
(2008) 11 BOM CK 0064

In the Bombay High Court

Case No : Writ Petition No. 6419 of 2008

Kolhapur Zilla Sahakari Dudha Utpadak Sangh

APPELLANT

Vs

Shivaji Shankar Pharakate and Another

RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 111 BOMLR 175 : (2009) 120 FLR 1164 : (2009) 1 MhLj 982

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : S.S. Pakale, for the Appellant; Abhay Nevagi, Rajesh Mirchandani and Vivek Patil, instructed by Paras Kuhad and Associates for Respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—Rule, by consent of the learned counsel made returnable forthwith. Counsel appearing for the Respondents waives service. By consent of the learned counsel, the matter is taken up for hearing and final disposal.

2. The two workmen who are Respondents to these proceedings were employed by the Petitioner as temporaries. The Petitioner is a Federation of Milk Supply Societies in the District of Kolhapur and is registered under the Maharashtra Co-operative Societies Act, 1960. The Petitioner is engaged in the collection of milk from village societies and in the processing and distribution thereof. The Petitioner employs about 1891 employees and has a processing plant at Borawade (Bidri). A charge- sheet was issued to the two workmen on 8th August, 1989 in respect of an incident which took place on 1st April, 1989. It was alleged in the charge-sheet that the First Respondent had taken leave of absence on 1st April, 1989 due to personal reasons on the ground of a marriage in the family. However, on 1st April, 1989 the workman stayed for the night in the precincts of a hotel. At about 1.30 a.m. an officer by the name of Mr. R.D. Patil came to the hotel and took the workman with him, informing him that a tanker

had to be filled. The workman accompanied the said officer to the chilling plant in the tanker. The tanker came to be filled unauthorizedly with milk of a total volume of nearly 10,000 liters together with the assistance of the First and Second Respondents. A trap was laid by the management on a suspicion that milk belonging to the Petitioner was being unauthorizedly secreted away. The tanker was apprehended. It is accordingly alleged that though the First 3 Respondent was not on duty on 1st April, 1989, he had during the hours of the night proceeded to the chilling center in a private tanker and had aided in facilitating the theft of milk from the precincts of the Petitioner by unauthorizedly filling up a private tanker to the extent of 10,000 liters. The Second Respondent was also charged with having committed misconduct.

3. A disciplinary enquiry was initiated on the aforesaid charge of misconduct involving theft of the property of the employer. An Enquiry Officer was appointed and both the workmen who were charge- sheeted were permitted to be represented by an advocate. On 11th June, 1990 the evidence of the Managing Director of the Petitioner was recorded. On 27th February, 1991 during the pendency of the disciplinary proceedings a letter was addressed by the Respondent workmen accepting the charge of misconduct and requesting the management, in view of their financial position, to allow them to resume duty. The record of the proceedings of the Enquiry Officer shows that the workmen were asked as to whether they had in fact addressed such a letter to which the answer was in the affirmative. The workmen were asked as to whether the charges were acceptable to which the answer was again in the affirmative. The workmen stated upon enquiry that the letter had been addressed by them voluntarily and without any coercion. The workmen stated that in terms of the request a lenient view may be taken of the matter and they may be allowed to resume duty. Insofar as the First Respondent is concerned, he had stated in his letter that he accepted the charge contained in the letter dated 1st April, 1989. The First Respondent stated that at the behest of Mr. R.D. Patil who was in charge of the chilling plant, he had proceeded to fill the tanker when he was apprehended by the Managing Director of the Petitioner together with certain other members of the management. The First Respondent stated that he had carried out the aforesaid course of conduct at the behest of his superior and that he should be excused for the lapse. The First Respondent stated that he had no intention to defraud the Petitioner.

4. The Enquiry Officer submitted his report. It has not been disputed that both the workmen had on 27th February, 1991 submitted similar applications accepting their guilt. The record of the enquiry also shows that on the aforesaid date of hearing, the advocate appearing on behalf of the workmen was present. Following the report of the Enquiry Officer, the workmen were dismissed from service.

