

(2007) 03 BOM CK 0068
In the Bombay High Court
Case No : Writ Petition No. 5 of 2007

Mahindra and Mahindra

APPELLANT

Vs

Suryabahn Avhad

RESPONDENT

Date of Decision : 05-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 14A, 44

Citation : (2007) 4 BomCR 118 : (2007) 6 MhLj 436

Hon'ble Judges : S.C. Dharmadhikari, J

Bench : Single Bench

Advocate : C.U. Singh, R.N. Shah, Sanjay Udeshi and Mahesh Londhe, instructed by Sanjay Udeshi and Co, for the Appellant; Gayatri Singh, for the Respondent

Final Decision : Allowed

Judgement

S.C. Dharmadhikari, J.—Rule. Respondent waives service.

2. By consent of parties, Rule made returnable forthwith.

3. By this petition under Article 226 of the Constitution of India, the petitioner has challenged an order dated 2.12.2006 passed in Revision Application (ULP) No. 204 of 2006. By this order, the Revisional Court has partly allowed the Revision Application preferred by the Petitioner herein and has expunged the remarks and observations of the Learned Judge of the First Labour Court, Mumbai but has maintained the direction issued by the said Court in so far as directing the Petitioner to lead evidence and justify its action of termination of the respondent.

4. The Revision Application was directed against an order passed by the Labour Judge, First Labour Court, Mumbai dated 24.08.2006 in Complaint (ULP) No. 602 of 2003. By this order, the First Labour court held that the inquiry against the

Respondent is not fair and proper, the findings of the Enquiry Officer are perverse and the Petitioner Original Respondent is at liberty to justify its action.

5. The facts leading to the filing of this petition are briefly set out hereinafter. Complaint (ULP) No. 602 of 2003 was filed by the Respondent Original Complainant in the First Labour Court at Mumbai alleging that the Petitioner Original Respondent in the complaint is guilty of unfair labour practice under Item (a), (b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter for the sake of brevity referred to as the MRTU and PULP Act). The Petitioner is a public limited company. It is engaged in the manufacturing and selling of jeeps and other utility vehicles. The Petitioner employed the Respondent as a Driver and is in its service for last more than 10 years. He was issued a suspension order and chargesheeted by the petitioner. An inquiry was conducted into the charges and ultimately the Petitioner terminated his services.

6. The charge against the Respondent is that the Respondent had committed misconduct, in as much as, on 16.2.2003 he was instructed to proceed to Nasik. He was to proceed to Nasik on 17.2.2003. The vehicle bearing No. MH-15-K-5586 was handed over to the respondent. It contained 60 litres of diesel in the diesel tank. This diesel according to the petitioner was sufficient to reach and come back from Nasik. The respondent returned to Mumbai on 17.2.2003 and parked the vehicle at his residence at Dahisar. On 18.2.2003 the Respondent entered the Kandivali plant of the petitioner in the morning with the vehicle and went to the fuel pump. He filled in diesel without any authorisation and on his own. He was aware of the fact that only the fuel pump attendant is authorised to fill the vehicles belonging to the petitioner after making necessary entry in the Material Issue Card. Taking advantage of the absence of Mr. Jagtap attendant, the Respondent starting filling in the diesel. When Mr. Jagtap returned, he noticed that the Respondent is filling in diesel and asked him not to do so. Thereafter, the Respondent stopped filling of the diesel and removed the dispensing nozzle from the tank of the said vehicle and kept back on the cradle of the pump. The Respondent also brought the pump meter reading at zero. Thereafter, the attendant personally filled 15 litres of diesel in the fuel tank of the said vehicle. It was mentioned that at about 4 p.m. when the attendant, Shri Jagtap checked the record, he found that there is difference of 24 litres of diesel in the fuel pump reading and actual consumption record maintained in Material Issue Card for that day. The Petitioner states it was further mentioned that said attendant Shri V.P. Jagtap reported the matter to Shri N.V. Bhosale and pointed out that even after checking and rechecking the record could not be tallied. At that time said Shri V.P. Jagtap also recalled that he had seen the Respondent filling the diesel in the vehicle No. MH-15-K-5586 and that he had reason to believe that the Respondent must have filled in the same 24 Litres of diesel in the said vehicle when he had gone to toilet.

7. The charge sheet dated 1st March 2003 also mentioned that on 18th February,

2003 the Respondent approached Shri N.V. Bhosale, his superior for settling the expense voucher, which included fuel receipt for Rs. 718.20 for 30 litres of diesel purchased from M/s. Naralka Auto Services, Nasik. It was mentioned that said Shri Bhosale brought to the notice of the Respondent that 60 litres of diesel was filled in the tank of the said vehicle on 16th February 2003, which was more than sufficient for to and fro trip to Nasik and there was no need to fill additional 30 litres of diesel. However the Respondent informed Shri Bhosale that he had to take vehicle at many places at Nasik and therefore required to fill 30 Litres of diesel near Igatpuri. Infact the Respondent had visited only one place at Nasik and not at many places as falsely reported by the Respondent to Shri Bhosale. The chargesheet further mentioned that on 17th February, 2003 only 5 Litres of the diesel was purchased by the Respondent at Nasik and fraudulently obtained the receipt for 30 Litres of diesel from the attendant of the said petrol pump and collected the amount of Rs. 718/ from the Petitioner Company by submitting false claim voucher.

8. Lastly, vide said chargesheet dated 1st March, 2003 the Respondent was informed that his aforesaid acts amount to misconduct under Clauses 22(d) and 22(I) of the Certified Standing Orders. The Respondent was also charged for refusing to accept the Order of Suspension dated 27th February, 2003 when he was advised to accept the same after reading over and explaining the contents of the same in Marathi. The Respondent was therefore charged under Clauses 22(I) and 22(x) of the Certified Standing Orders.

9. It is not necessary to refer to the details of the order of suspension, in as much as, there is no dispute about the same. There is also no dispute about the issuance of chargesheet and its receipt. There is also no dispute about the fact that the Petitioner not being satisfied with the explanation offered by the Respondent decided to hold Domestic Inquiry against him. One Mr. Nitin Paranjpe was appointed as Enquiry Officer. Mr. V.B. Kamat represented the company. The Respondent was defended by one Mr. D.B. Dalvi, Office Bearer of Mahendra and Mahendra workmen Union, so also by Advocate G.S. Kulkarni at a later stage. The inquiry commenced on 7.3.2003 and concluded on 13.12.2003.

10. At the inquiry, the Petitioner examined witnesses. The Respondent also was given opportunity to produce documents and examine witnesses. The Enquiry Officer thereafter heard rival submissions and concluded the proceedings. He forwarded his report. The Petitioner company received the findings of the Enquiry Officer forwarded to it. The Enquiry Officer submitted his findings holding that the charges leveled against the Respondent are proved. The findings were forwarded to the Respondent by letter dated 16.01.2004. An opportunity was given to submit an explanation with regard to these findings. The explanation/reply was forwarded by the Respondent under cover of his letter dated 6.2.2004. It is thereafter that the punishment of termination/removal from services was imposed on 27.9.2004.

