

(2013) 05 GUJ CK 0060
In the Gujarat High Court

Case No : L.P.A. No. 1607 of 2012 in SCA No. 5587 of 2000, with Civil Appli. No. 13504 of 2012 in LPA No. 1607 of 2012

Gujarat State Co-operative Land Development Bank Ltd.	APPELLANT
Vs	
Pravinchandra Chandulal Modi deceased through his heirs and Another	RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2013) 138 FLR 1044 : (2013) 3 LLN 644 : (2013) LLR 800

Hon'ble Judges : Mohinder Pal, J; Jayant M. Patel, J

Bench : Division Bench

Advocate : Mitul K. Shelat, No. 1, for the Appellant; A.K. Clerk, Advocate for Respondents No. 1 and 2, for the Respondent

Final Decision : Disposed Off

Judgement

Jayant Patel, J.—The present appeal is directed against the order dated 21.9.2012 passed by learned single Judge of this Court in SCA No. 5587 of 2000, whereby learned single Judge, for the reasons recorded in the order, has dismissed the petition and has not interfered with the award passed by the Industrial Tribunal for not granting approval to the order of Dismissal since it was found to be in breach of the principles of natural justice. We have heard Mr. Mitul Shelat, learned counsel appearing for the appellant and Mr. Clerk, learned counsel appearing for the respondents by caveat.

2. The contention raised on behalf of the appellant is that even if it is considered that the plea for allowing the employer to lead evidence for proving the charge against the employee was not taken in the written statement, application for such purpose was made at Exh. 37 and, therefore, once the Industrial Tribunal found that there was breach of principles of natural justice, the Industrial Tribunal ought to have granted an opportunity to the employer, appellant herein, to lead evidence for proving the charge against the employee. As opportunity

was not given to the petitioner-appellant, it can be said that the industrial Tribunal committed error apparent on the face of record, which was a good ground for interference by learned single Judge in the petition. As the said aspect has not been properly considered by learned single Judge, this Court may consider in the appeal. In support of his submission, learned counsel relied upon decision of the Apex Court in *Divyash Pandit Vs. Management, N.C.C.B.M.*, and more particularly the observations made at para 8 of the said decision.

3. Learned counsel further submitted that the Industrial Tribunal has committed error in recording the finding of fact that the inquiry was conducted in breach of the principles of natural justice and, therefore, it was not the case of not granting of approval. He submitted that opportunity was given to the employee concerned for defending the proceedings of the inquiry, but he did not participate and did not properly defend the proceedings and, therefore, the finding recorded by the Industrial Tribunal that sufficient opportunity was not given is erroneous and such ground was a valid ground for interference by learned single Judge in the petition. As learned single Judge has not considered that aspect, this Court may consider it in the appeal.

4. Whereas Mr. Clerk, learned counsel appearing for the respondents i.e. legal heirs of the employee, supported the order passed by learned single Judge and contended that the Industrial Tribunal has rightly found that sufficient opportunity was not given to the employee in the inquiry held by the original petitioner. It was submitted that the position of law is already settled by the Apex Court in the case of *Shambhu Nath Goyal Vs. Bank of Baroda and Others*, , whereby the Apex Court has taken the view that, if the plea for adducing evidence is not taken by the management in its written statement, the right of the management to lead evidence would go for all time to come. He submitted that even in the subsequent decision of the Constitutional Bench in the case of *Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another*, , the view taken in *Shambhu Nath Goyal (supra)* is reaffirmed and is not overruled. He submitted that the observations made by the Apex Court in the case of *Divyash Pandit (supra)* cannot be read to dilute the ratio laid down by the Constitutional Bench of the Apex Court. He submitted that even if it is considered that the Industrial tribunal had power, considering the fact that evidence of the workman was allowed to be completed and at that time also such plea of leading evidence was never pressed in service, the management cannot now find fault with the Industrial Tribunal that such opportunity has not been given. He submitted that the finding recorded by the Industrial Tribunal that sufficient opportunity was not given is arrived at after appreciation of evidence and has not been interfered with by learned single Judge after re-appreciation of the evidence. It was submitted that, under the circumstances, the present appeal may not be entertained.

5. Learned Counsel Mr. Clerk raised the contention that the petition before learned single Judge was preferred under Article 227 of the Constitution since it

was arising from the award passed by the Industrial Tribunal and, therefore, the present appeal also cannot be maintained before Division Bench of this Court.

