
(1984) 08 KAR CK 0036

In the Karnataka High Court

Case No : Writ Petition 1632 and 1633 of 1979

K. Chandrasekhar and Others

APPELLANT

Vs

Management of Binny Ltd.

RESPONDENT

Date of Decision : 29-08-1984

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33 (2) (b)

Citation : (1984) ILR (Kar) 840 : (1984) 2 KarLJ 389 : (1985) 2 LLJ 65

Hon'ble Judges : Murlidhar Rao, J; M.S. Nesargi, J

Bench : Division Bench

Judgement

Nesargi, J.—These two Writ Petitions have been referred to the Division Bench by Bopanna, J., along with few other Writ Petitions namely, W.P. Nos. 3122, 3115, 3116 of 1976, W.P. No. 670 of 1980, W.P. No. 2014 of 1979 and W.P. No. 2681 of 1978. The opinion, expressed in the order of reference, is that interpretation of Standing Order No. 2(c) of the Standing Orders of the Industry, in question, is involved.

2. We have heard the Advocate for the Petitioners in W.Ps. Nos. 3122, 3115, 3116 of 1976, W.P. No. 670 of 1980, W.P. No. 2014 of 1979 and W.P. No. 2681 of 1978. At this stage, we found that the crucial question involved in these two Writ Petitions, namely, W.Ps. Nos. 1632 and 1633 of 1979 is not common to the other Writ Petitions. Therefore, we have isolated these two petitions for disposal and have heard the counsel on both sides. It is in this background, we are proceeding to make this order in these two writ petitions.

3. The crucial question involved in these two Writ Petitions is whether the common order dated 10th August, 1976 passed by the Additional Industrial Tribunal, Bangalore, is to be quashed. These two Writ Petitions arise out of Sl. No. 81 of 1969 in A.I.D. No. 31 of 1969 and Sl. No. 82 of 1975 in A.I.D. No. 31 of 1969 before the Additional Industrial Tribunal.

4. The workman concerned in Sl. No. 80 of 1975 in A.I.D. No. 31 of 1969 is one

B. K. Thyagaraja. He had also impugned the said order in W.P. No. 1631 of 1979 but the same has been settled. Hence, the order we are now pronouncing would pertain only to Sl. No. 81 of 1975 and Sl. No. 82 of 1975 in A.I.D. No. 31 of 1969 on the file of the Additional Industrial Tribunal, Bangalore.

5. The relevant facts to the extent necessary for disposal of these two Writ Petitions may be stated as follows : The management held domestic enquiry against three workmen, namely, Thyagaraja, the petitioner in W.P. No. 1631 of 1979, Chandrasekhar, the petitioner in W.P. No. 1632 of 1979 and Krishna, the petitioner in W.P. No. 1633 of 1979, alleging certain misconduct falling within the ambit of the Certified Standing Orders. In the domestic enquiry, it was found that they had committed the misconduct and ultimately an order of dismissal was passed. As reference in regard to other disputes was pending, an application under S. 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) was made. Statement of objections was filed to the said application. No evidence was adduced in the Additional Industrial Tribunal, Bangalore, i.e., by the Management. The three workmen filed applications in the said numbers, namely Sl. Nos. 80, 81 and 82 of 1975 praying the Additional Industrial Tribunal that they be permitted to lead evidence in respect of victimisation and on other grounds. It is to be stated at this stage that in the statement of objections filed by the petitioners in response to the application filed by the employer under S. 33(2)(b) of the Act, the workmen-petitioners had narrated certain facts in para. 7 and ultimately on the basis of the said facts they alleged that a false report, as borne out from the facts narrated, had been secured and the Management which obliged the office-bearers of the Binny Mills Labour Association, held a farce of an enquiry and dismissed the opposite party workmen. This, according to them, is how they were victimised. It is in proof of this, they prayed for permission of the Additional Industrial Tribunal, as already stated earlier, to adduce evidence. The workmen filed affidavits in support of their applications.