11. The Respondent had filed Complaint (ULP) No. 602 of 2003 alleging that the

Disciplinary action taken against him and the inquiry proceedings are not fair and proper. However, during the pendency of the complaint the order of removal came to be served upon the Respondent. Therefore, he amended the pending complaint. The Petitioner has pointed out that the Respondent applied for interim relief in the complaint but his application for interim relief was rejected on 14.9.2004.

12. After amendment and prior thereto as well, the petitioner had filed its Written Statement/reply. A copy of the Written Statement filed by the Petitioner is annexed as Annexure C to the petition whereas Annexure B is the copy of the amended complaint.

13. After the pleadings were complete, the First Labour Court, framed preliminary issues. At the hearing of the preliminary issue, liberty was given to the Respondent Original Complainant as well as the Petitioner herein to lead evidence and file documents. The Respondent examined himself and the Defence Representative Mr. D.B. Dalvi. The Petitioner filed inquiry proceedings and copy of the certified Standing Orders in court. The preliminary issues framed were as under:

ISSUES FINDINGS

i. Whether the enquiry conducted In negative by the respondents against the complainant is legal, fair and proper

ii. Whether the findings recorded by In Affirmative the enquiry officer are perverse ?

iii. What Order ? As per final order

14. The Petitioner as well as the Respondent made submissions orally and filed written arguments as well. In an order running into about 73 pages, the First Labour Court held that the inquiry is not fair and proper and the findings are perverse. The First Labour Court granted liberty to the Petitioner to justify its action in court.

15. The matter was carried by the Petitioner in Revision and even the Revision Application has been dismissed with the modification reproduced above.

16. Aggrieved and dissatisfied with the order passed by the First Labour Court and the Industrial Court, the Petitioner has approached this Court invoking its jurisdiction under Article 226 of the Constitution of India.

17. Mr. C.U. Singh, Learned Senior counsel appearing for the Petitioner has submitted that the impugned orders are perverse and totally unsustainable in law. They are vitiated by errors apparent on the face of the record. He submits that no Adjudicating Authority or court will arrive at a conclusion as has been arrived at by the Courts below in the facts and circumstances of the present case. He submits that the First Labour court has exceeded its jurisdiction, in as much as, it overlooks the fact that it is not an Appellate Authority sitting in

appeal over the conclusions drawn by the Enquiry Officer. It has to peruse the record before the Enquiry Officer and arrive at a conclusion with regard to fairness of the inquiry and perversity of the findings. It cannot substitute its views with that of the Petitioner and the Enquiry Officer. He submits that invariably and as a matter of course, the Labour and Industrial Courts are framing preliminary Issues and thereafter calling upon the Management to lead evidence to justify removal of its employee. This should not be the approach in each and every case. Unless and until, the Labour Court is satisfied on scrutinising the materials produced, that the inquiry is vitiated on account of flagrant breach of principles of natural justice and has resulted in serious prejudice, it should not interfere. Similarly, it should approach the matter by taking into consideration, the totality of the circumstances. If the Management has led evidence before the Enquiry Officer, which in the opinion of the Enquiry Officer is adequate and sufficient to bring home the guilt, then, the Labour Court should not interfere with his conclusion. He submits that strict rules of evidence and Evidence Act is not applicable in Departmental Inquiry. It is a Domestic Tribunal and it must adhere to the principles of natural justice.

18. He submits that in the present case, it has been pointed out before the Revisional Court also that there is no substance in the grievances of the Respondent as the basic facts are undisputed. He submits that before the Revisional Court it was pointed out that there are sufficient grounds for the Revisional Court to exercise its jurisdiction u/s 44 of the MRTU and PULP Act. Mr. Singh has taken me through the impugned orders. He submits that the Learned Judge of the Labour Court has rendered inconsistent and contradictory findings. He has ignored the materials which were produced including the oral evidence led before him. He submits that in the Revision Application these aspects were highlighted and a perusal of the grounds of the Revision Application would show that the Petitioner had raised number of contentions. He submits that the inquiry was fair, independent and impartial. The findings of the Enquiry Officer are not perverse at all.

19. In this behalf Mr. Singh has relied upon the admitted facts. He submits that the courts below were aware of these facts, in as much as, the Respondent does not dispute that he was sent on duty to Nasik. He does not dispute that he was to take a diesel vehicle which already had diesel filled in it. That he was away from Bombay to Nashik for two days and upon return he came to the filling station of the Petitioner at Mumbai. The only dispute raised was with regard to the quantum of diesel filled at Nasik. The vehicle was taken to petrol/diesel filling station/pump is also not in dispute. Therefore, as to whether the Workmen filled in only five litres of diesel or something more as alleged in the chargesheet is a matter which the company had to prove. Mr. Singh submits that it was proved by the company.

20. In this behalf, he invites my attention to the fact that the Petitioner examined witnesses at the inquiry. He submits that even if one Sanjay Kanore has not been

examined at the inquiry it would not vitiate the same. He submits that the Labour Court had indeed arrived at that conclusion. In this behalf, he invites my attention to page 82 and 83 of the petition paper-book which is the interim order of the Labour Court. He submits that the impugned order of the First Labour Court at running page 249 and 256 would show that the Labour Court has not held that the inquiry is vitiated for non-examination of this witness.

21. Shri Singh submits that, it is the Workman who wanted to examine Sanjay Kanore. The statement given by Sanjay Kanore before the officials of the Petitioner, however, can be produced in the inquiry proceedings and there is no bar in that behalf. He has invited my attention to the evidence of one Mr. Bhosale. He submits that even during the course of Trial on preliminary issues, the Workman examined himself. In his examination-in-chief all that the Workman stated, was that he wanted to examine Mrs. Goenka i.e. the person travelling in the vehicle, Sanjay Kanore, Petrol Pump Attendant, Raju the Security Officer, U.K. Bhide and Sampat Ubhale. He also wanted to examine other witnesses whose names are listed at para 6 of his deposition. However, according to Mr. Singh in the cross-examination the Workman has categorically stated that he does not have anything in writing to show that he made a request to summon Sanjay Kanore. He has also not been able to substantiate his allegation that the statement of Sanjay Kanore was incomplete and torn-off. He invites my attention to the cross-examination at para-10. He submits that a copy of the statement of Sanjay Kanore was admissible in evidence. Apart from that, other witnesses have spoken about the involvement of the Workman. There is no cross-examination as far as this aspect is concerned. In such circumstances, it is erroneous and improper to hold that the findings are perverse and that the Management should lead evidence to substantiate their actions.