5. Complaints of unfair labour practices were instituted by the workmen before the Labour Court at Kolhapur under Item 1 of Schedule IV of the Maharashtra

Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The complaints were dismissed by the Labour Court on 7th June, 2005. The Labour Court relied upon the application submitted by the two workmen which according to the Court amounted to a confession of guilt. The Labour Court observed that from the proceedings dated 27th February, 1991 it emerged that the advocate appearing on behalf of the workmen was present and that the Enquiry Officer had enquired as to whether the statements contained therein were made voluntarily and without any coercion. Before the Labour Court it was submitted that the complainant workmen had obeyed the orders of the superior. While rejecting this submission the Labour Court observed that one of the complainant workmen was at the time of the incident not on duty, but had slept in a hotel near the plant at Bidri from where he was summoned at 1.30 a.m. by Mr. R.D. Patil. The workmen had engaged in the filling up of the tanker until it was apprehended by the raiding party. The Labour Court held that the punishment of dismissal was not disproportionate. The complaint was accordingly dismissed.

6. The workmen carried the matter in revision. The Industrial Court held that it being the grievance of the workmen that the enquiry had not been held properly, the Labour Court ought to have framed an issue in respect of the fairness of the enquiry. The Industrial Court held that the workmen were not given an opportunity to lead their evidence in defence in the domestic enquiry because the Enquiry Officer took into consideration the confessional statements following which the enquiry was concluded. The Industrial Court was also of the view that a specific issue in regard to the perversity of the findings ought to have been framed so that in the event that the enquiry was set aside and the findings were held to be perverse, the management would have an opportunity to justify its action before the Court. Having found fault with the Labour Court for not having framed an issue in regard to the fairness of the enquiry and the perversity of the findings, the Industrial Court proceeded to consider the question as to whether the penalty of dismissal was warranted assuming that the enquiry was fair and the findings were correct. The Industrial Court held that in the evidence of the management's witness it had come on the record that the workmen had only helped the incharge by following his instructions and there being no charge of collusion and since the workmen were temporary workers, the ends of justice would be warranted if an order of reinstatement is passed without backwages. The Industrial Court purported to rely upon an admission of the management's witness that the workmen had not benefited from the said incident. An order of reinstatement without backwages was passed.

7. In the present case, it has been submitted on behalf of the Petitioner that the Industrial Court in revision has transgressed the limits on its jurisdiction by reassessing the evidence and substituting its own conclusions for those of the Labour Court. The learned counsel submitted that in the event that the Industrial Court came to the conclusion that proper issues were not framed, it was only appropriate and proper that the proceedings should be remanded back to the

Labour Court for framing issues specifically in regard to the fairness of the enquiry and the perversity of the findings. Secondly, it was submitted that both the workmen had unconditionally admitted their guilt. The incident was not disputed and the only defence of the workmen was that they had acted at the behest of the incharge or their superior. The superior officer, the Court is informed by Counsel for the workmen, died after the incident in a car accident. The Enquiry Officer had duly satisfied himself about the voluntary nature of the statements which were recorded in the presence of the advocate who was appearing on behalf of the complainant workmen in the enquiry. In these circumstances, it was submitted that there was no valid justification for the Industrial Court to interfere with the order of the Labour Court in a case where the workmen were involved in a serious case of theft involving 10,000 liters of milk belonging to the Petitioner.

8. On the other hand on behalf of the Respondent workmen it was submitted that having regard to the fact that the incident on the basis of which disciplinary proceedings were initiated dates back to April 1989 and since evidence had been adduced before the Labour Court, there is no reason for this Court now to remand the proceedings back to the Labour Court for the framing of issues. The learned counsel submitted that it would be in the interest of justice if the matter is finally decided by this Court so as to obviate another round of litigation. On behalf of the Respondents it was urged that properly construed, the statement of the two Respondents amounted to a conditional plea which was not acceptable as a valid piece of confession in law. Secondly, it was urged that the charge-sheet itself would not make out an allegation of theft. Thirdly, it was submitted that the admissions elicited during the cross examination of the management's witness would show that the workmen had not benefited from the incident. The workmen, it was submitted, had acted on the orders of the superior and consequently, the Industrial Court was justified in ordering reinstatement though without backwages.

