
(1959) 11 BOM CK 0019
In the Bombay High Court
Case No : Reference (IDA) No. 17 of 1958

Hind Cycles Ltd.

APPELLANT

Vs

Its Workmen (Excluding Clerical Staff)

RESPONDENT

Date of Decision : 17-11-1959

Acts Referred:

Citation : (1960) 1 LLJ 373

Hon'ble Judges : D.M. Vin, J

Bench : Single Bench

Judgement

1. This industrial dispute between the Hind Cycles, Ltd., Bombay, and the Engineering Mazdoor Sabha, Bombay, representing majority of the workmen, was referred to me for adjudication by the Deputy Commissioner of Labour, Bombay, by his order No. AJH. 23/58, dated 7 May, 1958, under the powers delegated to him by the Government of Bombay by its notification, No, IDA. 3557, dated 8 May, 1957. The demand over which the dispute arose was as follows :-

Schedule

"The following workmen should be reinstated immediately with full wages for the period of intervening period of unemployment till the date of reinstatement. They should be given continuity of service and all other benefits :-

- (1) Sri T. G. Nair.
- (2) Sri Maruti Pandurang.
- (3) Sri Vishram Gopal.
- (4) Sri Yeshwant Ganpat.
- (5) Sri Madan Maruti.
- (6) Sri Tukaram Shivram.

- (7) Sri Kashinath Bandu.
- (8) Sri Lahu Arjun.
- (9) Sri Pandurang Laxman.
- (10) Sri Sahadeo Ramji.
- (11) Sri Keshav Bapu.
- (12) Sri Vishram Balu.
- (13) Sri Shankar Babu.

In case their reinstatement is not possible, they should be paid gratuity, retrenchment compensation and all other benefits on account of their service in the company."

2. Usual notices were served on the parties, who filed their respective statements. For the sake of convenience the Engineering Mazdoor Sabha, Bombay, would be hereinafter referred to as the sabha and the Hind Cycles, Ltd., Bombay, would be referred to as the company. Similarly, the thirteen workmen for whom the demands have been made, would be referred to as the concerned workmen.

3. The case of the sabha was that the company issued chargesheets against the concerned workmen on or about 14 September, 1957, alleging that they wilfully and concertedly reduced their production during the period between 2 September, 1957 and 10 September, 1957 as compared to their daily production in the month of August up to 29 and thereby wilfully slowed down their work and committed misconducts under standing order 22(3). The concerned workmen submitted their written explanations and inquiries were held against them. On completion of the inquiries, they were informed that the charges levelled against them were proved and that it was decided to take disciplinary actions against them by dismissing them under standing order No. 23(3). Thereafter they were dismissed. It was contended that the concerned workmen were not guilty of wilfully slowing down their production and that the charges were not at all proved. It was also contended that the inquiries held against the suffered from several irregularities and had not been conducted impartially, and they were not given proper opportunities to defend themselves. It further contended that the actions taken against the concerned workmen were highly arbitrary and amounted to coercion, victimization, unfair labour practice and acts of discrimination. According to it, therefore, these actions were absolutely improper and the demands for reinstatement and compensation made on behalf of the concerned workmen should be granted. The sabha by way of abundant caution also stated that in case these demands cannot be granted, the concerned workmen should be granted gratuity, retrenchment compensation and all other benefits.

4. The company's case was that the concerned workmen were working in the

polishing department. Up to the end of August 1957, the workmen of the department were giving normal production, but it was observed that from 2 September, 1957, they had resorted to go-slow tactics with a view to cause loss to the company. It was also found that during the period between 2 September, 1957 and 10 September, 1957, their production had gone down by 25 to 73 per cent. So, it was decided to take disciplinary action and chargesheets were issued against the concerned workmen. Thereafter, detailed and thorough inquiries were held against them wherein they were given all fair opportunities of being represented and defending themselves. As a result of the inquiries, the management came to the conclusion that they were guilty of wilfully slowing down their work as compared with their work during the previous periods. Going slow is a very serious misconduct, because it would not only undermine the discipline but would affect the production and cause financial losses. So it was decided to dismiss the concerned workmen. The allegations that the actions were arbitrary and taken with a view of coercion, victimization or unfair labour practice or by way of discrimination were denied. It was contended that under the circumstances the actions taken against them were quite legal and proper and the demands made on their behalf cannot be granted.

