
(2007) 08 MAD CK 0132

In the Madras High Court

Case No : Writ Petition No. 32495 of 2006 and MP No's. 2, 3 and 4 of 2006

ITC Limited

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 14-08-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12, 12(3), 32(2), 33

Penal Code, 1860 (IPC) — Section 120B, 307

Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 — Section 149, 3(1)

Citation : (2007) 08 MAD CK 0132

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : S. Jayaraman, for the Appellant; Row and Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Chitra Venkataraman, J.—The writ petitioner herein seeks quashing of the order dated 14.6.2006 passed in the Approval Petition Nos. 27

to 48 of 2001 of the first respondent herein. The petitioner challenges the order that the finding is unsustainable on the ground that the respondents

did not participate in the enquiry before the Enquiry Officer, and as such they are disabled from questioning the proceedings of the enquiry officer.

2. The petitioner herein is engaged in the manufacture of printed cartons for various customers. It is stated that the election to the trade union was

held on December 2000. A new set of office bearers came to power. It is stated that the trouble started when they trespassed into the factory

outside their shift timings and encouraged workmen to ignore Factory Standing Orders. It is stated that Ex-General Secretary one A. Joseph

Kennedy absented himself over 60 days and ignored all advice to report for work

and attend to his duties. He even ignored the direction to attend the enquiry for his absence without leave. When a show cause notice was issued for dismissal on 15.3.2001 asking him to submit his reply by 23.3.2001, he instigated the workmen to go on illegal and unjustified "stay in" strike from 3 pm onwards on 15.3.2001 and the same continued up to 16.5.2001. The petitioner alleged that the striking workmen stayed inside the factory beyond the duty hours and indulged in illegal activities like gambling, smoking in inflammable areas, consuming alcohol inside the factory premises and abusing management staff. The striking workmen even stopped the machines to bring all operations to a halt from 3 p.m. on 15.3.2001. Apart from this, they threatened the management staff, abused them in filthy language and threatened to enter into the staff residential colony and physically assault the staff and their family members. The petitioner lost a substantial amount of business and that they could not fulfill the Export Promotion Capital Goods obligations. The petitioner also submitted that foreign technicians could not do their job to carry out the important modernization projects. The illegal strike which commenced on 15.3.2001 extended up to 16.3.2001 on which date a settlement was signed u/s 12(3) of the I.D. Act before the Joint Commissioner of Labour. As per this, the union agreed to restore normalcy and co-operate with the management to bring about the discipline among the workers. It is further stated that after the memorandum of settlement dated 16.5.2001, the factory resumed operation on 18.5.2001. However, the Ex-Union office bearers, instigated the workmen to defeat 12(3) settlement and embark on a prolonged go-slow strike. The petitioner alleged that such a conduct was against the terms of memorandum of settlement signed on 16.5.2001 u/s 12(3) of the I.D. Act. It is stated that the workmen participated in the lightning strikes through out the day and night of 31.5.2001 and every month thereafter till October 2001. In spite of the advice given, the union refused to go by the factory standing orders, thus leading to gross in-discipline inside the factory. It is stated that the workmen went on illegal strike from about 14.15 hours on 13.11.2001. The workmen unleashed violence and assaulted 15 managers including the HR Manager and Accountant. They even threatened to kill the Managers and burn them alive and resorted to large scale vandalism and sabotage