22. Mr. Singh has contended that the orders under challenge deserve to be quashed and set aside.

23. In support of his submissions, Mr. Singh, has relied upon the following decisions:

(i) Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane,

(ii) Mahindra and Mahindra Limited Vs. Sunil Yeshwant Pandit and Shri P.S. Narkar, Presiding Officer, Labour Court,

24. On the other hand, Ms. Gayatri Singh appearing for the Respondent, submits that this is a petition under Article 226 of the Constitution of India. This Court is not a court of further appeal. She submits that it is not open for this Court to reappreciate and reappraise the materials on record and arrive at a different conclusion. She submits that the matter is at a preliminary stage. It is not as if, the petitioner has no opportunity to substantiate and prove the charges. She submits that this Court should not interfere merely because a different view is possible.

25. Further, it is her contention that there are concurrent findings of facts rendered by courts below based upon materials produced before them. They should not be interfered with. She has contended that Since the Petitioner company was tampering with evidence and since the Enquiry Officer was not correctly recording the proceedings, the Respondent made an application on 18.11.2003 for calling certain material witnesses. They were, Mr. Sanjay Kanore, the Petrol Pump attendant, Mrs. Goenka, who was in the car and Mr. Ubale, the Nasik Petrol Pump Manager who had signed Sanjay Kanore's statement. The workman also made a request to be represented by an Advocate. It is not in dispute that the Enquiry Officer was an Advocate and the management representative was also an Advocate. The request of the Workman was allowed and on 29.11.2003 the Advocate G.S. Kulkarni filed his authority. This is recorded at paragraph 63 of the Labour Court order. The cross examination of the workman was continued on 29.11.2003 and there is no complaint against the workman regarding his non-cooperation. The enquiry proceedings were adjourned to 12.12.2003. On the said date the workman and his D.R. informed the Enquiry Officer that they wished to examine Sanjay Kanore as their witness and that he would be available only after seven days. The workman also gave the names of his other witnesses. The Enquiry Officer refused to adjourn the enquiry and insisted that all the witnesses should be produced on the same day which was not humanly possible. The workman then volunteered to see if he could locate any of the witnesses. Mr. R.R. Parab was able to remain present. He was partially examined since the time of the enquiry was over, the enquiry was adjourned to 13.12.2003. However, on the same date the enquiry was closed, without examining the workmen witnesses.

26. She submits that the Labour Court has considered the evidence of the witnesses examined by the Company and concluded that the inquiry was a mere formality. She submits, that two witnesses, Bhosale and Raje examined by the Petitioner have relied upon the statement of Sanjay Kanore. The statement of Sanjay Kanore cannot be accepted as he has later on clarified the entire matter. She submits that the statement was recorded forcibly and under duress by Bhosale and Raje, who posed themselves as C.B.I. Officers. She submits that Sanjay Kanore has lodged a complaint against these officers of the company. However, in the copy of the statement of Sanjay Kanore, relied upon by the company, there is a discrepancy in the name of the vehicle. The vehicle was White Armada and not Bolero. In such circumstances, it cannot be said that the statement of Sanjay Kanore has been proved. As far as the evidence of Shri Jagtap is concerned, the Labour Court has pointed out the contradictions in the complaints dated 18.2.2003 and 22.2.2003. His cross-examination has also been referred to. Therefore, the contradictions in the evidence of Shri Bhosale, Raje and Jagtap should have been considered by the Enquiry Officer. Since the same were not considered, the Labour Court rightly concluded that his findings are perverse. These findings of the Labour Court have been upheld by the Industrial court. Therefore, this is not a fit case for interfering in writ jurisdiction. She

submits that the observations in the interim order of the court below cannot be relied upon as they are tentative and prima-facie. She submits that once the inquiry was abruptly closed and the Enquiry Officers report is vitiated as above, then, this Court should uphold the findings and conclusions arrived at and dismiss the present petition.

27. She has relied upon the following decisions to support her above contentions:

(i) Zandu Pharmaceuticals Works Ltd v. Dayanand Sitaldin Mishra and Anr. reported in 1992 (1) CLR

(ii) Central Bank of India v. Shri Prakash Chand Jain (1969) 1 SLR 735

(iii) Cooper Engineering Ltd v. B.P. Mundhe reported in 1975 (2) LLN 321

(iv) MSRTC and Nanuram Mohanlal Verma and Anr. 2002 (1) LLN 913

(v) Neeta Kaplish Vs. Presiding Officer, Labour Court and Another,

(vi) The Workman of M/s. Firestone Tyre and Rubber Company of India P. Ltd reported in 1973 Lab I.C.851

28. She has also distinguished the cases relied upon by Mr. Singh. It would be appropriate at this stage to notice the settled legal principles while deciding such matters. In Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, the same are reiterated. The Supreme Court holds thus:

8. This Court in the case of State of Haryana v. Rattan Singh which is also a case arising out of non-issuance of ticket by a conductor held thus: (scc pp.491-92)

In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence not in the sense of the technical rules governing court proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding.

In the present case, the evidence of the inspector is some evidence which has relevance to the charge and the courts below had misdirected themselves in insisting on the evidence of the ticketless passengers. Also, merely because their

statements were not recorded, the order for termination cannot be invalid. In fact, the inspector tried to get their statements but the passengers declined. Further, it was not for the court but for the Tribunal to assess the evidence of the co-conductor.

9. From the above it is clear that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which in our opinion as held by this Court in the case of Rattan Singh is not a condition precedent. We may herein note that the judgment of this Court in Rattan Singh has since been followed by this Court in Devendra Swamy v. Karnataka SRTC.

29. For properly appreciating the rival contentions, it is necessary to refer to the allegation in the complaint filed by the Workmen.

30. The complaint which was filed in the First Labour court at Mumbai is alleging unfair labour practice under Items 1(a), 1(b), 1(d) and 1(f) and Schedule IV of the MRTU and PULP Act, 1971.

31. The Respondent Workmen has in para 3(c) of the complaint set out details about the disciplinary proceedings and thereafter referred to the suspension order and the chargesheet. It was alleged by him that the Enquiry Officer appointed by the Petitioners should not have proceeded with the inquiry. However, the Enquiry Officer, the Petitioner and the Management Representative colluded with each other and commenced the inquiry. The Respondent Workmen states that he was defended by Mr. D.B. Dalvi, Senior Secretary of the recognised union.

32. Thereafter, it is alleged that the Enquiry Officer proceeded without giving him opportunity and with a biased mind. The Workmen made a grievance that he should have been given an opportunity to defend himself through advocate. He does not have a legally trained mind. The Defence Representative was pitted against two legally trained persons. In such circumstances, right from the first sitting of the inquiry it became clear to him that he was not given a fair and proper opportunity. A grievance is made of two outsiders and Advocates being appointed as Enquiry Officer and Management Representative. The grounds which are pressed for alleging that the inquiry is not fair and proper are enumerated in para 3(e) of the complaint and they are of the nature referred above.