5. In all, three inquiries were held against the concerned workmen. The first of them was on 19 and 20 September, 1957 and it was against all the concerned workmen except Sarvasri Keshav Bapu and T. Govindan Nair. The inquiry against Sri T. Govindan Nair was held on 25 and 26 September, 1957 and the third inquiry was held against Sri Keshav Bapu on 6 and 7 November, 1957. Even though there were different inquiries, defence of the concerned workmen was same and evidence recorded in all the three inquiries was exactly of similar nature. At the time of hearing of this case, the whole evidence in the three inquiries was treated by the parties in the same manner. Hence, I think that the three inquiries, the evidence led therein and cases of all the concerned workmen in the present adjudication should be considered together.

6. Even though validity of the inquiries was challenged in the pleadings, as well as at the earlier stages of hearing, on the grounds that there were several irregularities and that proper opportunities for defence were not given to the concerned workmen, Sri Sule, on behalf of the sabha, stated on 4 August, 1959 that all the contentions on this point were given up. Looking to the chargesheets, the notes of the inquiries and the evidence on the record, I do not think that there is anything to vitiate the inquiries.

7. The principles which govern the powers of a Court to interfere with a decision of an employer following an inquiry in such a case are now clearly laid down by the Supreme Court. It has been held that undoubtedly a management has power to direct its own internal administration and discipline, but that power is not unlimited. When a dispute arises, the tribunals have been given power to see whether the termination of service or dismissal of a workmen is justified or not and to give proper reliefs. In cases of actions for misconducts, the tribunal

cannot, however, act as a Court of appeal and substitute its own judgment for that of the management. It will interfere

- (1) when there is a want of good faith,
- (2) when there is victimization or unfair labour practice,
- (3) when the management has been guilty of a basic error or a violation of a principle of natural justice, and
- (4) when on the materials the finding is completely baseless or perverse. Vide Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, and Mckenzie and Co. Ltd. Vs. Its Workmen and Others, .

In the present case it was contended by the sabha that on the materials the findings of the inquiry officer holding the concerned workmen guilty of the charge were completely baseless and that the company's action in dismissing them amounted to coercion, victimization, unfair labour practice and discrimination. These contentions would be considered in their serial order.

8. All the concerned workmen were charged with committing a misconduct under standing order 22(3) by wilfully and concertedly slowing down their production. Except for the ticket numbers, chargesheet numbers and figures of average and reduced productions, all the chargesheets were worked in the same manner. Taking one of the chargesheets, it would seem that it read as follows :-

"Since 2 September, 1957, you have wilfully and concertedly reduced the production to the average of 23 hours (up to 10 September) approximate daily as compared to the average of 40 hours approximate daily in the last month up to 29. This wilful slowing down of work performance is a misconduct under Clause 22(3) of our standing orders.

You are, therefore, hereby called upon to show cause in writing within 24 hours why disciplinary action should not be taken against you for such act of grass misconduct."

The defences of the concerned workmen against this charge were that

- (1) they had not gone slow and that
- (2) if there was any low production during the period, it was due to
 - (a) change in emery powder,
 - (b) inspection being tightened up,
 - (c) change from brass crowns to steel crowns, and
 - (d) parts given for polishing to them were not same on the same day or even on different days.

Now, it is true that the actual figures of the previous average production were

given in each of the chargesheets; but they were clearly stated to be the average daily production of the month of August 1957, up to 29. Reading the notes of all the three inquiries, it seems that there is no evidence of whatever kind to show that the average production figures given in the chargesheets tallied with the real average daily production of the month of August 1957, up to 29. The production chart, which was before the inquiry officer, was produced as an annexure to the notes of the inquiry. That was the chart shown to the concerned workmen at the time of the inquiries. This is clearly borne out from the notes of the inquiries. The chart shows that the specific figures mentioned in the chargesheets were only the figures of average production of four days of August 1957, viz., 25, 26, 27 and 29, and not of the month of August 1957, up to 29. Referring to Sri D'Souza's statement in the inquiry against the eleven workmen held on 19 September, 1957, it was argued by Sri Thakkar, on behalf of the company, that the inquiry officer had considered average production of the whole month of August 1957. The actual sentence on which he relied was :

"from the daily reports of these workers it will be seen that their average production is much less from 2 to 10 September, 1957."