9. The record of the enquiry discloses that the workmen were permitted to be defended by an advocate. After the enquiry had commenced upon the issuance of a charge- sheet, the evidence of the management's witness, the Managing Director of the Petitioner, was recorded on 11th June, 1990. On 27th February, 1991 proceedings took place in the course of the enquiry. The Enquiry Officer noted that the workmen had submitted a representation accepting the allegation of misconduct contained in the charge - sheet dated 8th August, 1989. The Enquiry Officer posed several questions to the workmen to verify as to whether the representations were addressed by the workmen; whether they were voluntary or otherwise and whether the allegations of misconduct were accepted to the workmen. To this the answer was in the affirmative. In the letter addressed by the First Respondent to the enquiry officer, the incident which took place on 1st April, 1989 was not denied. There was an acceptance of the fact that the workmen were apprehended when they had filled a privately owned tanker on the night of the date of the incident but it was stated that this was all

done at the behest of a superior. The workmen prayed that they may be reinstated in service.

10. Now there can be no dispute about the fundamental principle of law that an admission of misconduct, in order to be acceptable as a ground for holding that the charge is proved, must not be qualified or conditional. The record of the enquiry dated 27th February, 1991 would in fact reveal that the incident which took place on 1st April, 1989 was not disputed. The presence of the workmen at 1.30 a.m. on 1st April, 1989, the presence of a private tanker which was brought into the premises of the chilling plant and the role of the workmen in actually assisting and facilitating the filling up of 10,000 liters of milk in the tanker is not in dispute. It must be noted that it was not the defence of the workmen that the incident did not take place or that they were falsely implicated. The defence of the workmen at all material times was that they had acted thus in compliance with the direction of the superior. In these circumstances, the Enquiry Officer made due enquiries with the workmen on whether the statement was voluntarily furnished and it was only upon his satisfaction that this was so that the enquiry was closed. The Labour Court noted that in the enquiry proceedings both the complainant workmen as well as their advocate put down their signatures. Once this was the case, the Labour Court was justified in coming to the conclusion that the charge of misconduct stood proved. The Labour Court also took note of the fact that the workmen were acquitted in a criminal case by the J. M. F. C. The approach of the Labour Court is consistent with the law inasmuch as the Labour Court observed that the burden of proof in a criminal case is of a different nature from a disciplinary proceeding. Moreover, from the judgment of the J. M. F. C. which was placed on the record of the Labour Court it was noted that the workmen were acquitted because in spite of the summons that were issued to the witnesses on several occasions, the police had failed to bring the witnesses before the Court.

11. In this background there is merit in the submission which has been urged on behalf of the Petitioner that the approach of the Industrial Court is inexplicable with reference to any cogent rationale or logic. If the Industrial Court was of the view that a specific issue ought to have been framed on the fairness of the enquiry and on the perversity of the findings, the only appropriate and proper course of action would have been to remit the proceedings back to the Labour Court for a fresh decision after framing issues. Instead the Industrial Court proceeded to determine as to whether the punishment was disproportionate even on the assumption that the enquiry was fair and the findings were not perverse. During the course of these proceedings, this Court had enquired with the learned counsel appearing for the parties as to whether parties would be desirous of pressing for the remand of the proceedings back to the Labour Court. Counsel appearing for the Respondent workmen submitted that in view of the long pendency of the matter and particularly since evidence was adduced before the Labour Court, it would not be in the interests of justice to remand the proceedings. Learned Counsel for the workmen opposed a remand. The

submissions have therefore been heard on merits by consent. The reasons which weighed with the Industrial Court in granting reinstatement suffer from a manifest perversity of approach. The Industrial Court was of the view that the workmen had obeyed a superior officer by following his instructions. As already noted earlier, the Court was informed that the superior officer who was alleged to be involved died in the course of an accident. The fact that the workmen were induced to resort to an unlawful course of action at the behest of a superior officer does not dilute or detract from their own involvement in facilitating the theft of property belonging to the employer. The First Respondent was not on duty on the night of the incident. Yet, he came into the premises of the chilling plant to fill up a tanker with 10,000 liters of milk. The time of the incident, the surreptitious nature of the conduct, and the attendant circumstances show that the workmen could not feign ignorance about the illegal nature of the activity in which they were involved. In any event, the workmen were temporaries and if the employer has lost confidence in their ability to discharge their duties with honesty, the decision to terminate after disciplinary proceedings cannot be faulted.