33. One of the grievance which was made before the Courts below, so also before me, pertains to the statement of Sanjay Tanaji Kanore being relied upon. According to the Complainant Workmen, this Sanjay Kanore was working at the

Petrol pump at Nasik where the Complainant took the vehicle for filling the fuel. It is alleged that two officers of the Petitioner posed themselves as C.B.I. Officers and entered the petrol pump and recorded the statement of Sanjay Kanore. This statement/letter has been relied upon and the grievance in that behalf is made in para 3(e)(iv). The same reads as under:

3(e)(iv) That though the Management has relied upon purported letter of Shri Sanjay Tanaji Kanore which also bears signatures of Shri U.K.Bhide and one Shri Vilas Sampat Ubhale, they are not examined in the enquiry though zerox copy of the same is taken on record by the Enquiry Officer as Exh.5 (i.e.Exh.7) collectively. This shows that the complainant did not get any opportunity of testing the veracity and truthfulness of the said statements. In this behalf, the Complainant has made a specific request vide his representation dated 18.11.2003 to the Enquiry Officer, as well as, the Management inter-alia requesting them to re-open the enquiry and to call the material witnesses, including the signatories of the so-called cash memo. These letters are taken on record in the enquiry as Exh.40 collectively. However, inspite of this, the Enquiry Officer has failed to re-open the enquiry.

34. The other grievance which was projected before me, pertains to not giving an opportunity to the Workmen to examine the witnesses on his behalf and that grievance is made in para 3(e)(vii) of the complaint. Further, a grievance is made that the Petitioner and the Enquiry Officer have destroyed clinching and material evidence which was in favour of the Workmen. It was pointed out that the lower portion of Exhibit 5 collectively (page 7) appears to have been torn off and that is why the signature of one Shri Bhide is not appearing. A ruling was sought from the Enquiry Officer with regard to tampering of these documents but the Enquiry Officer being biased has not given decision/ruling on the same.

35. Thus, the substance of the allegations appear to be that the Enquiry Officer is biased, the Workmen was denied fair and proper opportunity, he was not allowed to examine witnesses such as the person travelling in the vehicle to Nasik and one Sanjay Kanore. The documents were taken on record without their contents being proved so also the contradictions and admissions in the evidence of the witnesses examined by the Petitioner have not been taken into consideration by the Enquiry Officer.

36. In the Written Statement which was filed by the Petitioner, it specifically contended that all these allegations are an after-thought because the Petitioner had appointed an independent and impartial person as Enquiry Officer. The Enquiry Officer gave sufficient opportunity to the Respondent to defend himself. He was allowed to be defended by a representative of his choice. All allegations are made as an after-thought in as much as, the Workmen has participated in the inquiry.

37. It was contended that the vehicle (Bolero) was handed over to the Respondent and 60 litres diesel was filled in the tank of the vehicle which was

more than sufficient to go to Nasik and return back to Mumbai. The complainant Workmen returned to Mumbai on 17.2.2003 and parked his vehicle at his residence at Dahisar. On 18.2.2003 he entered Kandivali plant of the Petitioner and went to the fuel pump. He filled diesel in the vehicle from the plant fuel pump. He did so without any authorisation and in the absence of the fuel pump attendant. Thus, he did not allow the fuel pump attendant to fill in the diesel in the Material Issue Card (M.I.C.).

38. The fuel pump attendant Shri Jagtap was not at the fuel pump as he had gone to toilet. Upon his return from the toilet, the said Shri Jagtap noticed the Respondent filling in the diesel and he told him not to do so. Thereafter, the Workmen removed the dispensing nozzle from the tank of the vehicle and kept it back on the pumps cradle. The Workmen brought down the meter reading to zero. Shri Jagtap then filled in 15 lts of diesel in the fuel tank of the vehicle. Shri Jagtap informed one N.V.Bhosale that there is difference of 24 hrs of diesel in fuel pump reading and actual consumption record maintained in MIC for that day. The record could not be tallied despite repeated checking. Shri Jagtap then narrated that he had seen the complainant filling the diesel in vehicle Bolero and he had reason to believe that the Workmen must have filled in 24 litres of diesel in the vehicle when Jagtap had left the petrol pump and gone to toilet. The Petitioner stated that on 18.2.2003 the Respondent Workmen approached his immediate superior for settling the expense voucher. He submitted toll tax receipts for Rs. 70/- and fuel receipt for 30 lts diesel for Rs. 718.20/-. The receipt showed that the diesel was purchased from M/s. Naralka Auto Services, Nasik. The Complainant workmen superior brought to his notice that 60lts of diesel was filled in the tank of the said vehicle on 16.2.2003 which was sufficient to make a return trip from Nashik. There was no need to fill in additional 30 lts of diesel. However, the Respondent Workmen informed his superior that he had to take the vehicle at many places in Nasik and therefore filled in 30 lts of diesel near Igatpuri.

39. The Petitioners pointed out that the Workmen had visited only one place at Nashik and not many places. He purchased only 5 lts of diesel from the above petrol/diesel pump on 17.2.2003. However, he fraudulently obtained receipt for 30 lts of diesel from attendant of the said fuel pump and collected the amount of Rs. 718/- by submitting a false claim voucher. Thus, the above acts amount to a misconduct and therefore under the certified Standing Orders of the company, the chargesheet was issued.

40. It was pointed out by the Petitioner that during the course of the inquiry which commenced on 7.3.2003 and concluded on 13.12.2003, the Workmen was defended by a person of his choice who cross-examined the companys witness at length. The Workmen also adduced evidence in his defence. He was furnished with the documents filed by the company. He was also given a record of the day to day proceedings. The principles of natural justice were thus followed and no grievance was made by the Respondent at all. As far as the allegations that the

Enquiry Officer denied the request to engage an Advocate is concerned, it was pointed out that during the inquiry proceedings, the Workmen never asked or requested for appointment of an Advocate to defend him. The Defence Representative Mr. D.B. Dalvi was chosen by the Workmen and he represented him all throughout. There was no question of any bias. Mr. Dalvi, is a Diploma Holder in Trade Union & Industrial Relations Course conducted by Maharashtra Institute of Labour Studies. He was a Senior member of negotiation committee of Mahindra & Mahindra Workers Union and had also attended a seminar on Trade Unionism at Moscow.

41. The above reproduced allegations in the complaint were specifically dealt with and denied. It was contended by the Petitioners that no demand for any documents were made nor was any grievance made with regard to denial of any opportunity. The Petitioner contended that the Workmen was free to summon Mrs. Goenka who was the person concerned and had travelled from Mumbai to Nasik. He has not summoned her. It was specifically contended by the Petitioners that there was no question of tampering with the documents and allegations in that behalf do not arise for consideration.

42. The Petitioners in para 12 of the Written Statement, specifically contended that the Officers of the company Shri Bhosale and Raje had gone to Nasik to investigate the matter. They obtained a statement from Sanjay Kanore. The complainant had admitted the signature below the Cash Memo of M/s. Naralka Auto Services. Therefore, the question of examining anybody does not arise. The workmen case was that the signature was obtained under duress. Therefore, the onus was on the Respondent to prove the same. If the Respondent set up a case that the statement of Sanjay Kanore is obtained by force and he has signed under duress, then he should have examined Sanjay Kanore as his witness. The Petitioner contended that Sanjay Kanore was not summoned and reliance was placed on the observations of the First Labour Court on the application for interim relief.