But when this sentence is read in its context and the statement of Sri D'Souza is read as a whole, in my view, it will be amply clear that the daily production referred to in the sentence, cited above, was only from 25 to 29 August, 1957, and not for the month of August 1957, up to 29. The notes of the inquiries clearly show that the aforesaid chart was shown to the concerned workmen and then questions were put to them. If the notes of the inquiries are read as whole, they would very clearly show that the production considered for proving go-slow between the period from 2 September to 10 September, was only the production between 25 and 29 August, 1957, and not for the whole month of August 1957, up to 29. Daily average production calculated on the basis of only four days cannot be the same as the daily average production calculated on the basis of 29 days of a month. So there was no evidence of any kind before the inquiry officer to show that the average daily production, with which the production from 2 to 10 September, 1957 was compared to establish the charge of go-slow, was the average daily production for the month of August 1957, up to 29. The exact charge on the concerned workmen was that their production between 2 and 10 September, 1957 was much lower than their average daily production for the month of August 1957, up to 29. Clearly, therefore, there was no evidence to prove the charge, as was levelled.

9. It may be noted that at the time of hearing of this case, average production figures of one of the concerned workmen, viz., Sri T. Govindan Nair, were produced by the company at the instance of the sabha. Those figures are on the last page of Ex. 36. According to those figures, the average daily production of that workman in August 1957 was 17; while in the chargesheet, issued against him, the average daily production in the month of August 1957, up to 29 and 22. Obviously, the figures given in the chargesheet were the figures of the average

daily production from 25 to 29 August, 1957. This would very clearly show that the average daily production, calculated on the basis of four days would not be the same as the average daily production, calculated on the basis of 29 days of a month. Of course, there is nothing on the record of this case to show the exact figures of the daily average production for the month of August 1957 up to 29, of the other concerned workmen; but they are bound to be different from the ones taken for consideration by the enquiry officer, as they are in the case of Sri T. Govindan Nair.

10. Relying on the Supreme Court's ruling in *Management of Balipara Tea Estate Vs. Its workmen*, it was urged that in cases of this nature, Courts cannot draw an adverse inference from non-production of a document or evidence. If it is in genuine doubt or if it so desires to have that evidence, it should call upon the management to produce that evidence. Without adopting such a course, it would not be open to draw any adverse inference against the employer for the failure to produce such evidence. It was further urged by Sri Thakkar that if the sabha wanted to show the daily average production for the whole month was different from the daily average production shown in the chargesheets, a notice to furnish the average production figures should have been given and as that was not done, it cannot be held that the figures would be different as contended. In the present case, there is no question of drawing any adverse inference. As observed above, the figures produced in Ex. 36 for Sri T. Govindan Nair, show that the figures relied upon by the inquiry officer did not tally with those of the month of August 1957, up to 29. Further, the sabha did contend from the very beginning that the figures regarding average production for August 1957, given in the chargesheets, were wrong. It was not even alleged on behalf of the company that the figures of average production given in the chargesheet would tally with the figures of the exact daily average production for the month of August 1957. I, therefore, do not think that the ruling, relied upon in this behalf, would be of any help to the company. Considering the whole evidence, that was at the time of the inquiries, it seems to me that there is nothing to show that the daily average production of the concerned workmen for August 1957 up to 29 was as high as mentioned in the respective chargesheets, and taken into consideration for proving the alleged go-slow. The inquiry officer's conclusion holding them guilty of having given much lower production than the daily average production for August 1957, up to 29, should, therefore, be held to be completely baseless.

11. Now, comparing the daily production between 2 and 10 September 1957, with the average daily production from 25 to 29 August, 1957 of the concerned workmen, it does seem that there was low production. This fact was not seriously disputed. The explanations offered by the concerned workmen were that this was due to four reasons, viz. :

- (a) change in emery powder;
- (b) change from brass crowns to steel crowns;

(c) standard of polishing was raised and more parts were rejected than as was usually done; and

(d) different parts would be given for polishing to workmen on the same day and even on different days and their production in a particular period depended on the nature of the parts actually given to them during that period.

If on a particular day the parts were of such a nature, the production might be very low, and if they were of a different nature it might be very high. So, according to them, this was also a factory explaining the low production during the period in question.

