Gazette. In any case, parties were not able to tell me whether the same has been so published or not.

5. The contention now raised before me by the Counsel for the petitioner-management is that the management can make the request for adducing fresh evidence to sustain the dismissal of the workman at any stage before conclusion of the proceedings and since they had made the request before the preliminary order was passed, the same was within time. This contention is based on a sentence stated to be from paragraph 14 of the Lakshmi Devamma's case as extracted in Ext.P-6, as also a decision of a Bench of two Judges of the Supreme Court in Divyash Pandit v. Management N.C.C.B.M. 2005 (105) FLR 1179 (SC). I shall extract the paragraph from Lekshmi Devamma's case extracted in Ext.P-6 stated to be paragraph 14 thereof and underline the sentence relied on by the Counsel for the petitioner, below:

Therefore it is crystal clear that the right which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either u/s 10 or Section 33 of the Act questioning the legality of the order terminating service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take a certain action or seeking approval of the action taken by it. If such a request is made in the statement of claim application of written statement, the Labour Court or the Industrial Tribunal must give such opportunity.

If the request is made before the proceedings are concluded the Labour Court or Industrial Tribunal should ordinarily grant the opportunity to adduce evidence. But if no such request is made at any stage of the proceedings, there is no duty in law on the Labour Court or the Industrial Tribunal to give such an opportunity and if there is no such obligatory duty in law failure to give any such opportunity cannot and would not vitiate the proceedings.

6. The petitioner, also placed reliance on the following passage in Divyash Pandit's case (*supra*).

8. ...It is true no doubt that the respondent may not have made any prayer for (sic submitting) additional evidence to its written statement, but as held by this Court in Karnataka SRTC v. Luxmi Devamma this did not place a fetter on the powers of the Court/Tribunal to require or permit parties to lead additional evidence including production of document at any stage of proceedings before they are concluded. Once the Labour Court came to the finding that the enquiry was non est, the facts of the case warranted that the Labour Court should have given one opportunity to the respondent to establish the charges before passing an award in favour of the workman.

7. Regarding the passage from Lakshmi Devamma's case extracted by the Tribunal in Ext.P-6,1 must note that the Tribunal has made a mistake. In fact that passage is a passage from another decision of the Supreme Court in Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another, extracted in the minority judgment of Sabharwal, J. (as he then was) in Lakshmi Devamma's case and is not a part of the majority decision in Lakshmi Devamma's case. Since it is the decision of the majority which is the law, the extracted portion is not at all relevant for our purpose.

8. Since Laxmi Devamma's case is a decision of a Constitution Bench of five Judges, the law as laid down in the majority view of that decision is the one which would prevail over other decisions even if there are subsequent decisions to the contrary, unless the same are at least other Constitution Benches of coequal strength or having strength of more than five Judges. Therefore, I shall proceed to find out the, ratio of that decision for application to the facts of the case at hand.

9. In Lakshmi Devamma's case, the majority decision was rendered by Santosh Hegde, J. for himself and Bharucha, J. (as he then was). Shivaraj V. Patil, J. wrote a concurring judgment for himself and Khare, J. (as he then was). Sabharwal, J. (as he then was) alone wrote a dissenting judgment.

10. I shall now examine how the majority judgment dealt with the subject They first retraced, the various steps in the evolution of the law on the subject from the beginning. The question came up before them for decision because a Bench of two Judges perceiving a conflict between the decision in Shambhunath Goyal v. Bank of Baroda 1983 (47) FLR 438 (SC) and Rajendra Jha Vs. Presiding Officer, Labour Court, Bokaro Steel City, District Dhanbad and Another, referred it for decision of a larger bench. After finding that there is no conflict between the two decisions since the Rajendra Jha's case, was decided on the facts of that case only, the Court proceeded to lay down the law on the subject since some other decisions which were in conflict with Shambhunath Goyal's case were relied upon by the appellant before them.

11. The Court observed that the right to adduce evidence is not a statutory right, but a procedure laid down by (the Supreme Court to avoid delay and multiplicity of proceedings in the disposal of industrial disputes, the genesis of which they traced to certain observations .in the decision of Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, to the effect that" if such an opportunity is not given, the management may conduct another enquiry causing delay since the employer would claim the benefit of the second enquiry and if such opportunity is given to the employer before the Tribunal itself, the employee would have the advantage of having the merits of his case independently considered by the Tribunal itself, which would be to the benefit of the workman. Bearing in mind those observations, the Court examined the various decisions on the subject and found that in all those judgments, the Supreme Court agreed on the existence of this right on the management, but perceived some differences

of opinion in regard to the appropriate time for making such an application. The Court noted that while some judgments held that such a right can be availed of by the management at any stage of the proceedings right up to the stage of pronouncement of the order on the original application filed either u/s 10 or Section 33(2)(b) of the Industrial Disputes Act, some other judgments held that the said right can be invoked only at the threshold. After extracting passages on the issue from the decisions of *Delhi Cloth & General Mills v. Ludh Budh Singh* 1972 (25) FLR 1 (SC) and *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, which held that the request has to be made "before the proceedings are closed", their Lordships found that the controversy continued without finality until the decision in *Shambhunath Goyal's* case. After noting that in that case the Court discussed the earlier cases including that of *Shankar Chakravarti's* case (supra) and *Cooper Engg. case* (supra), their Lordships extracted the following passage from *Shambhunath Goyal's* case:

16. We think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to adduce further evidence to substantiate the charge or charges framed against the workman referred to in the above passage is the application which may be filed by the management during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its permission u/s 33 of the Industrial Disputes Act, 1947 to take a certain action or grant approval of the action taken by it. The management is made aware of the workman's contention regarding the defect in the domestic enquiry by the written statement of defence filed by him in the application filed by the management u/s 33 of the Act. Then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay. But when the question arises in a reference u/s 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing, any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do.

