
(1958) 03 KL CK 0010
In the High Court Of Kerala
Case No : O.P. No. 104 of 1957

K.K. Raghavan

APPELLANT

Vs

Industrial Tribunal, Ernakulam

RESPONDENT

Date of Decision : 10-03-1958

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Industrial Disputes Act, 1947 — Section 33

Citation : AIR 1959 Ker 62 : (1959) 1 LLJ 147

Hon'ble Judges : Sankaran, Acting C.J.;Vaidialingam, J

Bench : Division Bench

Advocate : K.S. Sebastian, for the Appellant; Government Pleader (for No. 1), G.B. Pai, P. Govindan Nair, K.V.R. Shenoi and P.K. Kurien, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

Vaidialingam, J.—This is an application under Articles 226 and 227 of the Constitution of India for the issue of a writ of certiorari or other appropriate writ or order calling up the records and proceedings and order dated 12-2-1957 of the first respondent in Miscellaneous Appeal 28/1956 and to quash the same along with the order dated 27-2-1957 of the second respondent and also to issue a writ of mandamus to the second respondent to compel them to reinstate the petitioner in service with back pay and other emoluments.

2. The first respondent is the Industrial Tribunal No. 2 Ernakulam and the second respondent is the Tata Oil Mills Co. Ltd., Tatapuram, Ernakulam represented by its manager.

3. According to the petitioner, he was in the employment of the second respondent for about 20 years and that he was also Vice-President of the Tata Oil Mills Workers' Union from about 1948. There was a general strike of the workers of the second respondent in or about February 1955 and the strike continued till about March 1955. The petitioner was not liked by the management of the

second respondent because of his trade union activities. In or about May 1955, the petitioner was suspended from work and this punishment and also certain other matters connected with the general strike are the subject-matter pending inquiry in Industrial Dispute No. 39/1950 before the first respondent.

4. There are certain other matters mentioned in the affidavit to show that the management was not well disposed towards the petitioner. It is enough to state that on a complaint received from one Sri C.A. Augustine, an employee of the second respondent about an assault made on him on 12-11-1955 by the petitioner and another co-worker Sri V.C. Mathew, the petitioner and Mathew were given charge-sheet on 14-11-1956.

In and by the said charge-sheets the management of the second respondent charged the petitioner and the said V.C. Mathew with misconduct falling under clause 22, Sub-clause 8 of the standing orders of the Company. Both the persons were given 48 hours to submit their explanations. Accordingly, the petitioner, on 16-11-1955, submitted a written reply refuting the charges and also stating that he was away at Chalakudy at the time of the incident.

5. It is also stated that the said Sri C.A. Augustine filed a complaint before the police regarding the assault on him by the Petitioner and Sri V.C. Mathew.

6. The said criminal case ended in an acquittal of the petitioner and Sri Mathew on 3-9-1956. But the management conducted its departmental enquiry between 27-12-1955 and 30-12-1955. The officer appointed by the management to conduct the enquiry, by his report dated 7-1-1956 has held that the petitioner and Sri Mathew assaulted Mr. Augustine on 12-11-1955 and he also found that the petitioner and Sri. Mathew are guilty of misconduct entitling the management to take disciplinary action against both of them.

7. Following this report, the management applied by petition dated 2-3-1956, Miscellaneous Application No. 28 of 1956 to the first respondent u/s 33 of the Industrial Disputes Act 1947 for permission to dismiss the petitioner and also Sri V.C. Mathew. The first respondent by its order dated 12-2-57 has granted the permission prayed for, so far as the petitioner is concerned but dismissed the application regarding Mr. Mathew.

8. According to the petitioner, the whole inquiry before the management was a mockery and opposed to all principles of natural justice. The petitioner had no real opportunity to place his case and the management conducted the inquiry with a serious bias as against the petitioner. Though the petitioner had been acquitted by the criminal court: and though that evidence was placed before the first respondent, the latter has not really considered the acquittal by the criminal court.