12. The exact defence regarding change in emery powder was that, during the period in question the emery powder supplied to the concerned workmen was of a different grit than usually supplied and so more time was required for polishing the parts and this resulted in low production. Each of the concerned workmen tried to make this out in his written explanation as well as at the time of the inquiry against him. The company's case was that the emery powder supplied during the period under dispute was of the same grit as usual and the concerned workmen's contentions in this behalf were not true. It examined Sri Phatak, the assistant works manager, who stated that there was no change in the emery powder and the one supplied during the period was of the usual grit. It also examined Sri Sharda, the incharge of the main stores, and he stated that there was no change of any nature in the emery powder. The emery powder was received from the same party and it was of the same grit as was received in the past. He also that on 29 August, 1957 when a contention regarding change in emery powder was raised, a representative of the manufacturer was called on 31 August and he certified that there was no change in the emery powder. He further stated that the workers were told that if they had any doubt about the grit of the emery powder, they could get it tested in the Alipore Test House. The third witness to be examined in this behalf was Sri R. K. Gupta, the market purchasing officer, who stated that he had been purchasing all kinds of emery powders required by the company and there was no change in the kind of the emery powder. Of course, the concerned workmen tried to make out in their respective inquiries that the emery powder supplied to them was of different grit; but the inquiry officer disbelieved their contentions. Reading the notes of the inquiries and considering the evidence in this behalf, it seems to me that the inquiry officer's conclusion on this point cannot be held to be unsustainable or baseless on the evidence that was before him.

13. The next defence was that a change from brass crowns to steel crowns was made and that brought down the production of the concerned workmen. Sri Phatak stated in the inquiry against Sri T. Govindan Nair, that by supplying steel crowns instead of brass crowns there would be no decrease in work. One Sri Sonu Sakharam stated in the inquiry against the eleven workmen that this change would take about half to three-fourths of an hour more for the work of 8 hours. But it seems that the inquiry officer did not believe that this change would

affect the production. I do not think that his conclusion in this behalf can be held to be unsustainable or baseless.

14. The third defence was that the standard of polishing was raised, the inspection was tightened and more parts were rejected than was usually done and these circumstances resulted in decrease in production. Reading the notes of the inquiries, there does not seem to be any clear evidence on this point. Only some allegations were made and they were denied. So I do not think that the inquiry officer was justified in completely disbelieving this point of the defence.

15. The fourth defence was that different parts for polishing were given on the same day and even on different days and the production in a particular period depended on the exact nature of the parts given for polishing during that period. Even though, this defence was very clearly raised in the written explanations, there was no evidence of any kind to show that the parts given for polishing to the concerned workmen during the period between 2 and 10 September, 1957 were of the same or similar type of the parts given to them during the period from 25 to 29 August. For considering the charge of wilful slowing down of production, this circumstance was of no less importance. Yet at the time of the inquiries, the management did not lead any evidence on this point. Further, for proving the charge of wilful slowing down of production, the figures considered were only of four days. So, assuming that that was in accordance with the chargesheets, even then, in absence of any evidence regarding the exact nature of the parts given for polishing, the production for such a short period would not with any definiteness show whether there was any wilful slowing down or not. The production figures produced by the company at the instance of the sabha at Ex. 36 clearly show that there would be great variations in the average production from month to month. The very nature of the work seems to be such as would show that the production depended mainly on the nature of the parts given for polishing. Therefore, unless and until it was considered or seen that the parts given for polishing were of the same nature, it could not reasonably be held that there was wilful slowing down of production. Moreover, Sri T. Govindan Nair had tried to make out in his inquiry that the average production figures calculated on the basis of four days would not be a good guide. He clearly stated that if his record for one year was gone through, it would show that his average production was the same. But there was no evidence to contradict this plea. Considering, therefore, the defences of the concerned workmen, it seems to me that, assuming the taking of average daily production figures of the period between 25 and 29 August, 1957 was in accordance with the chargesheets, and though the defences regarding change in emery powder and change from brass to steel crowns were not acceptable even then as there were no material before the inquiry officer to show that the parts given for polishing during the period from 2 September to 10 September, 1957 and from 25 to 29 August, 1957 were of the same or similar nature, his conclusion holding them guilty of wilful go-slow was not a reasonably sustainable one.

16. Assuming that the inquiry officer's conclusion holding the concerned workmen guilty of wilful go-slow should be held to be sustainable, even then it should be considered whether the actions of dismissing them amounted to discrimination or not. Of course in the pleadings it was contended that the actions of dismissal amounted to coercion, victimization and unfair labour practice also; but these contentions were not seriously pressed at the time of hearing. Only the point regarding discrimination was pressed. Sri Sule, on behalf of the sabha, relying on the decision on the Supreme Court in *Burn & Co., Ltd. v. Their workmen and others* 1959 I L.L.J. 450, argued that when a particular misconduct like strike is committed by many workmen, taking action against only a few for that misconduct would be unjustified and in cases of such a discrimination, relief of reinstatement must be granted. He further argued that the action against the concerned workmen was only for slowing down during the period between 2 and 10 September, 1957. During this very period so many other workers had also gone slow; and if no action was taken against those other workers, the company was not justified in taking any action against the concerned workmen also. In reply to this argument, Sri Thakkar argued that there was nothing to show that during the period between 2 September and 10 September, 1957, other workers had gone slow and so the question of the alleged discrimination would not arise. In this behalf, it would be very material to note the following extract from the cross-examination of Sri D'Souza in Court :

"From 1 September till the strike after dismissals there was no trouble in the polishing department. I now say that there was slow-down of production in one shift during that period."

