

(1984) 03 BOM CK 0030

In the Bombay High Court

Case No : Writ Petition No. 2250 of 1979

Ghatge Patil Transport Pvt. Ltd.

APPELLANT

Vs

B.K. Etale and others

RESPONDENT

Date of Decision : 29-03-1984

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 22

Citation : AIR 1984 Bom 167 : (1984) 49 FLR 86 : (1984) 2 LLJ 121

Hon'ble Judges : Kamat, J;D.M. Dharmadhikari, J

Bench : Division Bench

Judgement

Dharmadhikari, J.—This Writ Petition has been filed against the finding on the preliminary issue recorded by the Presiding Officer, Labour Court, Kolhapur vide his order dated 24th July, 1979 in I.D.A. Reference No. 79 of 1976. Before the Labour Court the employee had challenged the legality and validity of the Departmental Inquiry held against him on several grounds. The Learned Presiding Officer found that there was no substance in any other contention except the one viz. that he was not permitted to be defended by some well-wisher from outside or some Union representative from outside or through a legal practitioner and, therefore, the inquiry was vitiated, it being violative of the principles of natural justice. It is part of the order which is challenged in his Writ Petition by the petitioners-employers.

2. Shri Shetye, the learned Counsel appearing for the petitioners, contended before us that the learned Presiding Officer committed an error, which is apparent on the face of the record, in coming to the conclusion that this technical infirmity had vitiated the Departmental Inquiry. According to Shri Shetye, once it is held, as has been held by the Presiding Officer, that this infirmity was only a technical one, it was not open to the Labour Court to come to the conclusion that the Departmental Inquiry is vitiated. He also contended that under the Model Standing Orders, which governed the contract of service between the parties, the

employee has no right to be represented by a representative of a Union or a well-wisher nor has he any right to be represented by a legal practitioner. In these circumstances, if no permission was granted to the employee to be represented either by the representative of the Union or some well-wisher from outside or through a legal practitioner, it cannot be said that there was any infringement of the provisions of law or the Standing Orders. It cannot also be said that the right to be represented by somebody else is a principle of natural justice, breach of which will vitiate the inquiry. In support of these contentions, Shri Shetye placed reliance upon various decisions of the Supreme Court, including *Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd.*, and *K.L. Tripathi Vs. State Bank of India and Others*,

3. On the other hand, it is contended by Dr. Kulkarni appearing for the Respondent No. 1 employee, that this Writ Petition has been filed merely against a preliminary finding and the dispute pending before the Labour Court is not yet finally decided, and therefore, this Court should not exercise its extraordinary jurisdiction under Art. 226 of the Constitution of India at this preliminary stage. In support of this proposition, Dr. Kulkarni placed reliance upon the decision of the Supreme Court in *D.P. Maheshwari Vs. Delhi Administration and Others*, . So far as the merits of the controversy are concerned, he has placed reliance upon the decision of the Supreme Court in *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*, as well as another decision of the Supreme Court in *Agra Electric Supply Co., Ltd. Vs. The Labour Court, Meerut and Another*, He also contended that the earlier law laid down by the Supreme Court is no more good law in view of the introduction of S. 11A in the statute book. The ambit and scope of S. 11-A has been fully explained by the Supreme Court in its decision in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, and for deciding the questions which are germane under S. 11-A, the Labour Court will have to record evidence of the parties. Unless such evidence is recorded, the Labour Court cannot effectively decide the dispute raised before it. Thus, in substance it is contended by Dr. Kulkarni that the introduction of S. 11-A in the statute book has changed the colour of the whole controversy. This is an additional reason why this Court should not interfere in its writ jurisdiction with the finding recorded by the Labour Court on a preliminary issue. He also contended that when the Departmental Inquiry was pending, the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 came into force on 9th September, 1975. Under S. 22(ii) of the said Act, even an unrecognised Union has a right to appear on behalf of any of its members employed in the undertaking in any domestic or departmental inquiry held by the employer. Therefore, the request made by the employee should have been considered by the Inquiry Officer in the context of this provision though the employee being a layman had not specifically drawn his attention towards it.

