

(2011) 11 KL CK 0057
In the High Court Of Kerala
Case No : W.A. No. 674 of 2011

Jet Airways India Ltd

APPELLANT

Vs

The Labour Court and Another

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 1 KLJ 648

Hon'ble Judges : Pius C. Kuriakose, J;K. Harilal, J

Bench : Division Bench

Advocate : E.K. Nandakumar, A.K. Jayasankar Nambiar, K. John Mathai, P. Benny Thomas and P. Gopinath Menon, P.K. Vijayamohanan, M.K. Damodaran and C.R. Shyamkumar (GP), for the Respondent

Judgement

K. Harilal, J.—The principles of "Natural Justice", its violation causing prejudice and civil consequences to a worker who suffered dismissal in the domestic enquiry proceedings are the issues that loom large before us in this Writ Appeal. This writ appeal is directed against the judgment under challenge passed by the learned Single Judge of this Court in W.P (C) No. 24324/2005 filed by the appellant herein. In the above writ petition the appellant challenged Ext.P4 preliminary order passed by the Labour Court, Kozhikode in IDC No. 4/2002. The appellant was an employer and the 2nd respondent (contesting respondent) was a workman under him. Facts necessary for the consideration of this writ appeal can be summerized as follows:

2. The workman by name Mr. K.N. Suresh Kumar was employed as a Senior Security Assistant in the service of M/s. Jet Air Ways India Pvt. Ltd. at Calicut Airport. He was selected to undergo training at Bombay which was scheduled to be held on 16.5.2001. In that journey to Bombay, he boarded at Calicut Airport, at about 3 pm. on 15.5.2001. The Security Officer and Airport Manager, who were standing near the baggage screening machine, on suspicion that he was under the influence of alcohol wanted the workman/2nd respondent to undergo

medical check-up. Without undergoing medical check up, the 2nd respondent/ worker pleaded to accept him on board. He went near the aircraft without a boarding pass and undergoing security check. Ultimately, the aircraft departed without taking the passenger. The Airport Manager reported this matter to his superior officer in writing. On the basis of that report, the management charge sheeted the worker for riotous or disorderly behaviour during working hours at the establishment and committing acts subversive of discipline and for willful insubordination or disobedience of lawful and reasonable orders of superior and placed him under suspension pending enquiry. The worker denied the charges levelled against him. An advocate from Calicut Bar was appointed as an enquiry officer and he conducted enquiry. In the enquiry he was found guilty of the charges levelled against him and dismissed from the service by way of punishment. The industrial dispute raised by the workman was referred to the Labour Court, Calicut and an I.D was registered. The Labour Court, Kozhikode found that the enquiry was vitiated by the gross violation of the principles of natural justice due to the denial of sufficient opportunity to adduce evidence. The copies of the documents and witness list were not served in advance to the workman and it caused prejudice to him. The issue regarding the legality, propriety and fairness of the enquiry was heard as a preliminary point by the Labour Court and found that the enquiry is vitiated by gross violation of the principles of natural justice.

3. Aggrieved by the impugned order, the appellant filed Writ Petition No. 24324/2005 before this Court. After considering the impugned order the learned Single judge confirmed the finding that the enquiry is vitiated by gross violation of the principles of natural justice by non-supply of the witness schedule and copy of the documents in advance. This writ appeal is filed challenging the finding that the enquiry was vitiated by the violation of the principles of natural justice.

4. Shri. E.K. Nandakumar, the Learned Counsel for the appellant contended that the Labour Court went wrong by finding that the enquiry is vitiated by the gross violation of the principles of natural justice on account of the facts that witness list and copy of the documents were not given in advance and the learned Single Judge of this Court erroneously confirmed it. The Learned Counsel further pointed out that gross violation of the principles of natural justice cannot be a ground for setting aside an enquiry, unless prejudice has been caused and the respondent failed to establish the nature of the prejudice caused to him. The workman participated in the enquiry and these contentions were not raised in the enquiry and no opportunity was sought for to adduce evidence. Further it is contended that the learned Single Judge ought to have quashed the preliminary order passed by the Labour Court. In support of the contentions raised, the Learned Counsel has produced the decisions reported in *Chandrama Tiwari v. Union of India*, 1987 (Supp) Supreme Court Cases 518, *State of Tamil Nadu Vs. Thiru K.V. Perumal and others*, and *Syndicate Bank v. Venkatesh Gururao Kurati*, 2006 (1) LLJ 989

