

(1984) 09 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 2170 of 1982

Maharashtra State Road Transport Corporation

APPELLANT

Vs

Niranjan Shridhar Gade and Another

RESPONDENT

Date of Decision : 14-09-1984

Acts Referred:

Evidence Act, 1872 — Section 101

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30, 7

Citation : (1985) 1 BomCR 94 : (1984) 86 BOMLR 497 : (1985) 50 FLR 1 : (1984) MhLj 983

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Advocate : C.J. Sawant and A.Y. Sakhare, for the Appellant; M.V. Palkar, for the Respondent

Judgement

R.A. Jahagirdar, J.—This petition under Article 227 of the Constitution of India is directed against an order passed by the Presiding Officer in the Labour Court at Nasik on 30th September 1981 in Complaint (ULP) No. 240 of 1976. The said complaint had been filed by the first respondent in this petition, hereinafter referred to as "the respondent", under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter referred to as "Act I of 1972". It was the case of the respondent that the petitioner, which is the Maharashtra State Road Transport Corporation, had terminated his services which was an unfair labour practice within the meaning of Clauses (b), (d), (f) and (g) of Item 1 of Schedule IV of the Act 1 of 1972. The Labour Court held, answering an issue which it raised, that the enquiry which was held against the respondent was not fair, proper and legal.

2. In order to understand the nature of the controversy between the parties, it is necessary to narrate certain facts. The respondent was the driver of a bus belonging to the petitioner Corporation and he was on duty on 9th of May, 1975. On that day when the bus neared a bus stand at a place called Waghai in Nasik

District, the respondent did not stop the bus at the bus stand despite the fact that several persons who had assembled at the bus stand signaled him to do so. However, he stopped the bus at some distance away from the bus stand. He thereafter told the passengers who intended to board that bus that each one of them should pay a sum of Rs. 2. If they boarded the bus without making the said payment he threatened, he would take the bus to the office of the R.T.O. Among the passengers who intended to board the bus and did board the bus on that day was one Vasant Daga Patil, a Director of the District Central Co-operative Bank. The passengers paid the money in the hands of the conductor of the bus who later handed over the same to the respondent at the next bus stand. Thereafter the said Vasant Daga Patil filed a complaint.

3. A preliminary enquiry was held in which statements of several persons were recorded. After the preliminary enquiry it was decided to proceed against the respondent and accordingly a charge-sheet dated 25th of November, 1975 was issued to the respondent wherein he was charged with the misconduct of taking money from the passengers illegally. The respondent submitted his reply and a domestic enquiry was held. The Enquiry Officer came to the conclusion, on the basis of the statements of Vasant Daga Patil and of the bus conductor who was in charge of the bus at the relevant time, that the respondent was guilty of the misconduct with which he had been charged. After considering the finding so recorded in the domestic enquiry a further show cause notice was issued to the respondent as to why the ultimate penalty of dismissal from service should not be imposed upon him. After considering his reply the said penalty was ultimately imposed upon him.

4. This order of penalty of the dismissal from service was challenged by the respondent in the Labour Court in the complaint filed by him. I have already mentioned above that the respondent had contended that his dismissal was an unfair labour practice within the meaning of Clauses (b), (d), (f) and (g) of Item 1 of Schedule IV of Act 1 of 1972. If the dismissal is not in good faith but in colourable exercise of employer's right, it is covered by Clause (b); if the dismissal is for patently false reasons, it is covered by Clause (d); if the dismissal is made in utter disregard of the principles of natural justice in the conduct of the domestic enquiry or in undue haste, then it would be covered by Clause (f); and if the dismissal is for misconduct of a minor or technical character without having any regard to the nature of the particular misconduct or the past record of service of the employee so as to amount to a shockingly disproportionate punishment, then it would be covered by Clause (g).

5. If the respondent, therefore went to the Labour Court complaining of unfair labour practices on the part of his employer and if he contended that the act of the employer amounted to an unfair labour practice as mentioned above, naturally, the burden of proving the same was upon him. On the pleadings of the parties, the Labour Court framed issues as follows:---

""1. Whether the inquiry held against the complainant was fair, proper and legal?