6. The Additional Industrial Tribunal has rejected the applications of the workmen by the impugned common order on the reasoning which, in our opinion, is proper to excerpt.

"It is a well settled law that evidence regarding victimisation can be permitted to be let in before Tribunal provided it is made out that it was not possible at the time of Enquiry to have led that evidence. The question of victimisation which the opposite party seeks to lead is contained in para 7 of the objection statement. The long and short of this para is that one Kenchaiah was an office-bearer of the Employees Union for long The contention of the opposite party workers is that they did not know about the victimisation during that period There was heated discussion which is said to have up-set the office-bearers of the Union. The close proximity of this with the incident of misconduct is very significant. The opposite party workers would not have lost sight of it. They would have known about the incident of crowd on that day and learn about it. They would not have not known for the entire length of the period of the domestic enquiry. The alleged

victimisation therefore appears to be after thought. Therefore, no question of leading evidence in this respect.

By the very same order, the Additional Industrial Tribunal permitted the petitioner-workmen to adduce evidence regarding any other matters but not on the allegation of victimisation. It may be observed that we are not concerned with that part of the order.

7. The reasoning and conclusion available in the excerpt above is evidently based on the understanding of the law in the decision in *Ideal Jawa (India) Pvt. Ltd. Vs. C. Madan Mohan and Another*, The relevant portion in this decision is, in our opinion, worthwhile being expected. (Para 15)

"It is, therefore, clear that the allegations of mala fides, bias, victimisation or unfair labour practice are questions of fact and the burden of establishing the same is on the workmen who alleges them. If that is the legal position, it necessarily follows that the workman should have an opportunity to establish the same by independent evidence before the Tribunal which is charged with the duty of finding out whether the enquiry held by the management is vitiated on account of any one of these circumstances. We find that the High Court of Allahabad has taken the same view in *Nana Textile Ltd. v. Kishori Lal Sharma* 1966 I Lj 605. But having regard to the views expressed by the Supreme Court about the importance of domestic enquiries in the scheme of Industrial adjudication, we are of the opinion that this right of adducing evidence by the workman cannot be an unqualified one. In such cases the workman can lead evidence in support of the aforesaid allegations if he satisfies the Tribunal that either he did not know the facts on which he relies or that he was prevented by sufficient reason to lead evidence when the domestic enquiry was pending. To hold otherwise would amount to a denial of the right given to the workman to demonstrate that the enquiry is vitiated for one or the other reason on which the Tribunal can hold that the application made under S. 33 of the Act should be rejected."

Further on it has been observed as follows at Para 16 :

"If the workman alleges mala fides bias victimisation or unfair labour practice in his statement of objections and if it is shown that the workman either did not know the relevant facts which have to be established in support of the said allegations or could not for sufficient reasons prove them during the domestic enquiry, the Tribunal should permit the workman to lead evidence only to that limited extent even when the management which relies upon the domestic enquiry does not choose to lead evidence on its behalf."

8. In the very same decision, it has been held, on the basis of the principles laid down by the Supreme Court in a catena of decisions, that in a case where the Tribunal is dealing with a dispute relating to the dismissal of an industrial employee, if it is satisfied that no enquiry has been held or the enquiry which has been held is not proper or fair or the findings recorded by the Inquiry Officer are

perverse, the whole issue is at large before the Tribunal and in such cases, it is open to the employer to adduce additional evidence and satisfy the Tribunal that dismissal of the employee concerned is justified and further that the Tribunal would give an opportunity to the employee to meet that evidence, and deal with the dispute between the parties in the light of the whole of the evidence thus adduced before it.

9. It is by now well settled that even in a proceeding initiated by an application under S. 33(2)(b) of the Act, there is a right vested in the party to adduce evidence. We are not, at this stage, concerned with the stage at which they can exercise such a right.