12. The Industrial Court laid a great deal of emphasis on certain admissions which were made during the course of the cross examination of the management's witness. A perusal of those admissions will, however, demonstrate that they would have no bearing on the question of guilt or on the quantum of punishment. The management's witness stated that the complainant workmen were not in charge of the plant; that they had not benefited from the incident and what he meant by stating that they were involved in collusion was that they had filled up the tanker upon being asked to do so by the superior. The fact that there was no positive evidence that the workmen had in fact benefited from the incident is no ground to hold that they were not guilty of misconduct. Whether or not a benefit had been or was to be passed on to the workmen is a matter on which on which direct evidence is not always available. In such cases involving disciplinary proceedings the question which the Court must pose is as to whether the findings of misconduct are sustainable on some legally acceptable evidence on record. The Industrial Court has virtually reappreciated the evidence in the course of the exercise of its revisional jurisdiction. In doing so it has transgressed the jurisdiction which must govern the exercise of revisional jurisdiction. The approach of the Industrial Court suffers from a manifest illegality. A miscarriage of justice is liable to ensue unless the order of the Industrial Court is interfered with by this Court under Article 226 of the Constitution. The Labour Court was correct in its approach and its findings. The admission of guilt by the workmen was categoric and unambiguous. Upon such an admission the punishment of dismissal could not be regarded as disproportionate. Theft involving the property of the employer is a serious charge which would warrant the punishment of dismissal from service. The conclusion of the Labour Court was correct and the Industrial Court erred in exercising the revisional jurisdiction.

12A. Labour and Industrial Courts, when they deal with challenges to findings in disciplinary enquiries, must reflect a robust awareness of the realities of the economic situation. Serious cases of misconduct - such as those involving theft of the property of the employer- have to be dealt with seriously. Businesses cannot survive if those who are under an obligation to enhance productivity corrode the establishment by acts of dishonesty. Once a serious act of misconduct is proved, in a fair enquiry, the approach of the Labour Courts should not be to embark upon a search to find just any technical lapse or lacunae to vitiate the enquiry. There has to be something more fundamental, such as a breach of the principles of natural justice, some manifest perversity or something that shocks the conscience, for the Court to interfere. A wide degree of autonomy must be allowed for the disciplinary jurisdiction, so long as the basic principles of jurisprudence in labour cases are observed. Within that area of autonomy and conscious as they should be of that autonomy, Courts must tread with caution. A disciplined and efficient enterprise is a sine qua non for the survival of industry. Courts must, in their approach, not be regarded as condoning breaches of discipline. As India evolves into a modern Industrial state, the interpretative jurisdiction of the Court must facilitate efficiency, productivity and discipline. Courts will guard against victimization by employers. However, recourse to Courts should not be taken lightly as a means of condoning wanton acts of indiscipline. That would neither be in the interest of the workers or of society. This vision must not be lost to industrial adjudication. Industry survives on discipline and ought not to perish on indiscipline and, least of all, indiscipline that is condoned by the Court. Preservation of the rule of law includes preservation of the rules by which business is transacted. In a rapidly evolving economy, stability of business contributes to conditions of social stability. Rules of discipline are a critical ingredient of the rule of law. Courts as institutions involved in democratic governance must enforce those rules rather than condone their breach. Judicial legitimacy is founded on the ability of Courts to respond to societal concerns. Maintaining integrity and honesty must rank as one of the foremost concerns in today's troubled times. Equity in the hands of a judge is not an unguided instrument. Equity, despite all its breadth, is carefully structured to dispense justice according to law and to deal with injustice in accordance with law.

13. In these circumstances, the Petition will have to be allowed and is accordingly allowed. The judgment of the Industrial Court dated 20th June, 2008 is set aside. The complaint of unfair labour practices shall stand dismissed. In the circumstances of the case, there shall be no order as to costs.