4. I was then contended by Dr. Kulkarni that even otherwise from the facts brought on record, it is quite obvious that the Inquiry Officer was a trained

person. The management was being represented by Shri Khandekar, Personnel Officer, who is equally qualified and trained. On the other hand, the employee was asked to put forward his case in person. The Departmental Inquiry involved several disputed questions of law and fact because in the same matter on earlier occasion charge-sheet was issued which was subsequently withdrawn. When the chargesheet was issued, Shri Khandekar, Personnel Officer, was appointed as the Inquiry Officer. Thus, the very person subsequently became the Presenting Officer when the second inquiry was started. Even the Inquiry Officer admitted in his evidence that it was the duty of the Party No. 2 i.e., the employee to produce the Bailiff as a witness in the domestic inquiry. He also deposed that he felt that the bailiff's evidence would be quite helpful in the matter, though he clarified that in the absence of his evidence of the bailiff, it will not be correct to say that no correct finding could be given. Therefore, according to Dr. Kulkarni, taking any view of the matter, it cannot be said that the order passed by the Labour Court is in any way unjustifiable. The learned Counsel further contended that prejudice in the matter is writ large and, therefore, taking any view of the matter, I cannot be said that the finding recorded by the Labour Court is in any way vitiated so as to call for interference in the writ jurisdiction of this Court at this stage.

5. We find much substance in the contentions raised by Dr. Kulkarni. But for the fact that this writ petition came to be admitted in the year 1979 i.e., long back, we would not have permitted the learned Counsel to argue the matter at length in view of the decision of the Supreme Court in *D. P. Maheshwari's case* (supra). In *D. P. Maheshwari's case* (supra), the Supreme Court had in terms held that the High Courts in the exercise of their jurisdiction under Art. 226 of the Constitution of India should not stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Art. 226 of the Constitution nor the jurisdiction of the Supreme Court under Art. 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Art. 136 are not meant to be used to break the resistance of workmen in this fashion. In the exercise of writ jurisdiction the High Court is not required to be too astute to interfere with the exercise of jurisdiction by special tribunals at Interlocutory stages and on preliminary issues.

6. As held by the Supreme Court in the latest case i.e. *The Board of Trustees of the Port of Bombay v. Dilipkumar Nadkarni* (supra), apart from the provisions of laws, it is one of the basic principles of natural justice that the inquiry should be fair and impartial. Even if there is no provision in the Standing Order or in law, where in an inquiry before the domestic Tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request of defend himself and the essential principles of natural justice would be violated. In the present case, apart from the request to be

represented by a legal practitioner, the employee has also prayed for being represented by some well-wisher from outside or by some Union representative from outside. This request was also not granted. While dealing with this contention, in para 16 of his order, the Presiding Officer of the Labour Court has come to the conclusion that the person who appeared as a representative of the employers was the Personnel Officer and from the way in which he handled the case of the first party in the inquiry, it would have to be said that he had considerable experience and acumen in the matter of handling such cases. Such experience was lacking on the part of the employee. He ultimately came to the conclusion that the Inquiry Officer was not justified in refusing permission in the circumstances of the case. We have gone through the evidence of the Inquiry Officer adduced before the Labour Court and from it also it is quite clear that the Inquiry Officer was also of the view that the Bailiff's evidence would be quite helpful in the matter. However, according to him, it was the duty of the employee to produce the witness in the domestic inquiry. The Inquiry Officer was of this view obviously for the reason that the charge referred to a document with which the Bailiff was ultimately concerned. Irrespective of the fact on whom the burden lay for examining the bailiff, the fact remains that in the absence of assistance from an expert the employee was handicapped in this respect. Therefore, though we generally agree with the reasons given by the Presiding Officer for holding the inquiry as vitiated on that count, we do not agree with the Presiding Officer when he says that it was only a technical defect. In the matters of domestic inquiries, if the employee is refused a fair opportunity of putting forward his case i.e., his request for being represented by an outsider or a Union representative or a legal practitioner, then it cannot be termed only as a technical defect. However this will depend on facts and circumstances of each case. Having regard to the facts and circumstances of this case, in our opinion, prejudice was considerable and is writ large. In any case, by this finding the employer's case is not prejudiced in any way. Before the Labour Court, he is entitled to lead evidence and prove the guilt of the employee. His case is not shut out. On the other hand, if the parties are permitted to adduce evidence before the Labour Court, it will help the course of justice since in the trial before the Labour Court, the Bailiff also could be examined. Therefore, taking a cumulative view of the whole matter, in our opinion, this is not a fit case in which we should exercise the extraordinary jurisdiction under Art. 226 of the Constitution of India at this stage.

7. In the result, Rule is discharged. However, in the circumstances of the case, there will be no order as to costs.