2. If not, whether the respondent has been able to justify the order of dismissal?""

From what has been stated above it is clear that the Labour Court misunderstood its jurisdiction that it could decide whether the enquiry held against the respondent was fair, proper and legal. Patently it did not have any such jurisdiction. It is not enough in a complaint filed under Act 1 of 1972 charging the employer with unfair labour practice to merely allege or to prove that the act is not justified for one or the other reasons. As has been pointed out by this Court in *Navnath S. Koli v. Shri Siddheshwar Sahakari Sakhar Karkhana*, 83 Bom.L.R. 470, in a case where the employer has been charged with an unfair labour practice of dismissal or discharge of a workman for patently false reasons, it is not enough for the labour Court to hold that the order of dismissal or discharge was wrong or that the domestic enquiry had become vitiated for some other reasons. It must be established that the dismissal was motivated by false reasons and that such false reasons were patent. Similarly in the present case the Labour Court was entitled to see whether the act of the dismissal of the respondent by the petitioner amounted to an unfair labour practice under one or the other clause of Item 1 of Schedule IV of Act 1 of 1972 as alleged by the respondent. Instead of doing that the Labour Court gave itself an enlarged jurisdiction of finding out whether the domestic enquiry was fair, proper and legal. Thereafter the Labour Court proceeded to answer this question in the negative and held that the petitioner had engaged in an unfair labour practice and, therefore, he was entitled to be reinstated with full back wages and continuity of service. This the labour Court did by its judgment and order dated 30th of September, 1981 which is the subject matter of challenge in this petition.

6. Mr. Sawant, the learned Advocate appearing in support of the petition, had no difficulty in showing that the Labour Court bestowed upon itself jurisdiction which it does not possess under the provisions of Act 1 of 1972. On this ground the order of the Labour Court should be set aside. Mr. Sawant, has also invited my attention to the reasoning contained in the judgment of the Court below and has shown, with success, that even the finding given in exercise of this enlarged jurisdiction is also patently erroneous. In order to understand this contention of Mr. Sawant, certain facts ought to be recapitulated.

7. A preliminary enquiry was held by the Corporation and in that preliminary enquiry statements of several witnesses, including statements of Vasant Daga Patil and the conductor of the bus, were recorded. Thereafter it was decided to issue a charge-sheet to the respondent, which was done on 25th of November, 1975. Pursuant to this charge-sheet a domestic enquiry was conducted in which the depositions of Vasant Daga Patil and the conductor of the bus were recorded on 26th of February, 1976. This is evident from Exhibit "A" annexed to this petition, which is the report of the Enquiry Officer. It has been mentioned in paragraph 4 of the petition that in the departmental enquiry statements of Vasant Daga Patil and the conductor were recorded on 26th of February, 1976. It has also been mentioned in the report of the domestic enquiry officer and in

paragraph 4 of the petition that after the said statements of Vasant Daga Patil and the conductor were recorded, they were allowed to be cross-examined and in fact were cross-examined on behalf of the respondent. It is after this that the Enquiry Officer examined the material before him and came to the conclusion that the respondent was guilty of the act of misconduct with which he had been charged.

8. The Labour Court has mentioned in its judgment that ".....copies of depositions of witnesses examined in the preliminary inquiry were not supplied to the complainant. When the copies of the statements were not supplied to the complainant it can well be imagined that the complainant was not in a position to cross-examine effectively the witnesses whose statements were not recorded afresh in the domestic inquiry". Here the Labour Court seems to be labouring under the impression that all the witnesses who were examined in the preliminary enquiry ought to be examined afresh in the domestic enquiry and that the statements of those witnesses must necessarily be supplied to the delinquent workman. This is patently erroneous. It may be stated as a matter of law that if some of the witnesses whose statements were recorded in the preliminary enquiry are not again examined in the domestic enquiry, it is not necessary by any rule of natural justice that copies of their statements should be supplied to the delinquent workman. It may also be stated as a proposition of law that even if some of the witnesses whose statements are recorded in the preliminary enquiry are examined in the domestic enquiry again and their statements are recorded afresh in the domestic enquiry, it is not necessary that their statements recorded in the preliminary enquiry should be supplied to the delinquent workman. The rule of natural justice is that the domestic Enquiry Officer shall not rely upon any material which is not put to the delinquent workman against whom the enquiry is held.