damaging company property and machinery and vehicles of the managers. They also involved in looting of expensive computer parts and personal belongings of the Managers. The fire protection system was disrupted. The extent of damage caused by the striking workmen was about Rs. 8.3 crores and consequent loss of business was estimated at an additional cost of Rs. 25 crores. A FIR was lodged with the Ennore Police and charges were framed against 27 workmen including office bearers in the union under various sections of Indian Penal Code including Sections 307 and 120B IPC read with Section 149 and Section 3(1) of Tamil Nadu (Prevention of Damages to Property) Act, 1992. It is stated that the management also caused publication in the newspapers on 18.11.2001 narrating violent incidents. The charge sheet was issued to all the workmen for the various misconducts under relevant provisions of the Standing Orders. It was also displayed in the entrance to the factory in a conspicuous manner. The petitioner alleged that the notices sent were returned as refused. The notice calling upon the workers to attend the enquiry on 22.11.2001 was also not received by the workers. This necessitated the enquiry to be postponed. The enquiry was conducted on 29.11.2001. In spite of wide notice given by Registered post and paper publication intimating the date of enquiry of the matter on 29.11.2001, there was absolutely no response. The deliberate avoidance of the enquiry was termed as one on the instigations by the union. Thereafter wards, the petitioner proceeded with enquiry setting them ex parte and by report dated 12.12.2001 found the workmen guilty of charges. The second show cause notice was issued to the workmen by registered post and by certificate of posting on 15.12.2001 enclosing the copies of the enquiry proceedings, findings of the Enquiry Officer and called upon the workmen to submit their reply. There was no reply. Hence, by order dated 22.12.2001 the petitioner management dismissed the workmen for the proven misconduct. The petitioner sent order of dismissal along with the application u/s 33(2)(b) of the I.D.Act for approval before the Industrial Tribunal. The petitioner submits that the dismissal of the workmen concerned were on grounds of proven misconduct, which are very serious and grave in nature.

3. On the petition filed by the Management, the workmen filed their counter contending that the enquiry was not fair. It was also further defended

by the workmen that their absence was on the ground of pendency of anticipatory bail applications. Ultimately, the Tribunal passed an order on

14.6.2006 reserving liberty to the Management to adduce evidence on merits, after preliminary issue regarding the fairness of the issue is decided.

4. The learned Counsel appearing for the petitioner submitted that when the Tribunal had noted the misconduct of the workers and once enquiry

had been conducted in a fair and proper manner and considering the refusal by the workers, the same had to be concluded ex parte, it is highly

arbitrary to call the proceedings as not conducted fairly to result in setting aside of the same. The view of the Tribunal that there was no fair

opportunity and was biased is not supported by any materials, that considering the proper service of notice by Registered post as well as by paper

publication, it is not right for the respondents workmen to state that there was no proper enquiry conducted. The learned Counsel submitted that as

the workers had wantonly kept away from participating in the enquiry, they are now estopped from contending anything as to the fairness of the

enquiry.

5. On notice, the second respondent has filed a counter refuting the charges. It is submitted that the writ petition is only a dilatory tactics adopted

by the petitioner and it is not maintainable in view of the decision of Division Bench of this Court reported in 1997 (3) LLN 376 (Shree Kumar

Textiles). Admittedly, the ex parte enquiries were conducted and closed on 5.12.2001 ignoring the plea for an adjournment. He further pointed out

that when the Tribunal directed to let in evidence, the Management rushed to this Court only to delay the proceedings before the Tribunal. As to

the allegations regarding the strike, the alleged damage caused to the property as well as to the personnel there, the respondents submit that on

13.11.2001, a day prior to Deepavali, when the workers requested the Personnel Manager to give them the customary festival advance, one of the

Managers stated that the workers can go and beg and celebrate Deepavali. When the workers requested an apology, an Officer therein caught the

right wrist of the worker and cut his wrist with a paper cutting blade. The provocation came only from the Management officials. It led to clash

between the workers and the Officials. The factory premises was closed and police were summoned inside the factory. Contrary to the allegations,

the workers never indulged in the violence and workers were evicted around 5.00 p.m. The injured workman gave police complaint against the management officials. The management launched a criminal complaint for alleged damages against the union office bearers. The factory was re-opened on January 2002. They took an apology from more than 210 workers and allowed them inside except the union office bearers and those persons who were identified to be the union supporters. Considering the police complaint made by the Management, the workers were sought to be arrested, which necessitated the filing of an anticipatory bail application. During pendency of the bail application, the management called upon the workers to participate in the enquiry. The said action was resorted to ignoring even the request of the Joint Commissioner of Labour. The ex parte enquiries were conducted on 5.12.2001 resulting in the dismissal of 27 workers. The respondents alleged that the entire exercise was mere formality without any purpose. The management filed a petition for approval u/s 32(2)(b) of the Industrial Disputes Act, 1947. When the industrial dispute raised by the union was pending adjudication before the Industrial Tribunal, the petitions relating to the termination order dated 22.12.2001 were adjourned under one pretext or the other. After assessing the evidence given by the management and the workers, the Tribunal passed an order holding that the enquiry was vitiated. The respondents submit that the conduct of the management/ petitioner lacked bona fides and contrary to law propounded by this Court.