5. Shri. M.K. Damodharan, the learned Senior Counsel for the 2nd respondent/workman submitted that the enquiry was vitiated by gross violation of the principles of natural justice and the workman was denied of an opportunity to adduce evidence by the non supply of the witness list and documents. He was precluded from cross examining the witnesses effectively and properly. The learned Senior Counsel contended that the writ petition, challenging the order passed on a preliminary issue is not maintainable under Article 226 of the Constitution of India, and cited *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, .

6. We have given our anxious consideration to the rival submissions made by the counsel for the appellant and the respondent at the Bar. In *Chandrama Tewari Vs. Union of India (UOI)* (through General Manager, Eastern Railways), the Supreme- Court held that "the obligation to supply copies of the documents is confined only to material and relevant documents and enquiry would be vitiated by violation of the principles of natural justice, only if the non supply of the material and relevant documents may have caused prejudice to the delinquent workman". The question whether a document is material or not will depend upon facts and circumstances in each case. This decision was followed in the decisions reported in *State of Tamil Nadu Vs. Thiru K.V. Perumal and others*, and *Syndicate Bank and Others v. Venkatesh Gururao Kurati*, 2006 (1) LLJ 989

7. When we apply the above proposition to the facts and circumstance of the instant case, the 1st question that arises for consideration is whether the copies of the documents and witness schedule which were not served to the delinquent worker in advance are material and relevant documents? M1 to M4 were marked and MW1 to MW3 were examined by the appellant to prove charge against the respondent in the enquiry. M1 is a report regarding the alleged misconduct committed by the workman submitted to the General Manager by MW1. M2 is the charge sheet. M3 is a copy of the model standing order and M4 is the copy of the complaint dated 2.7.2001 prepared by the Security Officer (MW3). Coming to the witnesses, MW1 is the author of M1. MW2 is the maker of the complaint and MW3 is a Senior Security Assistant who had been examined to speak about the misconduct allegedly committed by the workman. It could be seen that these documents are having bearing on the charges against the workman and these documents are said to have been prepared contemporaneously by the witnesses sought to be examined at the time of occurrence or immediately after that, to prove the charge against the workman. The documents speak about the sequences of the occurrence and the action taken thereon. Therefore, we find that the documents stated above (M1 to M4) are material and relevant documents and the witnesses MW1 to MW3 are material witnesses.

8. The next question to be considered is whether the non supply of the copy of the documents (M1 to M4) and copy of the witness schedule in advance, caused prejudice counting to the violation of natural justice? The "prejudice" is a matter to be established on the basis of the facts and circumstances of each case and it

is inferable from the circumstances also. In the instant case, it is the consequential effect or impact of the non supply of the copy of the material and relevant documents and witness schedule. The witnesses MW1 to Mw 3 are sought to be examined in the enquiry to prove the alleged misconduct committed by the workman in their presence, while they were standing near the baggage screening machine at about 3 pm. on 15.5.2001. Similarly, these documents are intended to be produced and marked to corroborate the oral evidence of MW1 to MW3 as the documents are allegedly prepared contemporaneously.

9. Knowledge about the contents of the documents in advance is essential to cross examine a witness who claims that he witnessed and contemporaneously prepared the documents. Had the copy of these documents been served to the appellant in advance, he could have cross examined the witnesses more properly and effectively by asking questions to contradict the oral evidence with documentary, evidence. The workman was denied that opportunity, and thereby caused prejudice to him in the examination of the witness who deposed against him. The non-supply of M1 to M4 in advance would definitely result in substantial prejudice to the worker as he missed an opportunity to confront with contents, test their veracity and to discredit their testimonies. This is too much in this case where documents relied on are material documents having, direct nexus and bearing with the alleged misconduct and very much relied upon by the enquiry officer in rendering the findings which bring home the guilt of the delinquent workman. It is pertinent to note that the appellant has no case that the copies of these documents were served in advance. But their case is that these documents are not material or relevant.