43. Considering the allegations in the complaint and the denials so also the case set up in the Written Statement, the First Labour court framed the preliminary issues. The Labour Court took on record the Enquiry proceedings including the Report. Thus, it was exhibited. No objection was raised when the Labour Court took it on record. It would be worthwhile reproducing a portion of the Report. Its relevance is beyond doubt. The Enquiry Officer holds thus:

...From the respective evidence of Shri Bhosale and Shri Avhad, it shall be evidence that on 17.02.2003 Mr. Avhad had gone to Nashik and filled up the diesel at Naralka Auto Services is not disputed and Mr. Avhad came to Mumbai plant on 18.2.2003 and also Mr. Bhosale and Mr. Raje had carried out the investigations on 20.2.2003 by visiting the petrol pump is not in dispute. Now it can be seen that both the sides did not examine Shri Sanjay Kanore, the petrol pump attendant who had filled up the diesel in Mr. Avhad's vehicle as on 17.2.2003. However both the sides have filed counter complaints from Mr.

Kanore (Exb.5 colly) p.7 by the Company and Ex.19 by Mr. Avinad].

Mr. Bhosale in his evidence has stated that he had taken the said statement he had identified the same and also the same had been identified by the Companys another Shri. Raje. From Ex.19 it can be seen that this appears to be statement made by Shri. Kanore to the police station and also it bears the stamp of Nasik Police station. Therefore, in my opinion even though Mr. Kanore was not examined by both sides I can go through his statements because in the domestic inquiry strict rules of evidence are not applicable. Therefore, by applying the said principle and more particularly in view of the fact that investigations carried out by Mr. Raje and Mr. Bhosale on 20.02.2003 are not in dispute which shall be evident from cross examination of Mr. Bhosale and Mr. Raje. Therefore, even though Mr. Kanore was not examined before me with a view to find out the truth I had perused Ex.5(Colly)p.7 appears to have been signed by Mr. Kanore on 20.02.2003 and this was confirmed by Mr. Raje as well as Mr. Bhosale during their evidence. Secondly, from Q.127 put to Mr. Bhosale defence had also admitted that said writing was given by Mr. Kanore, but it is the case of the defence that the said writing was obtained by Mr. Bhosale by pretending Mr. Kanore that he was CBI officer this suggestion is denied by Mr. Raje as well as Mr. Bhosale. However, from Ex.19 it appears that same was given by Mr. Kanore on 04th March 2003 , one fails to understand as to why Mr. Kanore took about 15 days to file complaint against Mr. Bhosale if at all really he was threatened. Secondly, in Ex.19 the date of allege threats has been mentioned as 21.02.2003 when defence has also admitted the date of investigations as on 20.02.2003 and from evidence of Mr. Raje as well as from Mr. Bhosale it is clear that they carried out the investigations only on 20.02.2003 and also from Mr. Bhosales cross examination it appears that in connection with Ex.19 he was not called by police as well as he was not arrested (Q.128 and Q.131 of Mr. Bhosales cross examination) and defence has also not shown any further police action in respect of Ex.19 which means that police also did not take any action against this complaint therefore, Ex.19 as produced by the defence is not of any help to them to prove the innocence of Mr. Avhad, however Ex.5 (Colly)p.7 will show that Mr. Avhad had filled up 5 litres of diesel. In this connection there is another important aspect which will show that from Mr. Avhads examination in chief at page 93 he had admitted that it is the normal practice of the Company that when any vehicle has filled up diesel upto its capacity and while leaving Nasik the said fuel tank of the said vehicle is filled up to its capacity from the Companys plant at Nasik. According to Mr. Avhad as per Mrs. Goenkas instructions he did not fill up the diesel at Nasik plant and according to him since he went to several places at Nasik the vehicle required more diesel due to which he was required to fill up the diesel on the petrol pump which was not the companys pump. Though, this arguments appears to be attractive from the evidence on record it is not of any use to Mr. Avhad because while answering Q.11 of his cross Mr. Avhad had admitted that he was aware that while leaving Kandivali plant petrol tank of the vehicle was full to its capacity.

Secondly on page 10 of the inquiry proceedings Mr. Bhosale during his examination in chief had stated that when the said vehicle left the Kandivali Plant its reading was 24257 km and when the said vehicle was topped up again on 18.02.2003 its reading was 24696 km that means it had covered 439 km and also at page 7 he had stated that capacity of fuel tank of the said vehicle is 60 litres and on p.10 he had stated that average diesel consumption of the said vehicle is 60 litres and on p.10 he had stated that average diesel consumption of the said vehicle is 10 km. a litres and all these important statements made by Mr. Bhosale had remained unchallenged in his entire cross examination he means presuming for the sake of argument if Mr. Avhads argument is accepted that he went to several places and as per Mr. Goenkas instructions he did not fill up the diesel of Companys plant then once from his own admission when it is clear that while leaving the Kandivali plant vehicle was full then there was no necessity to fill up the diesel because as per Mr. Bhosale statement which remain unchallenged it is clear that average diesel consumption of vehicle is 10 km per litre, which means that vehicle may have consumed only about 439 litres of diesel as against its capacity of 60 litres as against this from the cross examination of Mr. Avhad it seems that he is avoiding to give replies because he was not aware about the fuel tank capacity of vehicle and also was not aware about the distance between Mumbai and Nasik (Q.1, 2 and 13 of Mr. Avhads cross examination), it is difficult to believe that a driver who is frequently visiting the Nasik by vehicle is not aware about the distance between Mumbai and Nasik and also not aware about the capacity of fuel tank of vehicle but while answering Q.3 5 of his cross Mr. Avhad agreed that vehicle had consumed about 45 litres of diesel. The statements of Mr. Bhosale and Mr. Raje are consistent and corroborative to each other and these statements remain unchallenged during their respective cross examinations and hence on the basis of evidence as discussed above I hold that Mr. Avhad had filled up only 5 litres of diesel, but procured the receipt for 30 litres of diesel. Thus misconduct (1) against Shri. Avhad is proved and I record my findings accordingly.

44. As far as the preliminary Issue is concerned, the Respondent Workmen stepped into the witness box. He has in his deposition more or less reiterated his allegations in the complaint. He has admitted that he was allowed to take assistance of one G.S. Kulkarni, Advocate. In para 4 and 5 of his deposition he states thus:

4. I was allowed to be represented by Adv. Shri G.S. Kulkarni, but he was not given an opportunity to make his submission. Adv. Shri Paranjpe and Kamat they have concluded the enquiry on 13.12.2003. The enquiry Officer and the Management representative have turned off the portion of the statement of Mr. Kanore which was being the signature of Mr. U.K.Bhide as they were apprehended that the matter may go against the company. My defence counsel Shri Dalvi had requested the Adv. Shri Paranjpe and Kamat to allow all concerned to sign the each and every page of the proceeding the exhibits. But the said request was not allowed.

