

(2004) 03 BOM CK 0024
In the Bombay High Court
Case No : Writ Petition No. 130 of 2004

Krishna Kumar D. Thakur

APPELLANT

Vs

Zilla Parishad and Others

RESPONDENT

Date of Decision : 09-03-2004

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 44

Citation : (2004) 6 BomCR 427 : (2004) 4 MhLj 196

Hon'ble Judges : A.S. Oka, J

Bench : Single Bench

Advocate : S.D. Thakur, for the Appellant; P.S. Shelke and M.P. Gulhane for respondent No. 1 and Dhote, A.G.P. for respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

A.S. Oka, J.—On 3rd March, 2004 this petition was finally heard and was adjourned for dictation of the Judgment. The petitioner has taken exception to the Judgment and Order dated 9th December, 2003, passed by the learned Member of the Industrial Court, Akola. By the said Judgment, Revision application filed by the respondent No. 1 has been allowed. The petitioner had filed a Complaint u/s 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the said Act of 1971) against the respondent No. 1 in the Court of the learned Judge of the Labour Court at Akola. By the Judgment and Order dated 16th April, 2002 the learned Judge of the Labour Court held that inquiry against the petitioner was not fair, legal and proper. The learned Judge held that the respondent No. 1 was guilty of committing unfair labour practice and therefore, relief of reinstatement with continuity of service with backwages was granted in favour of the petitioner. It appears that during the pendency of the said Complaint, an Order dated 17th February, 2001 was passed by the learned Judge of the Labour Court below Application at Exhibit 25 and directed that the Issue No. 3 which was

framed regarding proving of misconduct by the respondent No. 1 before the Labour Court, should be deleted. It was observed in the said Order that there was no pleading in the Written Statement filed by the respondent No. 1 and no permission was sought by the respondent No. 1 to lead evidence in the Complaint to prove the misconduct.

2. In the Revision Application filed by the respondent No. 1, the Judgment and Order dated 16th April, 2002 passed by the Labour Court was challenged. The learned Member of the Industrial Court relying upon the judgment of the learned Single Judge of this Court reported in 2000 3 CLR 99, *Gajanan s/o Shamrao Thakre v. Maharashtra State Road Transport Corporation* held that the learned Judge of the Labour Court ought to have given an opportunity to the respondent No. 1 to lead evidence for the purpose of establishing the guilt of the petitioner. The learned Member quashed and set aside the Order dated 17th February, 2001 passed below the Application at Exhibit 25. This Judgment and Order has been impugned in this petition. By the impugned Judgment and order, the Industrial Court remanded the complaint to the Labour Court and permitted the Employer to lead evidence on the charges against the petitioner.

3. The learned counsel appearing for the petitioner submitted that admittedly in the Written Statement filed by the respondent No. 1, no prayer was made for seeking permission to lead evidence to establish the guilt of the petitioner. In the event it was held that the inquiry against the petitioner was not fair and proper. The learned counsel for the petitioner submitted that during the pendency of the Complaint, at no point of time any prayer was made for seeking permission to lead evidence for establishing the guilt of the petitioner. The learned counsel for the petitioner submitted that the law laid down by the Apex Court in the Judgment reported in *Shambhu Nath Goyal Vs. Bank of Baroda and Others*, . (hereinafter referred to as the case of *Shambhu Nath Goyal*), the Apex Court held that the Employer must seek opportunity to adduce further evidence, if any, in support of the charges against the employee in its reply/statement itself and not by any belated application. He submitted that the Judgment in the case of *Shambhu Nath Goyal* has been expressly confirmed by the Apex Court in a Judgment reported in *Karnataka State Road Transport Corpn. Vs. Smt. Lakshmidevamma and Another*, . (hereinafter referred to as the said case of *Karnataka State Road Transport Corporation*). The learned counsel further urged that the reliance placed by the learned Member of the Industrial Court on the Judgment of the learned Single Judge of this Court in the case of *Gajanan Thakre* was not correct inasmuch as the said Judgment has been delivered prior to the Judgment of the Larger Bench of the Apex Court in the case of *Karnataka State Road Transport Corporation*. He pointed out that the learned Single Judge has relied upon the Judgment of the Supreme Court in the case of *Desh Raj Gupta Vs. Industrial Tribunal IV, U.P., Lucknow and another*, (hereinafter referred to as the case of *Desh Raj Gupta*) and urged that the Judgment in the case of *Desh Raj Gupta* was delivered by the Bench of the Apex Court consisting of Two Hon'ble Judges without noticing the view taken in the case of *Shambhu Nath*