10. The decision in *Ideal Jawa's* case (supra) has been understood and followed by the Labour Courts and Industrial Tribunals particularly in this State to have laid down the law that the right of the workman, who has been dismissed, to adduce evidence in proof of mala fides or victimisation and so on is not unqualified, but depends on his being able to establish to the satisfaction of the Labour Court or the Tribunal that either he did not know the facts on which he relied when the domestic enquiry was pending or he was prevented by sufficient reason from leading such evidence during such domestic enquiry and therefore, the concerned workman has to, in the first instance, satisfy the Labour Court or the Industrial Tribunal, on facts, if necessary, by adducing evidence, that either or these two conditions did exist. Next, when he successfully satisfies the Labour Court or the Tribunal in regard to these conditions, his right to adduce evidence in proof of mala fides or victimisation can be exercised and permission to adduce evidence can be granted. This is exactly the idea behind the reasoning in the impugned order (the relevant portion of the order has been already excerpted).

11. We have carefully gone through the decision in *Ideal Jawa's* (India) Pvt. Ltd. v. C. Madan Mohan (supra). We have been unable to satisfy ourselves that the Division Bench has, in fact, laid down as a proposition of law that it is a prerequisite for the concerned workman to adduce evidence in proof of his want of knowledge of the facts or he having been prevented by sufficient reason to lead evidence when the domestic enquiry was pending, and satisfy the Labour Court or the Industrial Tribunal, to enable him to claim before the Industrial Tribunal his right to adduce evidence in proof of his allegations regarding mala fides or victimisation. We have clearly understood the decision to lay down that while adducing evidence in proof of his allegations about mala fides and victimisation, he has also to satisfy the concerned Labour Court or the Tribunal as to why he could not lead evidence on those aspects when the domestic enquiry was pending or whether he was prevented by sufficient reason to lead evidence when the domestic enquiry was pending. If the decision is understood to have laid down the law as has been followed by the Labour Court and the Industrial Tribunal, it means, the concerned workman will have to adduce evidence in two stages which is nowhere contemplated, either in the provisions

of the Act or in any of the decisions of the Supreme Court rendered prior to 22nd July, 1971, the date on which the decision in *Ideal Jawa's* case (supra) was rendered, or after the said date.

12. In the decision in *Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others*, the position in law has been succinctly stated as follows :-

"When an application under S. 33 whether for approval or for permission is made to Tribunal it has initially a limited jurisdiction only to see whether a prima facie case is made out in respect of the misconduct charged. This is, however the position only when the domestic enquiry preceding the order of dismissal is free from any defect, that is to say, free from the vice of violation of the principles of natural justice. If on the other hand, there is violation of the principles of natural justice, the Tribunal will then give opportunity to the employer to produce evidence, if any, and also to the workman to rebut it if he so chooses. In the latter event the Tribunal will be entitled to arrive at its own conclusion on merits on the evidence produced before it with regard to the proof of the misconduct charged and the Tribunal, then, will not be confined merely to consider whether a prima facie case is established against the employee. In other words, in such an event, the employers' findings in the domestic enquiry will lapse and these will be substituted by the independent conclusions of the Tribunal on merits.

2. There is a two-fold approach to the problem and if lost sight of it may result in some confusion. Firstly, in a case where there is no defect in procedure in the course of a domestic enquiry into the charges for misconduct against an employee, the Tribunal can interfere with an order of dismissal on one or other of the following conditions :

(1) If there is no legal evidence at all recorded in the domestic enquiry against the concerned employee with reference to the charge or no reasonable person can arrive at a conclusion of guilt on the charge levelled against the employee on the evidence recorded against him in the domestic enquiry. This is what is known as a perverse finding.

(2) Even if there is some legal evidence in the domestic enquiry but there is no prima facie case of guilt made out against the person charged for the offence even on the basis that the evidence so recorded is reliable. Such a case may overlap to some extent with the second part of the condition No. 1 above.

A Prima facie case is not, as in a Criminal case, a case proved to the hilt.