6. It appears to us that the following aspects are apparent from the record:

(i) The plea for adducing of evidence was not raised by the appellant in the approval application before the Industrial Tribunal when the matter was presented before the Industrial Tribunal for the first time;

(ii) Application at Exh. 37 was made at a later point of time stating that if the Tribunal finds that there was breach of the principles of natural justice, opportunity may be given to the appellant to lead evidence;

(iii) The application, though filed, was not pursued at any point of time after filing of the same;

(iv) After filing of the application at Exh. 37, evidence was recorded of Chandrakant Shah at Exh. 101, and of Jagatkumar at Exh. 47 and evidence was already recorded of Pravinchandra Modi, employee concerned, at Exh. 36 prior to the application Exh. 37. The aforesaid witnesses were cross-examined and their evidence was closed;

(v) At no point of time during the aforesaid period of recording of evidence any attempt was made by the appellant requesting the Tribunal to pass appropriate order in the application at Exh. 37. Not only that but rather allowed the Tribunal to pass the final order.

7. It is in light of the aforesaid fact-situation, the matter deserves to be examined. As per the decision of the Apex Court in the case of Shambhu Nath Goyal (supra), plea for opportunity to adduce evidence is required to be taken by the management at the first instance and the application made at a belated stage cannot be permitted. The observations have been made by the Apex Court to the extent that such right at the later stage to the management to adduce evidence would be unavailable if such plea was not raised at the first instance for such purpose.

8. In the decision of the Constitutional Bench of the Apex Court in Kamataka State Road Transport Corporation (supra), at para 45, it has been observed thus:

45. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before Labour Court/Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/Tribunals have 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 a 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.

9. The aforesaid shows that though such right may not be available to the management to lead additional evidence in support of the action, but such would not place fetter on the powers of the Industrial Tribunal requiring or directing the parties to lead evidence as the Court may deem it just and necessary in the interest of justice. Therefore, if the Court was to exercise the power such was available but at the time when such powers are to be exercised, the facts are to be considered to the extent that whether permitting the management to lead evidence would cause any prejudice to the employee or not. Therefore, if the power of the Court was to be invoked, it was for the appellant to pursue the application and to press for appropriate orders by the Tribunal before any prejudice is caused to the employee.

10. In the facts of the present case, the appellant has conveniently allowed leading of evidence by the parties including that for the employee. As observed earlier, at no point of time the application at Exh. 37 was pressed or pursued for appropriate orders by the Court. Even when the application was submitted at Exh. 37, evidence of the employee was over at Exh. 36. The aforesaid shows that the Court did not find it proper to deal with the aspect of considering the plea for leading of evidence. If the appellant was to assert the right for leading of evidence, such plea at the first instance was never taken. Therefore, it appears to us that even if the decision of the Apex Court is considered in the case of Kamataka State Road Transport Corporation (supra), the same would be of no help to the appellant. The contention raised by taking support of the observations made by the Apex Court in Divyash Pandit (supra) is also ill-founded, inasmuch as in the said decision the Apex Court did not observe for diluting the law laid down in Kamataka State Road Transport Corporation (supra). Further, in the said decision it has not come on record as to whether evidence of the parties were already recorded or not, or at least as that of the workman was already recorded or not. The Apex Court had no occasion to examine the aspect of prejudice which may be considered by the Court if opportunity was to be given to adduce evidence by the employer by exercise of the power of the Industrial Tribunal or the Labour Court, as the case may be. Therefore, it appears to us that considering the facts and circumstances of the present case, the said decision would be of no help to the appellant.

In view of the aforesaid observations and discussion, we find that the contention raised based on the application at Exh. 37 has rightly been not accepted by learned single Judge in the impugned order.

11. On the aspect of the finding of fact recorded by the Industrial Tribunal that there was breach of the principles of natural justice, in our view, mere was limited scope of judicial scrutiny available before learned single Judge. Re-

appreciation of evidence was not falling in the judicial scrutiny in a petition arising from the award passed by the Industrial Tribunal. Even if the said aspect is kept aside, it does appear that considering the observations made at para 12 of the award, it cannot be said that the finding recorded of breach of the principles of natural justice was perverse to the record.

12. Under the circumstances, we find that non-interference to the said finding by learned single Judge in the impugned order could not be said to be erroneous.

13. In view of the aforesaid observations and discussion, we find that no interference is called for to the order passed by learned single Judge for dismissal of the petition. Hence, the appeal is dismissed. Considering the facts and circumstances, no order as to costs. In view of dismissal of the main appeal, the civil application would not survive. It accordingly stands disposed of.