Goyal by a Bench of Three Hon"ble Judges. In any event, he submitted that in view of the Judgment of the Larger Bench of the Apex Court in the case of Karnataka State Road Transport Corporation the law laid down by the learned Single Judge of this Court in a case of Gajanan Thakre is not correct. He, therefore, submitted that interference by the learned Member of the Industrial Court was uncalled for.

4. The learned counsel appearing for the respondent No. 1 has supported the impugned Judgment and Order. He submitted that the respondent No. 1 was entitled to an opportunity to lead evidence.

5. I have carefully considered the submissions made by the learned counsel appearing for the parties. Before considering the legal submissions, it will be necessary to refer to some factual aspects of the matter. The petitioner was employed in the service of the respondent No. 1 on 20th October, 1959 as a Lower Division Clerk. The charge sheet dated 11th April, 1988 was issued against the petitioner and on the basis of the said charge sheet, inquiry was held against the petitioner. The order of termination was passed against the petitioner with effect from 7th April, 1989 after conclusion of the inquiry. The Complaint was filed on 14th December, 1992 by the petitioner in the Labour Court. The Written Statement was filed by the Employer in September, 1994 and the issues were framed in the year 2001. Issue No. 3 was framed on the question whether the guilt of the petitioner was established by the respondent No. 1. By an Order dated 17th February, 2001, the said issue was ordered to be deleted and on 16th April, 2002 the Complaint was allowed. Considering this factual matrix of the case, the law laid down by the Apex Court will have to be appreciated.

6. In the case of Shambhu Nath Goyal, the Apex Court in paragraph No. 16 held that:

"But when the question arises in a reference u/s 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do."

7. The Apex Court held that the employer cannot be permitted at a belated stage to apply for permission to lead evidence for establishing the guilt of the

employee as such application may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do. This was a view taken by the Judgment delivered by A. Vardarajan, J. Agreeing with the view taken by the A. Varadarajan, J., D. A. Desai, J. delivered supplementary Judgment. In the said Judgment of Desai J, it is observed after referring to the case Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another, ;

"The observation was not made to lay down a proposition of law that as and when it suits the convenience of the employer at any stage of the proceedings, it may make an application seeking such opportunity and the Labour Court/ Industrial Tribunal was obliged to grant the same." In the facts of Shambhu Nath Goyal's case before the Apex Court, the workman in question was dismissed from employment on 26th November, 1966. A reference was made to the Industrial Tribunal on 11th May, 1970 and the Written Statement was filed to the Reference by the Employer on 12th August, 1970. An Application was moved by the employer on 8th February, 1979 for an opportunity being given to lead evidence in support of the charges framed against the workman in the event the Tribunal holding against it on the first question relating to the conduct of the Domestic Enquiry. While dealing with the said Application the Apex Court held that there was no explanation for delay in making such application.

8. In the case of Desh Raj Gupta it appears that the Judgment in the case of Shambhu Nath Goyal was not brought to the notice of the concerned Bench. The Apex Court considered the Judgment reported in Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another, . After considering the said case, the Apex Court in paragraph No. 8 held that;

"Analysing the situation, it appears that by asking the respondent to justify the punishment by adducing additional evidence, the Tribunal merely reminded the employer of his rights and the employer promptly availed of the opportunity. We do not find any illegality in the course adopted which could vitiate the Award. The first point is, therefore, rejected."