The Tribunal has not also acted according to the principles applicable in proceedings u/s 33 of the Industrial Disputes Act. The whole order of the second respondent is vitiated by an error apparent on the face of the record and is also

one passed without jurisdiction and as such, has to be quashed along with the order of the second respondent dismissing the petitioner from service.

9. The second respondent, in its counter-affidavit, has yet out in great detail the circumstances which led up to action being taken against the petitioner. The charges of mala fides and bias are controverted by the management. According to the management, the petitioner was given ample opportunities to place any evidence that he desired to produce before the Domestic Tribunal. In law, the management is entitled to take disciplinary action for misconduct against its employees and this has been recognised by judicial decisions. The proceedings before the Domestic Tribunal are in no way opposed to the principles of natural justice.

The entire evidence adduced in the inquiry was considered by the Domestic Tribunal and it has held that the petitioner is guilty of the charges levelled against him and that in consequence, the management has got the right to take disciplinary proceedings for misconduct. In consequence, the management applied to the first respondent Tribunal u/s 33 for removing the ban on their power to dismiss the petitioner. The order of the first respondent is one passed with jurisdiction and the first respondent has exercised its power according to the principles laid down by judicial decisions regarding the scope of Section 33 of the Industrial Disputes Act.

10. The fact that the petitioner was acquitted by a criminal court, subsequent to the finding arrived at by the Domestic Tribunal, has absolutely no bearing in these proceedings. The Tribunal has only to find out whether the application filed by the management u/s 33 was bona fide and whether the inquiry has been conducted properly by the Domestic Tribunal before arriving at a decision as against the petitioner. The first respondent was not bound by the decision of the criminal court and it was mainly concerned with the question to find out as to whether he should give the necessary permission or not u/s 33.

11. The second respondent has further stated that the petitioner never applied for any adjournment of the inquiry before the Domestic Tribunal on the ground of criminal proceedings pending against him in a criminal court.

12. The whole proceedings of the Domestic-Tribunal is bona fide and done in good faith and no action has been taken against the petitioner for the purpose of victimisation.

13. The first respondent has considered the application filed by the management to lift the ban and come to the conclusion that from the evidence available in the case, it cannot find any case of victimisation. It was also found that there is no substance in the plea that the workmen were falsely charge-sheeted by the company because of their trade union activities. First respondent has further held that the plea of alibi set up by the petitioner was given up at the time of argument and the petitioner chose to rest his defence on the evidence available in the case. It has also held that regarding the choice of Mr. Y.D. Joshi, the

Inquiry Officer, the workmen had absolutely no objection and that his inquiry was a very fair enquiry and that it has been conducted according to the rules of natural justice.

14. Regarding the judgment of acquittal passed by the criminal court which appears to have been very strongly pressed before the tribunal, the latter held that the judgment of the criminal court and the reasons given therein are not binding on the tribunal. It also held that the management is perfectly within its rights in seeking to establish the charge against the workmen in the inquiry before Mr. Jothi adducing the necessary evidence and that the management need not wait for the result of the proceedings in the criminal court. It also held that an independent conclusion has to be arrived at by the first respondent on the evidence placed before it.

In the end, the tribunal-first respondent found that there is a prima facie case for the management for lifting the ban u/s 33 and to grant permission to the management to dismiss the petitioner from service. But so far as V.C. Mathew was concerned, the first respondent came to the conclusion that the management has not made out a prima facie case as against him and therefore declined to give the management the permission to lift the ban asked for. In consequence of the lifting of ban against the petitioner, the second respondent passed final orders on 27-2-1957 dismissing the petitioner from their service.

15. During the hearing before us, Mr. Sebastian has not really challenged the proceeding of the domestic tribunal as mala fide or as being opposed to principles of natural justice. Though such allegations were made in the affidavits, those points have not at all been argued before us. In fact, we may also say that all these allegations have been found against the petitioner by the second respondent tribunal, and we also find no basis for such allegations.