(Emphasis supplied)

Thereafter, for the majority of the Constitution Bench, Santhosh Hedge, J. proceeded to finally lay down the law on the subject in paragraphs 16 to 19 as

follows:

16. While considering the decision in Shambhu Nath Goyal case we should bear in mind that the judgment of Vardarajan, J. therein does not refer to the case of Cooper Engg. However, the concurring judgment of O.A. Desai, J. specifically considers this case. By the judgment in Goyal case the management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it u/s 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made u/s 10 of the Act, meaning thereby that the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.

17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in Shambhu Nath Goyal case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen in as much as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/ Tribunal could get prolonged. In our opinion, the procedure laid down in Shambhu Nath Goyal case is just and fair.

18. There is one other reason why we should accept the procedure laid down by this Court in Shambhu Nath Goyal case. It is to be noted that this judgment was delivered on 27.9.1983. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis requires us to approve the said judgment to see that a long standing decision is not unsettled without a strong cause.

19. For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shambhu Nath Goyal v. Bank of Baroda is the correct law on the point."

(Emphasis supplied)

Shivaraj Patil, for himself and for Khare, J. (as he then was) agreed with the judgment of Santosh Hegde, J. but added two paragraphs thus:

Shivaraj V. Patil, J. (for Khare, J, and himself) (concurring)--After going through the draft judgment prepared by N. Santosh Hegde, J., we respectfully agreed

with the same. Having gone through the draft judgment prepared by Y.K. Sabharwal, J., received later, we felt the necessity of adding the following few lines.

44. The question as to at what stage the management should seek leave of the Labour Court/Tribunal to lead evidence/additional evidence justifying its action is considered in the draft judgment of Hegde, J. and not the power of the Court/Tribunal requiring or directing the parties to produce evidence if deemed fit in a given case having regard to the facts and circumstances of that case. As per Section 11(1) of the Industrial Disputes Act, 1947 (for short "the Act") a Court/Tribunal can follow the procedure which it thinks fit in the circumstances of the case subject to the provisions of the Act and the rules framed thereunder and in accordance with the principles of natural justice. u/s 11(3), the Labour Court/Tribunal and other authorities mentioned therein have the same powers as are vested in a Civil Court under the CPC when trying a suit in respect of certain matters which include enforcing the attendance of any person and examining him on oath and compelling the production of documents and material objects;

45. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before the Labour, Court/Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Court/Tribunals have the power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in as given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the Court/Tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the Court/Tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice.

(Emphasis supplied)

These additional paragraphs are the ones which form the basis for the decision of the later Bench of two Judges in Divyash Pandit's case (supra) cited by the Counsel for the petitioner.

12. On a careful reading of the majority decision of the Constitution Bench as a whole I have no doubt in my mind that the law on the subject is that the management has to exercise its right of seeking opportunity to lead fresh/additional evidence at the first available opportunity, which is in the written statement itself in industrial disputes u/s 10 and immediately after the workman alleges defect in the enquiry in proceedings u/s 33 of the Industrial Disputes Act and not at any time thereafter during the proceedings before the Tribunal/Labour Court.

13. I am of the opinion that the observations in the concurring judgment of Shivraj Patil, J. followed in Divyash Pandit's case do not lay down any different law, but only reiterates the power of the Tribunal/Labour Court to call for any evidence at any stage of the proceedings, which power has to be exercised by it, if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation and do not confer any right on the management to make the request for adducing additional evidence at a later stage without making the request in the written statement in an I.D. or in the rejoinder statement in proceedings u/s 33.

14. The learned Counsel for the petitioner tried to distinguish the case at hand by arguing that he had filed a petition for amending the written statement, which if allowed would relate back to the date of filing of written statement which is a different situation not contemplated by the judgments referred to above. I do not think that the petitioner can save the situation by importing the principles in the CPC to the proceedings under the Industrial Disputes Act, which is the obvious attempt of the Counsel. If that is permitted, the law as laid down by the Supreme Court would be rendered meaningless, since any management can overcome the said legal position by just filing an application styled as an application to amend the written statement to include a request for permission to adduce additional evidence, which cannot be permitted.

15. The above discussion would give me no option but to dismiss the original petition upholding Ext. P-6, which I hereby do. The Government shall publish the award passed by the Tribunal without any further delay, if not already done, for which purpose a copy of the judgment shall be forwarded to the Secretary, Department of Labour, Government of Kerala since the award was passed before the amendment of the rules permitting publication of the award by pronouncement of the award by the Tribunal/Labour Court in open Court. The parties shall bear their respective costs.

Interlocutory Application stands closed.