6. Learned Counsel for the petitioner, placing reliance on the decisions reported in Nagar Palika, Natar Vs. U.P. Public Services Tribunal, Lucknow and Others, and 2003 (3) LLN 1102 Binny Limited Engg. DIVN. v. PO., Industrial Tribunal submitted that when the workmen refused to take part in the proceedings and refused to receive the charge sheet or even notice and went ahead to avoid the enquiry, it is not now open to them to question the order of the Enquiry Officer's finding that the workmen were guilty of misconduct. He further placed reliance on the decisions reported in 2001 III LLJ (Sup) 1194 Madura Coats Ltd. v. P.O., Labour Court and 2003 I CLR 499 Prabhakar Engg. P. Ltd. v. R.B. Mohite of Pune and Anr., and submitted that by their own conduct, the respondents are estopped from questioning the fairness of the enquiry. The learned

Counsel further pointed out that when the respondents adopted an intimidatory attitude not to participate in the enquiry, with no other option, the Management had to conclude the enquiry ex parte. Sufficient opportunity was granted to conduct the enquiry and there is nothing to show that there was any infirmities. In the face of the decisions reported in 1962 (1) LLJ 656 Bhatt (Major U.R.) v. Union of India, the petitioner submits that when proper opportunity was granted, it is not now open to the respondents to challenge the very same enquiry as arbitrary and in violation of principle of natural justice. It is submitted that the respondents were estopped from questioning the fairness of the proceedings when they refused to participate in the enquiry as evidenced from the conduct of the respondents. He impressed on the distinction that the question of fairness will arise only where the workers participated in the enquiry and the question does not arise in matters where the workers refused to take part in the enquiry. Considering the conduct of the respondents, there is no justification now to hold the proceedings as violative of principle of natural justice and unfair. He pointed out that the respondents sought for an adjournment and refused to receive the notice. Hence, the respondents herein are duty bound to justify the conduct when they raised a plea that the enquiry was unfair. Impressing on the violent atmosphere created, the learned Counsel for the petitioner pointed out the loss suffered on account of damage to the property as well as to the business and submitted that non participation on their own accord cannot defeat the results of the enquiry conducted or to call it as an unfair conduct. He submitted that when the respondents refused to receive the charge sheet, it tant amounts to admission of charge. In this connection, he placed reliance on the decision reported in 1961 (1) LLJ 303 Bata Shoe Co. v. Ganguly and Ors. He further submitted that to raise the question of enquiry as unfair, the respondents ought to have participated. He also placed reliance on the decision reported in Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another, and 2003 (3) LLN 1102 Binny Ltd. Engg. Divn. v. P.O., Industrial Tribunal and submitted that a person who stayed away from the enquiry and refused to receive any notice sent, has dis-entitled himself from questioning the enquiry.

7. Referring to the prayer sought for in the Approval petitions before the Industrial Tribunal, the learned Counsel for the respondents questioned

the maintainability of the writ petition as against order passed by the Industrial Tribunal. He submitted that on analysing the various factors, the Tribunal rightly came to the conclusion that even though the respondents were aware of the disciplinary proceedings, they were not in a position to participate in the enquiry and that the enquiry was conducted in a biased manner and not in accordance with Standing Orders. Hence, the domestic enquiry results were set aside directing the petitioner to let in evidence before the Tribunal to prove the charges levelled against the respondents.