10. Coming to "Natural Justice", the authorities on "Natural Justice" by H.K. Marshall and B.M. Banerjee after a historical survey on "Natural Justice", observed that there is no single authoritative or comprehensive definition of Natural Justice. In *Abbat v. Sullivan*, 1952 (1) KB 189 it has been held that "the principles of Natural Justice are easy to proclaim, but their precise extent is far less easy to define". But it is possible to enumerate the main principles with some certainty. Thus Natural Justice is an expression lacking precision. In past it was used interchangeably with the expression "Natural Law". Natural equity, the Laws of God etc are still using as synonym for Natural Law. What are the norms of Natural Justice? The idea of natural law in their practical application to human problems are the norms of natural justice. What is natural law? Unlike special law consists of written enactments by which men are governed, natural law is a universal law, consists of those unwritten rules which are recognized among all men and courts of law. In every action and proceedings, and everywhere, there is an instinctive understanding of justice in the sense of righteousness, equality and fair play. For instance, among the two playmates, when one takes a big bite in a single bread given to them, there arises violation of Natural Justice and the child may appeal to fair play. In modern times "Natural Justice" has come to be used almost exclusively as a comprehensive expression to describe two procedural rules that "no man shall be judge in his own cause and "Audi alteram

partem" or both sides shall be heard". Indian law recognizes certain fundamental principles of justice commonly called the Rules of Natural Justice. They are:

- i) The person accused should know the nature of accusation.
- ii) He should be given an opportunity to state his case.
- iii) He should be given an opportunity to controvert the charge against him.
- iv) The decision making body should act in good faith with utmost honesty and fairness.

11 These rules are not confined to the conduct and proceeding of statutory tribunals and courts, but is applicable to contractual domestic tribunals or body of persons or person vested with authority to enquire or adjudicate upon matters involving civil consequences to individuals. Reliance on the report of the domestic enquiry is great as the courts refuse to interfere with the report of the domestic enquiry arrived at bonafide and in accordance with natural justice. It is well settled that fair hearing also calls for a right to rebut any evidence and that necessarily involves right to cross examine effectively and properly. Whenever a person suffers civil consequences or prejudice, the principles of natural justice is attracted.

12. Disciplinary enquiry is a fact finding investigation by administrative or managing authority to which standard of a criminal trial cannot be imported. In disciplinary proceedings the standard of evidence to be maintained or rather expected to be maintained is that of a civil court. It is pertinent to note that the Rules of Natural Justice are the basic principle from which several provisions in CPC ensuring fair trial are enacted. We remind ourselves the relevant provisions in CPC insisting the production of the documents in support of a claim along with plaint and written statement and the list of witnesses whom the parties propose to call, not later than 15 days after the date on which the issues are settled. In principle, this aspect also justifies our view that in domestic enquiry the delinquent worker has the right to get copy of the material and relevant documents and copy of the witness schedule in advance before the examination of witness.

13. It is well settled that reasonable, just and fair trial is a right that emanates from the fundamental right guaranteed under the Constitution of India and denial of such right amounts to violation of the right guaranteed under the Constitution. The same principle is applicable to proceedings in a domestic enquiry also as it stands on par with trial. It has to be understood that domestic enquiry which is preliminary aimed at ascertaining truth has to be fair to all concerned. It will not be correct to say that delinquent worker alone must be fair. The delinquent worker under the disciplinary enquiry is also has a right to be dealt with fairly in the enquiry. The worker has a right to prove his innocence by a just and fair enquiry. He should be given all opportunities in accordance with the law and principles of Natural Justice.

14. In the result, we find that in the instant case the workman was denied of an opportunity to defend his case effectively and properly by not serving in advance the copy of the material and relevant documents which allegedly speak against him, witness schedule consists of name of witness who intends to speak against him and thereby caused prejudice amounting to violation of the principles of natural justice. The learned Single Judge of this Court rightly refused to interfere with the findings of the Industrial Tribunal to that extent and we also confirm the judgment under challenge. Hence the writ appeal fails and is dismissed accordingly.