5. I was required to take assistance of Adv. Shri G.S. Kulkarni as the company was represented by Shri Kamat. It was not recorded in enquiry proceeding that I was requested to call Mr. Kanore, Mrs. Goenka, Sanjay Ubale.

45. Thereafter, he stated that he was not allowed to examine his wife, children and one R.R. Parab so also Raju Chavan as his witnesses. However, he admits that the statement of Raju Parab was recorded.

46. In the cross-examination by the Petitioners Advocate, the Respondent Workmen states thus:

It is not correct to say that myself and my representative Mr. D.B. Dalvi fully participated from the 1st day till the last day of the enquiry. Mr. D.B. Dalvi was representing me till 13.12.2003. It is true to say that whatever used to transpire in the enquiry used to be recorded by the enquiry officer. All the pages of the enquiry proceeding bears my signature, signature of my representative and all concerned who were present in the enquiry. We used to sign on each page after it was typed on the respective dates. We were given the copies of the enquiry proceeding after completion of the proceeding of that date. The copies of the documents submitted by the management were supplied to me during the enquiry. Now I am shown the copy of the enquiry proceeding, these are the same copies of the proceeding and the charge sheet. The enquiry proceeding is collectively at Exhibit C-18. It is not correct to say that myself and my defense were explained the procedure of the enquiry. I replied both the chargesheets. It is true that I did not sent any letter to the Company asking them to furnish any document or list of witness with respect to charge sheets.

47. The questioning during the cross-examination resulted in several admissions and the respondent workmen admitted that he requested for engaging advocate during the course of the inquiry and not earlier. In para 9 of his deposition, he states thus ." It is true that in the enquiry I had stated that I wanted to examine Sanjay Kanore as my witness. I have not produced the copy of the complaint Exhibit 19 in the enquiry proceeding. Again say that I submitted the said complaint after going to Nasik and meeting Mr. Kanore. I do not remember when I had been to Nashik to collect the said complaint. I had gone to Sanjay Kanore after receipt of the charge sheet. I cannot say whether page 160 of the enquiry proceeding and the original of the page No. 160 whether there is difference of signature of Mr. Bhide which appears in the original and does not appear in the copy according to me.

48. About his grievance, that he was not allowed to examine witnesses, a question was posed to the Respondent Workmen but he could not recollect the details of the request made nor he could state anything about the refusal of the Enquiry Officer to permit him to examine them. At page 167 of the petition paper-book is an extract of the Recording of evidence in Question and Answer Form. It reads thus

12. Today I have brought the xerox copy of the statement of Sanjay Kanore

dated 20.2.2003, which I had received from the company and the enquiry witness voluntarily stated which includes signature of Shri U.K.Bhide, I am producing the said copy today.

Q. Whether the contents of original statement 4 xerox copy of the Sanjay Kanore are same ?

Ans. Contents are same but in the original there is no signature of Mr. U.K.Bhide, C.S.O.

49. Even the Defence Representative Shri Dalvi was examined before the Labour court and he specifically states that he was prepared to cross-examine all Management witnesses which he did. He specifically states that the request to engage an Advocate at the inquiry was made for the first time on 18.11.2003. The deposition of the Management Representative and more particularly paras 3 and 4 thereof would indicate that the spot Inspection Report (Exhibit 24) and copy of the Statement of Sanjay Kanore (Exhibit 33) have been taken on record after an inspection of the petrol pump at Nasik in the presence of the Workmen, Defence Representative, Enquiry Officer, Management Representative and Management witness Shri Raje. The said Sanjay Kanore had at that time stated that he will appear as witness in the inquiry after he is summoned and that is recorded in the Spot Inspection Report (Exh 24). At page 174 of the petition paper-book, the cross-examination of the Defence Representative shows that when the document (Exhibit 33) was being exhibited and taken on record, no objection was raised by the Defence Representative or the Workmen about the inquiry proceedings not being properly recorded. It is in the backdrop of the above material that the arguments of both sides on the preliminary issue were considered by the Labour Court.

50. Assuming that the findings of the Labour Court on the preliminary issues must be considered and scrutinised independent of its observations in its interim order, yet, a perusal of the order of the First Labour court would show that the Learned Judge has rejected most of the objections raised by the workmen to the inquiry. In para 53 of the impugned order (page 245 internal page 13), the First Labour Court has adverted to the objections with regard to the Workmen not permitted to engage an Advocate and rejected the same. According to the Labour Court, this objection does not require consideration because the request for engaging an Advocate was never made prior to 18.11.2003.

51. With regard to not furnishing the list of documents and witnesses alongwith chargesheet is concerned, in para 54 of the impugned order, the Labour court has observed that the Workmen was given sufficient time as per his request to prepare for cross-examination and all opportunities were granted to cross-examine the witnesses examined by the company. The complainant Workmen never demanded the list of witnesses and therefore his objection was held to be without any basis, more so, when no prejudice was shown by the alleged non-furnishing of the list of witnesses.

52. The Learned Judge has considered the Case Law on this point and ultimately in para 56 of the impugned order, rejected the objections of the aforesaid nature.

53. The third objection pertains to non-examination of material and relevant witnesses by the Petitioner Management. In para 57 of the impugned order, the Labour court has held that the Workmen produced the Affidavit of Sanjay Kanore dated 13.4.2003 (Exhibit U-16A). The Petitioner pointed out that it has produced the statement of the petrol pump attendant at Nasik, Sanjay Kanore. The Workmen produced the letter of Kanore alleging that the statement given by him earlier to the company was under duress and coercion. Therefore, the onus shifted on the Workmen to examine Kanore. It was contended by the Petitioner that the Workmen was free to examine Kanore as well as Mrs.Goenka. 54. Ultimately, the First Labour court observes thus:

58. The Learned Counsel for the complainant has also relied on so many case laws. It appears that I have observed while passing order Exhibit U-2 regarding examination of Sanjay Kanore as a witness as the person who has made statement in the presence of witnesses contrary to the receipt issued to the complainant and he can not be said as a reliable person. It is also further observed that the said witness might have stated something else than the statement made before Mr. Bhosale. In the present case the management has to decide regarding the witnesses to be examined in the enquiry. The management has not examined Mr. Sanjay Kanore. It appears that Mr. Kanore has stated at the time of spot inspection that he would appear as a witness in the enquiry with the permission of his employer. It appears that the Complainant has also stated before the enquiry officer that he wants to examine Mr. Sanjay Kanore as his witness. Certainly Mr. Sanjay Kanore was a material witness in the present enquiry, but considering the fact that he made different statements i.e. one before Bhosale and next statement made by him to the police authority against the management witness and the 3rd statement made by Mr. Sanjay Kanore in his affidavit dated 13.4.2003, it was desirable to examine the said witness in the enquiry so that the enquiry officer could have appreciated and considered which of the version can be accepted. The complainant cannot examine the said witness in view of other issue that was raised during the enquiry i.e. representation by two representatives of the complainant. In such circumstances, non-examination of Sanjay Kanore by the management cannot be a ground to hold that the enquiry conducted against the Complainant was not fair and proper. Certainly reliance by the enquiry officer on the statement made by Sanjay Kanore and non-reliance on the Complaint lodged at police station by him is the matter required for consideration but at the time of deciding the issue regarding perversity of findings and not at this stage.