16. The only contentions that have been raised before us by Mr. Sebastian are (a) that the first respondent acted without jurisdiction in granting the permission u/s 33 inasmuch as he has ignored the judgment of acquittal passed in favour of his client by the criminal court and (b) that the Standing Order No. 22(8) of the Standing Orders of the second respondent company for breach of which the petitioner was charged with misconduct is ultra vires.

17. The objection regarding the ultra vires nature of the Standing Order can be disposed of very briefly. According to Standing Order No. 22(8), the second respondent company is entitled to take disciplinary action for misconduct contemplated under Standing Order 23, in case there is) drunkenness, fighting, riotous or disorderly or indecent behaviour within or without the factory. We may state that this objection has not been raised before the Domestic Tribunal during any stage of the inquiry.

To a pointed question as to how the said Standing Order is ultra vires the learned counsel submitted that it, is opposed to Article 19(g) of the Constitution. Frankly, we are not able to appreciate how the Standing Order complained of in any way

affects the right of the petitioner to practise any profession or to carry on any occupation, trade or business. In our opinion, this contention is devoid of any substance and as such is rejected.

18. Coming to the main contention, as already stated, it is one challenging the jurisdiction of the tribunal and also on the ground that there is an error of law in the exercise of the jurisdiction. According to Mr. Sebastian the judgment of acquittal parsed in favour of his client by the criminal court is binding on the first respondent and it should have accepted that finding and declined to grant the permission asked for by the second respondent. It had no jurisdiction to grant the permission u/s 33 ignoring the judgment of the criminal court. Alternatively, it was contended that in any event, there is an error of law apparent on the records in that the first respondent has not given sufficient weight to the findings of the criminal court.

19. On the other hand, Mr. Govindan Nair, learned counsel for the second respondent, has contended that the jurisdiction of the tribunal u/s 33 of the Industrial Disputes Act is a very limited one and it has no jurisdiction to embark on an elaborate inquiry as if it decides an industrial dispute. He also relied upon the several decisions of their Lordships of the Supreme Court defining the nature of jurisdiction exercised by the Industrial Tribunal in such matters u/s 33 of the Industrial Disputes Act.

20. It is not necessary for us to quote all the Supreme Court decisions defining the jurisdiction of the tribunal u/s 33 of the Industrial Disputes Act or of the Appellate Tribunal under the corresponding Section 22 of the Industrial Disputes (Appellate Tribunal) Act 1950. It is enough to refer to the recent decision of the Supreme Court in *Martin Burn Ltd. Vs. R.N. Banerjee*, . In that case, their Lordships were dealing with an analogous provision, namely, Section 22 of the Industrial Disputes (Appellate Tribunal) Act 1950. Their Lordships have reiterated the principles laid down in their previous judgments and quoted with approval the following passage from their earlier judgment in *Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup*, .

"The Tribunal before whom an application is made u/s 22 has not adjudicated upon any industrial dispute arising between the employer and the workman but has only got to consider whether the ban which is imposed on the employer in the matter of altering the conditions of employment to the prejudice of the workman or his discharge or punishment whether by dismissal or otherwise during the pendency of the proceedings therein referred to should be lifted. A prima facie case has to be made out by the employer for lifting of such ban and the only jurisdiction which the Tribunal has is either to give such permission or to refuse it provided the employer is not acting mala fide or is not resorting to any unfair practice or victimisation." In the decision in *(S) Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup*, their Lordships have also stated that if the permission is granted by the Industrial Tribunal, the ban would be lifted and the employer would be at liberty if he so chooses thereafter to deal out the punishment to the

workman. Their Lordships have also stated that when such action is taken, it is open to the workman to raise an industrial dispute and have it referred by the Government on proper steps being taken. In such an industrial dispute, the workman would be entitled to have all the circumstances of the case scrutinised by the tribunal and claim appropriate reliefs at the hands of the tribunal. But if the Industrial Tribunal refuses permission to the employer the parties would be relegated to the status quo.