9. In the instant case, except two, none of the other persons whose statements were recorded in the preliminary enquiry has been examined in the domestic enquiry. It is, therefore, wholly unnecessary to supply copies of their statements recorded in the preliminary enquiry. From what I have already mentioned above, it is clear that Vasant Daga Patil and the bus conductor were examined afresh in the domestic enquiry. The domestic Enquiry Officer relied upon their statements recorded in the domestic enquiry as tested by the cross-examination made on behalf of the respondent. He did not, and it has not been shown to me that he did, rely upon the statements of these two witnesses recorded in the preliminary enquiry. In these circumstances, I do not see how there is contravention of any rule of natural justice at all. The Labour Court was thus in error in holding that there was a contravention of or utter disregard for the rules of natural justice when the domestic inquiry officer did not supply copies of the statements of those witnesses who had been examined in the preliminary enquiry or copies of the statements of Vasant Daga Patil and the bus conductor despite the fact that the latter has been examined in-chief domestic enquiry.

10. I have already mentioned above that the case of the petitioner was that the conductor collected the amount at the behest of the respondent and handed over the amount to the respondent at the subsequent bus stop. Vasant Daga Patil was one of the passengers who paid the amount to the conductor. The Labour Court has recorded a finding as follows:----

"However, even assuming that Shri Patil had handed over the amount by (sic) the conductor to the complainant (present respondent), it does not necessarily mean that the conductor had handed over the amount which he had collected in excess of the fare from the 8 passengers".

This may be so and if this were the only evidence, may be the finding could have been vitiated, but there is the evidence of the bus conductor Joshi himself which shows that he handed over the amount to the respondent. This evidence has been accepted by the enquiry officer, but the Labour Court says that the conductor might have stated so in order to save his own skin. It is not open to a Labour Court which is not sitting as a Court of appeal, to sit in judgment over the findings recorded by the Enquiry Officer in a domestic enquiry unless those findings are perverse. The Labour Court exceeded its jurisdiction in reversing the finding recorded by the domestic enquiry officer in this regard. Looked at from either point of view, therefore, the order of the Labour Court is erroneous in law and is liable to be set aside.

11. Mr. Palkar, the learned Advocate appearing for the respondent, advanced certain arguments thinking that no deposition of Vasant Daga Patil or of the bus conductor was ever recorded in the domestic enquiry and, therefore, there was a patent violation of the rule of natural justice, but when it was shown to him that depositions of Vasant Daga Patil and of the bus conductor were in fact recorded in the domestic enquiry and that those two persons were offered for cross-examination, which cross-examination, was, again, in fact conducted, Mr. Palkar, naturally could not pursue that line of argument. However, he has insisted that on the facts of this case it should be inferred that the punishment is shockingly disproportionate and, therefore, the order of dismissal should be set aside and, if at all, a minor punishment should be given. He is obviously relying upon the provisions contained in Clause (g) of Item 1 of Schedule IV to Act I of 1972. I am unable to accept his submission in this regard. Clause (g) can be considered only when the punishment is for the misconduct of a minor or technical character and not when it is for a misconduct of the type with which we are concerned where a public servant is blackmailing the passengers who precariously have to depend upon such public transport system. By no stretch of imagination can it be said that this misconduct is of a minor or a technical character.

12. In the result, this petition must succeed. The order dated 30th of September, 1981 passed by the Presiding Officer, Labour Court, Nasik, in Complaint (ULP) No. 240 of 1976 is set aside. That complaint is dismissed throughout.

There will, however, be no order as to costs in this petition.