59. It appears that the complainant has submitted that he has requested for calling material witnesses vide letter dated 18.11.2003, it is at page 39 of the enquiry proceeding. The Complainant has requested to examine Mrs.Goenka and also requested for reopening of the enquiry by calling the witnesses including the

signatories of the so called cash memo. The complainant has requested to examine Mr. Bhide, Mr. Sanjay Kanore, Mr. Bhosale and Mr. Raje. Infact, it is the management to decide which of the witnesses are to be examined in the enquiry to prove the charges. Therefore, non-examination of these witnesses by the management the enquiry cannot be vitiated. However, the complainant has also asked for recalling witnesses Mr. Raje and Mr. Bhosale stating that the said witnesses are necessary to be cross examined on the point regarding tearing of the statement of Mr. Sanjay Kanore, which was originally bearing signature of Mr. Bhide at Exhibit 30. He has also requested that if persons are called in the enquiry, it would help t o find out the truth of tampering of the said document. It appears that according to the Respondent the document was tampered. It is further submitted that assuming without admitting that there is any change in the original and xerox copy of the particular document that itself does not show that any record is tampered. The Respondents submitted that the allegations are baseless and is based with malafide intention. The complainant has admitted that the contents of the original statement and the Xerox copy are the same. The complainant stated that there is no signature of Mr. K.U.Bhide on the copy. The Respondents submitted that there is no change in the contents of documents and no prejudice is caused to the complainant by not allowing the application. It is also submitted that there might be mistake while taking out zerox copies of some other documents and the signature might have appeared below the statement of Mr. Sanjay Kanore.

55. Further, in para 60 to 62 of the impugned judgment, the Learned Judge has rejected the objection with regard to the tampering of the document/statement of Sanjay Kanore. He has specifically rejected that objection by relying upon the deposition of the parties before the Enquiry Officer. It is clear from a perusal of these paras, that merely because in one of the copies of the statement of Sanjay Kanore, the portion of the signature of Mr. Bhide does not appear/or is torn off, that is not enough in the view of the Labour court to hold that the inquiry is not fair and proper. The finding is that there is no change in the contents, i.e. the statement of Sanjay Kanore. The objection with regard to non-examination of material witnesses by the Petitioner Company has thus been rejected in para 61 and 62 of the impugned judgment.

56. The Learned Judge has also observed that the inquiry is not vitiated, because after 18.11.2003 the Enquiry Officer has not permitted Advocate, G.S. Kulkarni and D.B. Dalvi, to remain present at the inquiry proceedings. In para 64-65, the Learned Judge observes thus:

64. It appears that according to the complainant the statement of Sanjay Kanore ought to have been recorded at the time of spot inspection, but I do not agree with this submission. The enquiry officer has correctly avoided to record the statement of Sanjay Kanore at the spot inspection. It was not a place whether the enquiry was supposed to be continued. I do not agree with the submission on behalf of the complainant that the action of the enquiry officer of not recording

the statement at the spot was not fair. Nextly the enquiry officer never refused the complainant to examine Sanjay Kanore in the enquiry. Therefore, it cannot be said that no opportunity was given to the complainant to examine the Sanjay Kanore. It appears that on 12.12.2003, it was submitted on behalf of the complainant that Sanjay Kanore has informed that he will give evidence only after taking the permission from his employer and he will be available only after 7 days from today. In fact, considering this submission it was desirable to adjourn the enquiry upto 7 days for recording evidence of Sanjay Kanore. But it appears that on 13.12.2003 due to the difference between the parties for allowing the representatives of the complainant at time, the enquiry officer has concluded the enquiry. Infact, it was desirable that the enquiry officer should have made clear before concluding the enquiry that he may conclude the enquiry if there would be no co-operation and they may not have an opportunity to examine his witnesses. But considering the witnesses to be examined it cannot be said that complainant was denied an opportunity to examine the witnesses. I said so because Sanjay Kanore has made three different statements. Therefore, if he is not examined it should not be treated as a ground for vitiating the enquiry.

65. The Learned Counsel for the complainant has submitted that the company has not examined the enquiry officer or the management representative Mr. Raje in the present proceeding. The allegation made against the enquiry officer is not conducting the enquiry in legal, fair and proper manner are not denied and has gone un rebutted and unchallenged. I do not agree with this submission on behalf of complainant. I said so because the complainant has to prove the enquiry was not fair and proper. The complainant has to point out from the enquiry proceeding about the irregularities committed by the enquiry officer. He can also show from the enquiry proceeding that it was not conducted in legal, fair and proper manner.

57. The Learned Judge has rejected the contention that the inquiry was concluded in undue haste. In this behalf, his observations in para 68 of the impugned judgment would show that he has once again referred to the stand of Sanjay Kanore.

58. Thus, all observations and conclusions prior to para 69 of the impugned judgment/award would show that each of the objections to the inquiry have been turned down and rejected. Yet, in para-69 the Learned Judge observes thus:

69. In my opinion, if the objections raised by the complainant are considered and decided separately and independently, the enquiry cannot be vitiated but while deciding the fairness of enquiry officer at all the facts are required to be taken into consideration. I said so because all the facts if taken into consideration, it may appear that the inquiry was not really inquiry but is a mere formality or requirement of law to be completed after taking decision. In the present matter it appears that the witness Mr. Bhosale and Mr. Raje had been to the petrol pump attendant Sanjay Kanore. It appears that the petrol pump attendant Sanjay

Kanore did not accept that he sold 5 litres diesel and has issued receipt of 30 lts. Thereafter, the management witnesses were required to approach the manager. The manager and the owner of petrol pump told Sanjay Kanore to make true statement regarding the incident. This shows that all of them presumed that Sanjay Kanore has made a incorrect and false statement. Nextly the situation created by the management witnesses that they obtained receipt of 15 litres diesel/petrol by purchasing 5 litres and thereafter they approached the manager. They asked the manager to count the cash with the respondents when the manager refused that there is any practice of issuing receipt of more quantity than actual sale at the petrol pump. This shows that the manager and the owner in order to avoid further complications and to end up the matter have asked Sanjay Kanore to make the statement. Nextly the statement of Sanjay Kanore prepared by Bhosale shows that must not be a statement of Sanjay Kanore. I said so because description of vehicle is mentioned in the statement of Sanjay Kanore as Bolero. In fact, the enquiry officer ought to have considered this fact that a person cannot recollect the description of vehicle, if he is working as petrol pump attendant after 3 days. I said so because it has come in evidence in the enquiry proceedings on page 35 in reply to question No. 96 that nearly about 542 vehicles had been to the petrol pump in between 17.12.2003 to 20.2.2003 (i.e. the receipt dated 17.2.2003 and the receipt dated 20.2.2003 produced in the enquiry shows this fact. Nextly petrol pump is by the side of highway and witness had occasion to see thousands of vehicle in three days.

