
(1996) 09 AHC CK 0102
In the Allahabad High Court
Case No : S.A. No. 293 (SB) of 1995

Indian Telephone Industries Ltd. and Another	APPELLANT
Vs	
Devi Shankar Kumar Shukla	RESPONDENT

Date of Decision : 23-09-1996

Acts Referred:

Citation : (1997) 3 LLJ 930

Hon'ble Judges : Maithli Sharan, J;Brijesh Kumar, J

Bench : Division Bench

Advocate : Krishna Chandra, for the Appellant; R.P. Mehrotra, for the Respondent

Final Decision : Dismissed

Judgement

Brijesh Kumar, J.—A short legal question involved in this Special Appeal is as to whether in a domestic enquiry in an industrial dispute, an outsider could be appointed as Enquiry Officer or not. The learned Single Judge, by judgment and order dated September 29, 1995 held that in view of the Standing Order 16(2) (Kha), an outsider could not be appointed an Enquiry Officer. Hence, the proceedings were vitialed. The appellant-establishment, Indian Telephone Industries. Rac-Bareli. has challenged the order passed by the learned Single Judge.

2. We have heard learned counsel for the appellants as well as the learned counsel for the respondent.

3. It appears that the respondent, as an employee of the establishment, was charged with some misconduct. An Advocate was appointed to conduct the domestic enquiry into the charges against the petitioner-respondent. The petitioner- respondent, on the basis of the enquiry report, was awarded punishment. He challenged the punishment and one of the grounds pressed before the learned Single Judge was that an outsider could not be appointed an Enquiry Officer in the teeth of the Standing Orders 16(2)(Kha). The learned

Single Judge followed a decision, as relied upon by the petitioner respondent, reported in *G. Chandrakanth Vs. Guntur Dist. Milk Producers' Union Ltd.*, . . Bye-law 27 of the relevant Bye-laws provided that the disciplinary authority could itself hold the domestic enquiry or could cause enquiry to be held by any other authority superior in rank to the employee charged. The disciplinary authority, on the other hand, had appointed an Advocate as Enquiry Officer. The Bye-laws, as indicated above, permitted enquiry by the disciplinary authority or any other authority superior in rank to the delinquent. It was thus held that the enquiry was vitiated.

4. Learned counsel for the appellant has vehemently urged that the decision in the case of *G. Chandra Kanth (Supra)* as not applicable. Hence, the learned single Judge erred in following the said decision. It is submitted that it was based on Bye-law 27 of the Bye-laws applicable in that case which permitted holding of the enquiry by the disciplinary authority or any other authority superior in rank to the delinquent but, in the present case, there is no such Bye-law. Hence, the judgment is liable to be set aside.

5. In view of the submission made by the learned counsel for the appellant, we may peruse the Standing Order applicable, in the present case.

6. An extract of Standing Order 16(2)(b) is reproduced below :

"16(2)(b) On receipt of the explanation of the employee or on expiry of the time limit whichever is earlier or under special circumstances at the time of issuing the chargesheet, the Manager shall appoint an Enquiry Officer or constitute an Enquiry Committee consisting of one or more than one person, other than from Security Department"

7. Learned counsel for the appellant submits that in case an Enquiry Committee is constituted, it should consist of persons other than from Security Department. Apart from the above, there is no other restriction and any person can be appointed an Enquiry Officer or one constituting the Enquiry Committee. It is further submitted that the restriction placed about a person not being from the Security Department, applies only where an Enquiry committee is constituted and not where an Enquiry Officer is appointed. In our view, the interpretation of Standing Order 16(2)(b) as made by the learned counsel for the appellant is not correct. It cannot be said that if an Enquiry Officer is to be appointed he can be even from the Security Department but where an Enquiry Committee is to be constituted then a person belonging to the Security Department cannot constitute the Committee. As a matter of fact, the last clause "other than from Security Department" is applicable to both Enquiry Officer as well as Enquiry Committee. A reading of the above provision also leads to the conclusion that the Enquiry Officer or the persons constituting the Committee should belong to one or the other department of the establishment. It is clear by the expression that they should be from other than security department. Obviously, the word "Department" was not required to be repeated and it simply means that the