While deciding the case of Gajanan Thakre, the learned Single Judge has placed reliance on the Judgment of the Apex Court in the case of Desh Raj Gupta. Relying upon the said Judgment the learned Single Judge held that there was no bar or embargo on the powers or jurisdiction of the Labour Court to remind the employer to lead evidence in the Court to prove the misconduct and to justify its action by placing on record such additional relevant material, if any, after the enquiry is held to be not fair and proper. The learned Judge further held that there was no illegality in the action of the Labour Court if the Labour Court reminded the Employer to lead evidence. It is pertinent to note that the Judgment of the Apex Court in the case of Shambhu Nath Goyal was not brought to the notice of the learned Single Judge.

9. The larger Bench of the Apex Court consisting of five Hon''ble Judges heard

the case of Karnataka State Road Transport Corporation. The Apex Court in the said case considered the decision in the case of Shambhu Nath Goyal. Justice N. Santosh Hegde speaking for himself and for S. P. Bharucha, J. (as his Lordship then was) considered the question whether there was any conflict in decisions of the Apex Court in the case of Shambhu Nath Goyal and in the case of Rajendra Jha Vs. Presiding Officer, Labour Court, Bokaro Steel City, District Dhanbad and Another, . In paragraph Nos. 16 to 20 the Apex Court held as under :

"16. While considering the decision in Shambhu Nath Goyal case we should bear in mind that the Judgment of Varadarajan, J. therein does not refer to the case of Cooper Engg. However, the concurring Judgment of D. A. Desai, J. specifically considers this Case. By the judgment in Goyal case the management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it u/s 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made u/s 10 of the Act, meaning thereby that the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.

17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in Shambhu Nath Goyal case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambhu Nath Goyal case is just and fair.

18. There is one other reason why we should accept the procedure laid down by this Court in Shambhu Nath Goyal Case. It is to be noted that this judgment was delivered on 27-9-1983. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis requires us to approve the said Judgment to see that a long standing decision is not unsettled without a strong cause.

19. For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shambhu Nath Goyal v. Bank of Baroda is the correct law on the point.

20. In the present case, the appellant employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was vitiated. Applying the aforesaid principles to these facts, we are of the opinion that the High Court has rightly dismissed the writ Petition of the appellant, hence, this appeal has to fail. The same is dismissed with costs."

Shivaraj V. Patil, J. for himself and V. N. Khare, J. (as His Lordship then was) concurred with the view taken by Hegde, J. In paragraph No. 43 it is observed;

"After going through the draft Judgment prepared by N. Santosh Hedge, J. we respectfully agreed with the same. Having gone through the draft judgment prepared by Y. K. Sabharwal, J, received later, we felt the necessity of adding the following few lines." In paragraph No. 45 it is further held by the Apex Court that; "It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/ Tribunals have the power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the Court/ tribunal in the written statement itself to lead additional evidence, to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the Court/ tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice."

10. The dissenting Judgment in the said Case of Karnataka State Road Transport Corporation Case was delivered by Sabharwal, J. The conjoint reading of the three separate Judgments delivered in the case of Karnataka State Road Transport, it is very clear that the view taken in the case of Shambhu Nath Goyal was affirmed by the Apex Court. In paragraph 17 of the Judgment, the Apex Court held that keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, the directions issued in the case of Shambhu Nath Goyal need not be varied being just and fair. The Apex Court held the procedure eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court could get prolonged. The Apex Court in paragraph 45 held that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the Court/Tribunal in the Written Statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. The Apex Court further observed that this should not be understood as placing fetters on the powers of the Court/ Tribunal requiring or directing the parties to lead additional evidence. Thus, it is very clear that the law laid down in the case of Shambhu Nath Goyal holds the

field today. However, in a given case the Labour Court/Industrial Tribunal can always exercise powers requiring or directing the parties to lead evidence on a particular aspect.