He pointed out that even in an ex parte enquiry, fair conduct is absolutely necessary. He pointed out that 22 enquiries were conducted at the instance of the management on the same day. The management was aware of the conciliation notice issued by the statutory authority viz., the Joint Commissioner of Labour. The hearing was scheduled on 5.12.2006. In the face of Section 12 of the Industrial Disputes Act, the enquiries sought to be held at the instance of the management on 5.12.2006, suffers from illegality. The learned Counsel further pointed out that in respect of the very same charges an enquiry was sought for at the instance of the management and pending before the Joint Commissioner, there was no appeal by the management, and as such, Section 33(1)(b) of the I.D. Act bars the employer to proceed further with the enquiry. He pointed out that there was personal bias of the members constituting the enquiry committee who acted as witnesses in the enquiry. He submitted that the entire proceedings is nothing short of victimisation at the hands of the management. He placed reliance on the decision reported in 2004 (3) LLN 1029 Sri Ramanarayan Mills Ltd. v. P.O., LC 1975 (2) LLN 321 Cooper Engineering Ltd. v. P.P. Mundhe and 2007 (1) LLN 351 R. Bojan v. Needle Industrial (India) Ltd. and submitted that the writ petition itself has to be dismissed since the same is not maintainable and not in accordance with law. He made particular reference to the conduct of the enquiry to impress on the submission that the entire proceedings were unfair. In the background of the conduct of the proceedings, the learned Counsel submitted that the Tribunal has rightly come to the conclusion on the question of fairness.

8. In reply, Mr. S. Jayaraman, learned Counsel appearing for the petitioner submitted that the respondents have not proved anything on the

question of biased nature of the enquiry proceedings. Countering the claim on the maintainability, the learned Counsel submitted that when the

preliminary issue goes to the root of the matter, as regards the dismissal of the workers on the enquiry committee's finding, the writ petition could

be maintained as against the order passed by the Tribunal.

9. As to the contention of the pendency of the proceedings before the Conciliation Officer, the learned Counsel submitted that as on date, there

was no industrial dispute pending. Further the termination which is the subject matter of the enquiry is totally different from the illegal strike which is

the subject matter before the Conciliation Officer. He submitted that distinction between Section 10 and Section 33(2)(b) of the I.D. Act needs to

be maintained for appreciating the contention of the petitioner on merits and hence, the writ petition is maintainable.

10. Before going into several contentions raised in these proceedings, we may have to get into facts leading to the filing of the present proceedings.

In the application taken before the Industrial Tribunal, the petitioner took a definite case that the respondents failed to submit their explanation in

accordance with Clause 22(d) of Certified Factory Standing Orders for approval of the proceedings culminating into the dismissal of the workers.

The petitioner sought for leave to let in evidence to establish the case to enable the Court to come to a conclusion of its own. A definite case was

taken by the management in the proceedings that the allegations based on mala fide action was totally bereft of merits. The respondents took a

definite stand that the management was to be blamed for the state of affairs and that notices for enquiry was issued on 22.11.2001, 29.11.2001

and 5.12.2001. The management was fully aware of the criminal proceedings pending before the High Court and they were opposing the bail

applications. 24 workers were granted anticipatory bail on 22.12.2001 and they were released only on 24.12.2001. In this background, the

workers could not attend the enquiry. Admittedly, the proceedings were also pending as on the date before the Joint Commissioner of Labour.

The union had sought for postponement of the enquiry. The enquiry date was fixed on 22.11.2001 on their own accord, ignoring the Joint

Commissioner's request and representations made by the respondents. The workers made a specific allegation that the time granted for submitting

the explanation has been conveniently omitted and that there was no proof of delivery of the notice alleged to have been sent. The Industrial Tribunal considered the question as to whether there was proper domestic enquiry in accordance with relevant Rules and Standing Orders and in observance of the principles of natural justice. The enquiry notice and the publication in the papers informing the enquiry indicated the date of hearing as 22.11.2001. It was adjourned to 5.12.2001. The enquiry commenced and concluded on the very same day. The Tribunal held that going by the evidence available, parties were aware of the disciplinary proceedings and hence, it is not correct to state that there was no proper service of notice. However, on the question as to whether a fair opportunity was given, the Tribunal pointed out that the charge memo and enquiry notice was sent to the parties, when the bail applications were moved, the management has filed a petition as an intervener. The anticipatory bail order was given on 21.12.2001 and the respondents were enlarged on bail only on the execution of sureties on 22.12.2001, on which date, the respondents were dismissed from service. Considering the document filed, the Tribunal came to the conclusion that even before issuing of charge memo, the management had made up its mind to terminate the services of the office bearers from the company.