Enquiry Officer or the persons constituting the committee should be from any department other than from Security Department. The above position also stands clarified by looking into the Standing Orders in Hindi. It reads as follows :

^1622(b) deZpkjh dk Li"Vhdj.k izzkIr gksus ij ;k le;&lhek dh lekfr ij] tks Hkh igys gks] vFkok fo"ks"k ifjLFkfr;ksa es vkjksi&i= tkjh djus ds le; izcU/kd ,d tkap vf/kdkjh dks fu;qDr djsxk vFkok ,d tkap lfebr dk xBu djsxk] ftlesa lqj{kk foHkkx ls fHkUu fdLh foHkkx dk ,d ;k ,d ls vf/kd lnL; gksaxs A-----**

8. The language used in Hindi Standing Orders leaves no room to doubt that the requirement is for appointment of an Enquiry Officer or persons constituting the Enquiry Committee from a department of the establishment other than Security Department. This being the position, under the Standing Orders, applicable to the present case, any person not belonging to any of the departments of the establishment, viz., an outsider, could not be appointed as an Enquiry Officer. Therefore, it cannot be said that the learned single Judge had erred in following the decision in the case of G. Chandra Kanth (Supra).

9. Learned counsel for the appellants has then drawn our attention to the decisions reported in 1964 II LLJ 139) (SC) Saran Motors (Private) Ltd. New Delhi v. Vishwanath Dalmia Dadri Cement, Ltd. Vs. Shri Murari Lal Bikaneria, and, on the basis of the same, it was submitted that in the above noted cases Hon"ble Supreme Court had upheld the appointment of Advocates, who were outsiders, as Enquiry Officer. We find that the question involved in the above noted decisions was a little different. The plea raised on behalf of the delinquent employee that an Advocate could not be appointed as an Enquiry Officer, since they were engaged by the establishment from time to time and were paid, therefore, they would be biased against the delinquent Officers, was repelled and it was held that merely because an Advocate was appointed as Enquiry Officer, it would not vitiate the proceedings on the ground of bias, as, otherwise if an Officer of establishment is appointed as Enquiry Officer, they are also paid by the establishment. There cannot be any presumption of bias. The proposition of law as laid down by the Hon"ble Supreme Court in the above noted decisions has not been disputed even by the counsel for the other side. Their contention is that in the absence of any rule restricting the field of eligibility for appointment as Enquiry Officer, in general, there may not be any impediment in appointing an outsider or an Advocate as an Enquiry Officer but where the Standing Orders provide otherwise and restricted the appointment within the establishment or from amongst the Officers belonging to the establishment, the position is otherwise.

10. Learned counsel for the appellant has placed reliance upon a decision reported in Union of India (UOI) and Others Vs. M.B. Patnaik and Others, . The position, however, in this case was different. A committee of two officers had enquired into the charges against the delinquent. Later on, a supplementary enquiry was ordered. The two officers who had held the enquiry earlier, had in the meantime been promoted but they held the supplementary enquiry also even