11. The learned Member of the Industrial Court in the present case relied upon the Judgment in the case of Gajanan Thakre which holds that the Labour Court has power to remind the Employer to lead evidence for establishing the guilt. However, the case in hand will have to be decided in the perspective of the law laid down by the Apex Court in the subsequent Judgment of Larger Bench in the case of Karnataka State Road Transport Corporation. The question in the present case is not of power of the Labour Court to remind the Employer to lead evidence but whether at a belated stage the Revisional Court could have permitted the Employer to lead evidence.

12. As stated earlier the order of dismissal from employment against the petitioner was passed on 7th April, 1989. Issue No. 3 framed by the Labour Court was ordered to be deleted, by the Order dated 17th February, 2001. Issue No. 3 reads thus:

"3. Whether the complainant proves misconduct before this Court?"

The learned Member of the Industrial Court simply observed that the opportunity was not given to the respondent No. 1 to lead evidence. It is an admitted position that in the Written Statement filed by the respondent No. 1, no plea was made for seeking permission to lead evidence for establishing the guilt of the petitioner. Even after issue No. 3 was ordered to be deleted by the Labour Court, no application was filed by the Employer for seeking permission to lead evidence. It appears that even till the dismissal of the Complaint by the Labour Court, no such application was moved by the respondent No. 1. It also appears that the submission was made in the Revision filed by the respondent No. 1 for the first time that opportunity ought to have been given by the Labour Court to the respondent No. 1 to lead evidence. Even assuming that the plea raised before the Industrial Court in the Revision can be treated as the Application of the respondent No. 1, the same will have to be held as a belated application. The inquiry was initiated against the petitioner in the year 1988 and came to end in the year 1989 resulting in order of dismissal. After the lapse of more than 14 years, a contention was raised that the respondent No. 1 ought to have been given opportunity to lead evidence in support of the charges. In paragraph No. 16 of the Judgment, in the case of Shambhu Nath Goyal, the Apex Court held that the belated application made for leading evidence may result in delay which may lead to wrecking morale of the workman. The result of allowing the employer to lead evidence in the year 2003 is that the petitioner-employee will have to again face the trial of the charges which were framed against him 15 years back. It is such delay which the Apex Court held that may result in wrecking moral of the workman and compete him to surrender which he may not otherwise do. Even in the separate Judgment delivered in the case of Shambhu Nath Goyal by Desai, J. it was observed that the Application at any stage of the

proceedings without explaining long unexplained delay cannot be granted. In the present case, no application seeking permission to lead evidence was filed by the respondent No. 1. In the circumstances, the learned Judge of the Industrial Court was not right in holding that the Labour Court should give opportunity to the respondent No. 1 to lead evidence.

13. When order of dismissal was passed in the year 1989 on the basis of Enquiry commenced in 1988, it will be very unfair to the employee if he is required to face evidence on his guilt, after the lapse of 15 long years. The Industrial Court was, therefore, not justified in granting the liberty to the employer. It is pertinent to note that in the Revision, the Industrial Court has not upset the finding recorded by the learned Judge of the Labour Court on the fairness of the inquiry and the respondent No. 1 has not filed any petition in this Court challenging that part of the order of the Industrial Court.

14. Therefore, in view of the law laid down by the Apex Court in the case of Karnataka State Road Transport Corporation Case, the learned Member of the Industrial Court could not have given opportunity to the respondent No. 1 to lead evidence for establishing the guilt of the petitioner at a belated stage. Hence, the impugned Judgment and Order deserves to be set aside.

15. Hence, I pass the following order.

i) The petition is allowed with no order as to costs.

ii) The impugned Judgment and Order dated 9th December, 2003 passed by the learned Member of the Industrial Court is quashed and set aside and the Revision Application (ULPA) No. 77/02 stands dismissed. The Judgment and Order dated 16th April, 2002 passed by the learned Judge of the Labour Court, Akola is restored.

iii) Certified Copy is expedited.