11. The Tribunal considered that as per the enquiry reports, the management representative Mr. Ramamurthy had examined 184 witnesses before 22 enquiry officers on a single day i.e. on 5.12.2001. Considering the number of witnesses to be examined and the enquiry proceedings, on the admitted fact as stated above, the Tribunal came to the conclusion that the enquiry was not fair. Apart from that, the Tribunal pointed out as an example that while Mr. Sridharan acting as an Enquiry Officer in A.P. No. 27 of 2001, acted as witness in A.P. No. 29 of 2001 and one A.K. Nair is an Enquiry Officer in A.P. No. 29 of 2001 and he is a witness in A.P. No. 27 of 2001. Considering the dual role played, the Tribunal came to the conclusion that there was a total negation of principles of natural justice.

12. On the question of bias, the Tribunal further noted that the decision reported in 2003 (3) SCC (L&S) 488 Union of India and Ors. v. B.N. Jha, clearly applied to the facts in this case, where the Officers acted both as witness as well as enquiry Officers in connection with the same

charges. In the background of these facts, the Tribunal came to the conclusion that the Management had not given fair opportunity to the parties

and not conducted the same in an unbiased manner. As per the decision reported in *Meenglas Tea Estate Vs. Its Workmen*, , the Tribunal further

pointed out that in spite of the telegram received from the President of the trade union, the Management went ahead with the examination of 184

witnesses in respect of 22 enquiries on 5.12.2001 and arrived at a decision. From the very nature of this proceeding, the Tribunal held that it is

clear that there was no fair opportunity granted and the proceedings were in sheer violation of principles of natural justice. The Tribunal further

concluded that the domestic enquiry was not in accordance with the Standing Orders. Referring to a decision reported in 2001 (3) LLN 105

K.S.R.T. Corporation v. Smt. Lakshmidhevama, the Tribunal held that if the conclusion of the Tribunal is that the enquiry was not fair, the

management has right to adduce additional evidence. However, considering the fact that only one witness was examined on the side of the

management and on the side of the workmen two witnesses were examined, the Tribunal concluded that there was no proper conduct of the

enquiry and that the opposite sides were not in a position to participate in the enquiry and that the same was conducted in a biased manner without

giving an opportunity to the parties to let in evidence.

13. It must be seen that the Tribunal on an analysis of the entire facts leading to the dispute and the conduct of the enquiry and the manner of

conducting the enquiry, rightly arrived at a decision that the enquiry was not conducted in a unbiased manner.

14. The learned Counsel for the petitioner stressed that when the respondents had already received the enquiry notice, but had failed to participate

in the enquiry on their own accord, it is not open to them to question the correctness of the enquiry. He placed particular emphasize to the decision

of this Court reported in 2001 (3) LLJ Supp 1194 *Madura Coats Ltd. v. P.O.*, Labour Court to submit that the reasons which prevented the

workmen not to participate in the enquiry cannot be a ground to interfere with the domestic enquiry. A perusal of this decision shows that when the

workmen did not care to participate in the enquiry, reasons assigned for non participation cannot be a ground for setting aside the enquiry

conducted. This Court went into the legal notice as per the standing orders to hold that there was no illegality or violation of principles of natural

justice. In para 48, this Court further pointed out that merely because proceedings were set ex parte, it cannot be said that the same is in violation

of principles of nature justice. This Court further held that,

...Ex-parte procedure is also provided for and it is a valid procedure and such an ex-parte proceeding the management had been compelled to

resort by the very conduct of the workmen....

15. Learned Counsel placed particular emphasize on the decision reported in 1997 (2) LLJ 947 S. Murngadhas v. State Bank of India and stated

that where a person refused to receive any order, it will amount to sufficient service of the said order to him. He also placed reliance on the

decision reported in Union of India and Others Vs. Dinanath Shantaram Karekar and Others, and submitted that service of the notice clearly

proved the knowledge of the respondents. The learned Counsel placed particular emphasize on Section 33 of the Industrial Disputes Act. In the

context of the above said decision relied on by him, the inference drawn by the Tribunal that the respondents were not granted a fair opportunity

was incorrect.

16. It must be noted that the decisions cited before this Court, relied on before the Tribunal were considered at length by the Tribunal only to note

that although the respondents were aware of the proceedings, yet, the respondents had to move for anticipatory bail in the wake of threat of arrest.