Further, reading the company's written statement, Ex. 21, especially Para. 1, it is clear that the workmen of the polishing department had resorted to go-slow. In Para. 1, it was stated as follows :

"Up to the end of August 1957, the workmen in the polishing department were giving normal production but from 2 September, 1957, it was observed that these workmen in the polishing department had resorted to go-slow tactics with a view to causing loss to the company. It was further found that between 2 September and 10 September the production of some of the workmen was almost half and whereas in the other cases the loss of production varied between 25 per cent, and 73 per cent."

It is clear from this that even according to the company all the workmen of the polishing department had resorted to go-slow. If it was so, it was not shown, why only the thirteen concerned workmen were singled out for action. As held in the ruling, cited, above discriminating only a few workmen for action for a misconduct when many others have been guilty of the same misconduct, is unjustified. So relying on the ruling I hold that the actions taken against the concerned workmen were unjustified.

17. The next question to be considered is what demands should be granted. The

sabha made a demand that the concerned workmen should be granted reinstatement with continuity of service and with full wages for the period of unemployment. By way of abundant caution it had also demanded that in case reinstatement was not possible, gratuity, retrenchment compensation and other reliefs should be granted. It was urged on behalf of the company that the demand for reinstatement cannot be granted because it was not shown that all the concerned workmen were available for reinstatement and capable of being reinstated. It was further argued that some of the concerned workmen may be physically incapable of being reinstated and so unless and until definite evidence is led to show that they are available for reinstatement and capable of being reinstated, the demand should not be granted. The fact that the demand for reinstatement is pressed so strenuously till the date of hearing, would mean that the concerned workmen do desire reinstatement and as soon as it is granted they would make themselves available for it in time. If it was the company's case that any of them was physically or in some other manner incapable of being reinstated, it was for it to allege and prove it. There is neither any allegation nor proof on that point. It cannot, therefore, be presumed that the concerned workmen are either incapable of being reinstated or do not desire reinstatement. Then an attempt was made to show that a worker named Sri Madhvan Nair was assaulted two or three months after the dismissal of the concerned workmen. But there is nothing to show, not even an allegation, that any of the concerned workmen had anything to do with assault. Simply because the worker was assaulted by somebody, not proved or even alleged to have been connected with the concerned workmen, the relief of reinstatement cannot be denied. Relying then on the decisions in *Ashok Motors, Ltd. v. Their workers* 1953 II L.L.J. 793 and *Firestone Tyre and Rubber Company of India, Ltd., Bombay v. Bhoja Shetty* and another 1953 I L.L.J. 599 it was argued by Sri Thakkar that the misconduct regarding go-slow is so serious that it cannot in any way be lightly dealt with and the persons guilty of such a misconduct cannot be reinstated. But, as held above, the inquiry officer's conclusion holding the concerned workmen guilty of go-slow is not upheld and assuming it was upheld the action of discriminating them was unjustified. In the ruling of the Supreme Court in this behalf even though the workmen were guilty of an illegal strike, they were reinstated on the ground that they could not be discriminated from the other workers. I, therefore, do not think that even on this ground, the demand for reinstatement can be rejected. There is no other reason as to why the demand for reinstatement should be rejected. I think that this is a fit case in which the demand for reinstatement of the concerned workmen with continuity of service should be granted.

18. The sabha had demanded that the concerned workmen must be granted full compensation for the whole period unemployment. It was, however, urged by Sri Thakkar, on behalf of the company, that to be entitled to full compensation, it must be shown that all the concerned workmen were unemployed throughout the whole period after dismissal. There is no evidence to show whether they were employed or unemployed or what they did during the period of unemployment.

Nothing can be presumed in this behalf. Considering, therefore, the circumstances of the case I think that the ends of justice would meet if each of the concerned workmen is granted half of the wages which he would have earned from the date of his dismissal to the date of his reinstatement as compensation.

19. In the result, I direct that all the concerned workmen should be reinstated with continuity of service and each of them should be paid half of the wages which he would have earned from the date of his dismissal to the date of his reinstatement as compensation within one month from the date of publication of this award. I also direct that this award be submitted to the Government. There would be no orders as to costs.