In the said decision, their Lordships further state that if on the materials before it the Industrial Tribunal comes to the conclusion that a fair inquiry was held by the management and it had bona fide come to the conclusion that the workman was guilty of misconduct with which he had been charged, the prima facie case would be made out by the employer and that the tribunal, in those circumstances, would be bound to give the requisite permission to the employer to deal out the punishment to the workman. Their Lordships further emphasised that the tribunal, however, would have no jurisdiction to go into the question about the harshness or excessive nature of the punishment and its only function is to either grant the permission or refuse it.

21. From the principles laid down by the Supreme Court, the jurisdiction of the Industrial Tribunal exercising powers u/s 33 is only to find out whether the management has made out a prima facie case for lifting the ban and whether the action of the management is bona fide or was actuated by motive or victimisation. If, on the materials before it the tribunal comes to a conclusion that a fair enquiry was held by the management and it had bona fide come to the conclusion that the workman was guilty of misconduct with which he had been charged, a prima facie case would be made out by the employer and the tribunal would be bound to give the requisite permission to the employer to deal out the punishment to the workman.

22. The same principle has been reiterated by their Lordships of the Supreme Court against the decision reported in *Patna Electric Supply Co., Ltd., Patna Vs. Bali Rai and Another*. In this case, their Lordships were dealing with the exercise of powers by the tribunal u/s 33 of the Industrial Disputes Act, 1947. In discussing the nature of jurisdiction exercised by the tribunal under this section, at page 206 of the reports, their Lordships observed as follows:

"The only question relevant to be considered by the Industrial Tribunal would be that in taking the step which it did the appellant was not guilty of any unfair labour practice or victimisation. If the Industrial Tribunal did not come to a conclusion adverse to the appellant in these counts, it would have no jurisdiction to refuse the permission asked for by the appellant."

The appellant referred to in the judgment was the management. Therefore, the Industrial Tribunal is not sitting as a court of appeal over the decision arrived at by the Domestic Tribunal nor is it deciding an industrial dispute when exercising its powers u/s 33. When an application is made by a management to punish an

employee, the Industrial Tribunal has only to consider as to whether the management is guilty of any unfair labour practice or victimisation and whether the management has made out a prima facie case for giving the permission.

Once it comes to the conclusion in favour of the management on these points, it has no jurisdiction to refuse the permission asked for by the management and it is bound to lift the ban. It may also be stated that the right of an employer to take disciplinary action against the employee within the limits of law have always been recognised by courts and that position has not been challenged by the petitioner before us in these proceedings.

23. We may also refer to a recent decision of the Madras High Court reported in *Gordon Woodroffe and Company (Private) Limited Vs. S. Venugopal and Another*, where Mr. Justice Rajagopala Ayyangar has exhaustively considered the nature of the jurisdiction exercised by an Industrial Tribunal u/s 33 of Act XIV of 1947. The learned Judge has traced the history of Section 33 and has also reviewed the authorities bearing on the point, and has held that it is not within the jurisdiction of the tribunal to go into the question of unreasonableness of the punishment imposed by the employer or to substitute a different punishment. The learned Judge has laid down the limits of the jurisdiction of the tribunal based upon the decisions of the Supreme Court. With respect, we agree with the reasoning of the learned Judge.

24. In this case, as already stated, the tribunal has considered the proceedings conducted by the Domestic Tribunal and has come to the conclusion that the management have not falsely charge-sheeted the employee because of the trade union activities. The first respondent has also held that the employer was not seeking permission in order to victimise labour. It has also held that the management have made out a prima facie case against the petitioner of misconduct. After being satisfied that the management has made out a prima facie case for lifting of the ban, the Industrial Tribunal, after considering the entire proceedings taken by the management and the conclusions arrived at, has given the necessary permission to the management, lifting the ban as against the petitioner.