3. It must be made clear in following the above principles, one or the other, as may be applicable in a particular case, the Tribunal does not sit as a Court of appeal, weighing or reappreciating the evidence for itself but only examines the finding of the enquiry officer on the evidence in the domestic enquiry as it is in order to find out either whether there is a prima facie case or if the findings are perverse.

4. Secondly, in the same case, i.e., where there is no failure of the principles of

natural justice in the course of domestic enquiry, if the Tribunal finds that dismissal of an employee is by way of victimisation or unfair labour practice, it will then have complete jurisdiction to interfere with the order of dismissal passed in the domestic enquiry. In that event the fact that there is no violation of the principles of natural justice in the course of the domestic enquiry will absolutely lose its importance or efficacy."

13. Further, on, in paragraph 8 of the said decision it is explained as to when a person can ordinarily be said to be victimised. In paragraph 9 it has been explained that victimisation is a serious charge by an employee against an employer and therefore, it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them and so on. It has been clearly laid down in the said decision that even if there is a conclusion of the concerned Tribunal, namely, Labour Court or the Industrial Tribunal that the domestic enquiry has passed all the necessary tests in law, that conclusion will lose its importance or efficacy, in case, on evidence, the concerned Labour Court or the Tribunal comes to the conclusion that there has been victimisation of the workman by the management. It naturally follows that such a conclusion can be arrived at only on the basis of the evidence adduced by the concerned workman as in the very said decision the Supreme Court has clearly stated the position in law in regard to the onus being upon the person pleading it, which necessarily has to be the workman affected. Nowhere is the rider as is understood to be stated in the decision in *Ideal Jawa's* case (supra) restricting the right of the workman to adduce evidence is found laid down in any of the decisions of the Supreme Court either rendered earlier to the decision in *Ideal Jawa's* case (supra) or later to that decision. Therefore, we are convinced that the position in law laid down by the Division Bench of this Court in *Ideal Jawa's* case (supra) is in accordance with what we have understood and explained in one of the earlier paragraphs and not in accordance with how it has been understood and followed by the Labour Courts or the Industrial Tribunals in the State. Hence it follows that the evidence adduced by the workman to establish that he did not either know the facts on which he relied in proof of victimisation and therefore could not produce necessary evidence in the domestic enquiry or he was prevented by sufficient reason to read such evidence in the domestic enquiry would have to be taken into consideration which appreciating the evidence that the workman adduces in proof of his allegation of victimisation by the management.

14. In view of the foregoing, we do not consider it necessary to go into the other aspects that have arisen in these two Writ Petitions. Those aspects will be dealt with by us in the remaining writ petitions, which are before us by virtue of the very order of the learned single Judge. So far as these writ petitions are concerned, the impugned order dt. 10th August, 1976, refusing opportunity to the petitioners to adduce evidence in regard to proof of their allegation of victimisation is to be quashed. Consequently, the orders that have followed the impugned order, also have to be quashed as the concerned Additional Industrial

Tribunal will have to proceed with the case from the stage at which it stood on the date of the refusal of the permission, namely, 10th August, 1976.

15. Before concluding, we must place on record, the submission made by Sri Kasturi and other Advocates, at the Bar, who are fairly well acquainted with this Branch of law, that in no other case, decided either by the High Courts or the Supreme Court, the rider understood to be found in *Ideal Jawa's* case, is laid down as a condition to adduce evidence on the question of victimisation.

16. In the result, we allow these two Writ Petitions, make the rule absolute and quash the order dt. 10th August, 1976, passed by the Additional Industrial Tribunal, Bangalore, and also the subsequent order dt. 25th November, 1978, according approval to the order of dismissal passed against the petitioners in these two Writ Petitions by the management and direct the Additional Industrial Tribunal, Bangalore, to grant permission to these two petitioners to adduce evidence as sought for by them and then proceed to dispose of the proceeding before it so far as these two workmen are concerned. No order as to costs.