through working on the higher promoted post. Hon"ble Supreme Court upheld the validity of the supplementary enquiry in view of the fact that there may be a situation where the Officer holding the enquiry initially may not be available. Hence, other Officers may continue with the enquiry. Therefore, there was no legal infirmity if the supplementary enquiry was also held by the Officer, though working on the promoted post. This case, therefore, would not be applicable to the facts of the present case as it cannot be said to be a case of inherent lack of jurisdiction and, as held, enquiry, in a given situation, could be completed or held by other officers of the department. Reliance has next been placed by the appellants on a decision reported in *Central Bank of India Vs. C. Bernard*, . It appears that the disciplinary authority had himself been holding the enquiry into the charges against the delinquent. Before conclusion of the enquiry, he retired from service but continued with the enquiry and also passed the order of punishment. Hon"ble Supreme Court held that even though he could continue with the enquiry after retirement, in no case, he could act as disciplinary authority, as a disciplinary authority cannot be a non-official but an Enquiry Officer can even be a non-official. It appears that there was no such dispute in the case that under the Standing Orders or Bye-laws only an Officer of the department and not an outsider could be appointed an Enquiry Officer. The case seems to have proceeded on the undisputed premise that an outsider could be appointed as Enquiry Officer which would also be evident from the submission made on behalf of the establishment to the effect ".....if a third party non-official can validly be appointed an Enquiry Officer, though not Disciplinary Authority, his report up to the stage preceding the issuance of a second show cause notice could be saved" Thus, it is evident that permissibility of appointment of an outsider as Enquiry Officer, was not in dispute. In that view of the matter, the continuance of the enquiry by the retired Officer who had initially started the enquiry having full jurisdiction to do so was upheld. The doctrine of *de facto* pressed into service by the appellant-bank was repelled by the Hon"ble Supreme Court holding that the acts of Officers *de facto* are such which have been performed within the sphere of the assumed official authority in the interest of the public or third parties are generally held valid and binding as if they were performed by *de jure* officers but the two requisites for pleading *de facto* doctrine, must be answered : (1) the possession of the office and the performance of the duties attached thereto ; and (ii) colour of title, that is, apparent right to the office and acquiescence in the possession thereof by the public. The benefit of such *de facto* doctrine is available where there is some defect in the appointment but it does not come to the rescue of an intruder or usurper or a total stranger to the office and, such a doctrine, more particularly does not apply to a person who is not the holder of an office but is merely a bank employee, more so, an ex employee. Apart from different facts involved in the present case, the *de facto* doctrine also as pleaded cannot be applied for the reasons indicated above.

11. Learned counsel for the appellant has then submitted that the petitioner-

respondent had made no objection during the course of the enquiry; hence, now it is too late for him to raise any such objection. It is also submitted that no mala fide is established nor any prejudice has been substantiated by the petitioner; hence, even though the appointment of an outsider may not be permissible under the Standing Orders, the petitioner-respondent cannot, at this stage, challenge the appointment or the enquiry proceedings. In support of the above contention, reliance has been placed upon a decision reported in 1983 2 S LR 580 (Kant), Mallappa Basappa v. Controller of Weights and Measures and 1983 Lab IC 324 (All), Sheo Sampat Lal v. State of U.P. This question, however, need not detain us long. Where a person who is totally an outsider and his appointment as Enquiry Officer is not permissible under the rules, such a plea as raised by the appellant is not available in such cases. In this connection, we may have the observations made by the Hon'ble Supreme Court in the case of Central Bank of India v. C. Bernard (Supra). A similar argument was raised that since the delinquent did not attribute any bias or mala fides to the Enquiry Officer nor he had complained of any prejudice, the Hon'ble Supreme Court held that such a defect would not be curable as to his competence where the punishment is imposed by a person who had no authority to do so. It would be a case more or less lacking in inherent jurisdiction. Therefore, absence of plea of bias or prejudice or mala fides is of no consequence.

12. In our view, the legal position that emerges from different decisions referred to above is that in general in absence of any provision there is no restriction on appointment of an outsider as an Enquiry Officer in the domestic enquiry. Even, a Lawyer who had been appearing for the establishment could also be legally appointed the Enquiry Officer. But the enquiry proceedings and the manner and mode in which they are to be held may be provided under the rules or the Standing Orders. Therefore, in cases where Standing Orders made a specific, provision regarding appointment of Enquiry Officer it has to be in accordance with such Standing Orders. On interpretation of Standing Order 16 (2)(b), it is clear that an Enquiry Officer or an Enquiry Committee can be appointed or may consist of persons belonging to any of the departments of the establishment other than the Security Department. The field of eligibility of being appointed as Enquiry Officer is restricted to the officers of the Department of the establishment. The Standing Order does not permit appointment of any outsider to enquire into the charges. Therefore, appointment of the Enquiry Officer in the present case, who is admittedly an outsider, and the enquiry proceedings held by him are without jurisdiction or he lacked inherent jurisdiction to conduct the enquiry. Had there been no rules or there had been Standing Orders or rules permitting appointment of outsiders, the position may have been otherwise.

13. In view of the discussion held above, we find no merit in the appeal so as to interfere with the order passed by the learned single Judge. The special appeal is, therefore, dismissed. There would, however, be no order as to costs.