25. The fact that it did not give permission to the management to punish Sri V.C. Mathew clearly shows that the first respondent has applied his mind independently. Therefore, in our opinion, the first respondent has strictly confined itself to the duties which he has to discharge according to the decisions of the Supreme Court in considering an application u/s 33.

26. But the contention of Mr. Sebastian is that the tribunal has ignored the judgment of the criminal court acquitting his client. We are not able to find under what provision of law the tribunal can be said to be bound by the proceeding before the criminal court. No provision of any statute or of any decision of any court compelling the tribunal to accept the judgment of a criminal court under such circumstances have been placed before us by the learned counsel for the

petitioner.

The tribunal was concerned with the application made by the management and its only duty was to find out whether there was material on which the Domestic Tribunal could have taken the action for which permission is asked for. Even otherwise, the nature of an inquiry before a Domestic Tribunal is entirely different from that of a trial in a criminal court. In fact, the tribunal has considered the contention regarding the acquittal by the criminal court and it has held, in our opinion, rightly that it is not binding on the said tribunal. We do not find any relevancy of those cases cited by Mr. Sebastian to show that when there was a conviction by a criminal court, that will be binding on all the parties to the said proceedings and in all subsequent proceedings also and therefore we are not referring to them.

In this case, even otherwise, the decision of the Domestic Tribunal has been given long earlier than the judgment of the criminal court. It will be seen that the judgment of the criminal court was on the basis that the prosecution evidence as a whole does not prove the guilt of the accused beyond reasonable doubt. Before the criminal court, the petitioner before us had very strongly relied upon his plea of alibi. Though the criminal court did not find alibi as such, it was of the view that there are enough circumstances to throw doubt upon the prosecution case and that the plea of alibi set up by the petitioner is likely to be true.

27. That the petitioner himself does not seem to attach much importance to this judgment of the criminal court will be seen from the fact that he did not make any request to the Domestic Tribunal to stay its hands pending the criminal trial. Further, the plea of alibi, so strongly relied upon in the criminal trial, was given the go by by the petitioner, before the Industrial Tribunal, in the proceedings u/s 33 of the Act. In paragraph 19 of the order of the Tribunal, Ext. C, it has been definitely stated as follows :

"But this case of alibi set up by Sri Raghavan was given up at the time of the argument. He not only did not press his plea of alibi but chose to rest his defence on the evidence available in the case."

Though Mr. Sebastian attempted to argue that the statement of the tribunal is not correct, we declined to permit him to raise that contention in the absence of any material before us to show that the statement of the tribunal is incorrect. We may also add that we are in agreement with the decision in *Bimal Kanta Mukherjee v. Newman's Printing Works*, 1956 1 Lab LJ 453 where the Appellate Tribunal has held that the acquittal of an accused in a criminal case is not binding on the Industrial Tribunal in such circumstances. They have held that it is open to the Domestic Tribunal to arrive at its own conclusion and the duty of the Industrial Tribunal is only to find out whether the Domestic Tribunal had sufficient materials on which it could come to a conclusion against the employee.

In our opinion, the scope of the enquiry u/s 33 being limited as per the decisions of the Supreme Court referred to above, we do not find any error or lack of

jurisdiction in the order of the Industrial Tribunal. It has considered, quite properly, as to whether the management has made out a prima facie case for lifting the ban and for considering that aspect, the judgment of the criminal court, which has come into existence long after the decision of the Domestic Tribunal, is absolutely irrelevant. We have absolutely no doubt that the decision of the criminal court is not at all conclusive and binding on the Industrial Tribunal.

28. Therefore, it follows that the order Ex. C is one based with jurisdiction and there is no error committed by the Industrial Tribunal in not feeling itself bound by the decision of the criminal court, Ex. B.

29. In the result, the application fails and is dismissed with costs of the second respondent, fixed in the sum of Rs. 250.