They were granted bail only on 22.12.2001. But on the very same day, they were dismissed after the enquiry was conducted on 5.12.2001.

Leaving aside this fact for a moment as regards granting of an opportunity for the respondents to participate in the enquiry, even assuming that

there was proper opportunity, the facts noted by the Tribunal cannot be ignored. Given the impossibility of examining the witnesses on a single day

given the hours of working and considering the dual role played by one and the same person, as noted in the Tribunal's order, I do not find any

justification in the petitioner calling this enquiry as fair one to reject the findings of the Tribunal. On the score that the entire proceedings were

conducted in a biased manner, the order passed by the Tribunal merits to be upheld. It is not denied as a matter of fact that the management's

representative one Ramamoorthy in all 22 enquiry cases, examined nearly 184 witnesses on a single day viz., on 5.12.2001. 22 Enquiry Officers were appointed. It is not denied that most of these Enquiry Officers had also deposed as eye witnesses. The Tribunal in its order as a matter of sample pointed out at least in two cases where the Enquiry Officer in one proceedings deposed in another proceedings, where that particular Enquiry Officer in the proceedings acted as a witness before the first Enquiry Officer. The learned Counsel for the petitioner could not ignore this as a mere change of roles among the Enquiry Officers without any implication. It only indicates the performance of a statutory obligations as a ritual. In all these proceedings, even assuming for a moment that the contents of the statement are one and the same, yet, it stares at the possibility of concluding the enquiry examining 184 witnesses on a single day in 22 proceedings. I do not find any basis to assume the possibility of fairness or to exclude bias in these proceedings. Rightly, the Tribunal came to the conclusion that there was travesty of principles of natural justice and proceedings were writ large with biased attitude. There is no explanation for hurrying this proceedings on a single day, when 184 witnesses were examined by the management. On the face of this solitary factor itself, it is not difficult for this Court to uphold the order of the Industrial Tribunal and the finding that the domestic enquiry was not fair and proper. On the question of estoppel or notice, scales of justice cannot weigh against the employees merely on the ground of the employees not participating in the enquiry, the petitioner is aware of the anticipatory bail petitions before this Court. It had impleaded itself in these proceedings too. In the above circumstances, I do not find any justification to hold that the proceedings were conducted in a fair and unbiased manner in accordance with the principles of natural justice.

17. The learned Counsel for the petitioner pointed out that even in their pleadings before the Tribunal, they had sought for permission to let in evidence to establish their charges to enable the Tribunal to come to a conclusion on its own finding. In the light of the decision of the Supreme Court in the case of Cooper Engineering and in the light of the decision of this Court reported in 1986 I LLN 110, the learned Counsel submitted that the conduct of the proceedings have to be viewed keeping in mind the necessity to maintain public interest. While there cannot be any dispute

as to the necessity of maintaining discipline among the work force, by the same stroke, one cannot accept the conduct of an enquiry by the petitioner without any regard to the principles of natural justice. If the purpose of enquiry is to get at the truth, then as an employer, having the interest of the workers also, in its consideration, it ought to have acted in a manner which is beyond the pale of any doubt, that even the workers have no cause for complaint as to the conduct of the enquiry. If the enquiry really has to have any purpose, it goes without saying that it needs to satisfy the norms of fairness that even the worst of the opponent will have no cause to complain as to the manner of conduct of the enquiry, except on the results of the enquiry. In the face of the finding of the Tribunal, which does not show any arbitrariness or unreasoning, I do not find any justification to uphold the contentions of the petitioner herein.

18. On the preliminary objection as to the maintainability of the writ petition, I uphold the contention of the petitioner herein that since the issue herein goes to the very root of the matter raised and as to the merits of the order passed by the Tribunal, it is not possible to sustain the objection raised by the respondents. The order impugned is in fact a final order on the merits of the enquiry results. In the above circumstances, I do not have any hesitation in holding that the writ petition is maintainable one.

19. Going by the merits of the findings by the Tribunal, I uphold the order of the Tribunal that the findings are correct that the proceedings were conducted in a biased manner leading to miscarriage of justice.

In the circumstances, the writ petition is dismissed. No costs. Consequently, connected MPs are closed.