59. The Learned Judge, in my view, has committed a grave error apparent on the face of the record while holding that although the inquiry cannot be said to be vitiated considering the objections independently, yet, from the totality of the facts taken into consideration, it may appear that the inquiry was a mere formality. It is unfortunate that the Learned Judge makes no reference to the Enquiry Report. That apart, he brushes aside and ignores his own observations and findings reproduced above. Thus, the conclusion can safely be termed as perverse.

60. This conclusion appears to have been reached only because of the stand of Sanjay Kanore. Once the contradictory stand of Sanjay Kanore was held as not vitiating the inquiry, then, there was no occasion for the Labour Court to rely upon the same aspect again. Thus, the statement of Sanjay Kanore recorded at the meeting of the companies representatives with the owner and manager of petrol pump has not been faulted in any manner. However, the isolated act of Sanjay Kanore not being examined at the inquiry has been relied upon for the above conclusion.

61. At the cost of repetition, it must be said that in earlier part of judgment, the Learned Judge does not fault the inquiry proceedings because of non-examination or non-summoning of Sanjay Kanore. This is not an Enquiry against Kanore. This was a case where the respondent Workman was being proceeded against and there was admittedly other material on record against him to prove

the charges. That material has been brought on record after giving due opportunity to the workman. As far as that material is concerned, the Learned Judge does not disbelieve the same. However, in para 71 of the impugned order, the Learned Judge has once again referred to the lower portion of the statement of Sanjay Kanore being torn off. Even this aspect has not been held of any significance, leave alone vitiating the inquiry. Similarly, why no action was taken against Jagtap by the Petitioner is also not of any relevance. This was not an inquiry against Jagtap and therefore his leaving the petrol pump unattended is something irrelevant to the issue at hand. In these circumstances, Jagtap giving his statement to the Management is also not at all serious, leave alone germane and relevant matter. In such circumstances, there was no occasion for the Learned Judge to conclude that Jagtaps statement ought to have been relied upon. In para 72 of the impugned Judgment, the learned Judge repeats his confusing and contradictory observations with regard to statement of Sanjay Kanore and a copy thereof being placed on record. The Learned Judge observes thus:

72... Infact, if there were doubtful circumstances it was desirable to watch his activities for some time. In the present case though it was not required to fill the diesel at outside petrol pump be claimed he filled diesel is the only doubtful circumstance appearing against him. There can be reason for the same as according to him the pointer indicating quantity of diesel in the motor was showing less quantity. It can be a mistake while looking at the meter, or he may not have paid proper attention to the meter or the meter may show faulty reading if the vehicle is not on plane raid i.e. on ascending or descending road. But is was not desirable to presume that he committed misconduct and to prepare record to hold him guilty. It has been done as it can be seen from above facts that it was mere formality or farce of enquiry to find out reason to hold him guilty, instead of holding him guilty on sufficient and acceptable evidence.

62. It is rather unfortunate that the Learned Judge makes such observations despite his attention being repeatedly invited to the material placed before the Enquiry Officer and evidence led before him. His opinion of the conduct of the chargesheeted Workmen is hardly of any relevance. His personal views about the manner in which the chargesheeted workmen has been held guilty also does not carry the matter any further. The Learned Judge may have a different view than, that of the Management with regard to the charges against the Respondent Workman. However, his personal views and conclusions can hardly substitute that of the Management. He has to scrutinise the action of the Management on the touchstone of the allegations made in the complaint and relevant legal principles. He was not required to express his personal view on the matter at all. Hence, I am of the view that the Learned Judges conclusion that the inquiry is not fair and proper is perverse being contrary to the material placed before him. The inquiry proceedings clearly demonstrate that the principles of natural justice were not violated and that is the conclusion reached by the Learned Judge in his judgment. The Learned Judge has contradicted himself at several places and his

conclusion on this issue can safely be termed as "confusing" to say the least. The Learned Judge drifted away from the materials and in that process rendered inconsistent findings. In such circumstances, his finding about the fairness of the inquiry deserves to be quashed and set aside.

63. The next conclusion rendered is with regard to the findings of the Enquiry Officer. The Learned Judge in para 72 has noted the contentions of the Advocates appearing for both sides. He has referred to the written arguments. In para 84 onwards, the Learned Judge proceeds to consider the rival contentions. He is aware of the legal principles. This is a domestic inquiry. Strict rules of evidence are inapplicable and the case must be decided on preponderance of probabilities. Here again, the Learned Judge refers to the stand of Sanjay Kanore and the evidence before the Enquiry Officer. The Learned Judge records that the statement made by Sanjay Kanore at the instance of the Manager or owner cannot be said to be voluntary and acceptable as it is given for the purposes of saving his employment. If the views of the Learned Judge earlier expressed, are to be taken into account, then, it was for the Workman to have summoned Sanjay Kanore and Mrs. Goenka. Nothing prevented him from doing so. The inquiry was going on for more than six months. During the course of proceedings, no grievance is made by the Workman with regard to the stand of Sanjay Kanore, save and except, urging that the copy of his statement should not be taken on record.

64. In my view, if Sanjay Kanore withdraws his earlier statement, then, his subsequent stand including his complaint to police officials is a matter which could have been brought on record only by examining him and other concerned persons. If he is not summoned, it does not mean that his statement cannot be proved in the inquiry or cannot be placed on record in accordance with the principles of natural justice. A copy of his statement could have been placed on record. The Learned Judge does not hold that there is any prohibition in doing so. Therefore, why the Learned Judge observes that the Inquiry Officer ought to have ignored the statement of Sanjay Kanore is not clear to me at all. This is a finding rendered on the basis of the opinion of the Learned Judge. He does not hold that there is no evidence before the Inquiry officer. In such circumstances, the conclusion of perversity of the findings of Enquiry Officer could not have been drawn by the Learned Judge by the process of reasoning adopted by him and more particularly in para 84 and 85 of the impugned judgment. The charge was proved by the company not just relying upon Sanjay Kanore's statement, but also by proving the fact that the chargesheeted Workmen filled in diesel at the petrol pump of the company at its plant at Mumbai. There was no occasion for him to have filled in diesel without demonstrating that the tank of 60 lts of diesel has been emptied fully or substantially. It is upon this basis and by relying upon the admitted position of the chargesheeted Workmen coming at the diesel/petrol pump at the plant, that the company examined the petrol pump attendant, Jagtap. The Enquiry Officer permitted Jagtap being examined and cross examined. Jagtap's report was taken on record in accordance with the principles

of natural justice and also after one Bhosale was examined by the Management at the inquiry. The acts of Jagtap in not reporting to the Management the fact that he left the petrol pump unattended for sometime is something which is not relevant to the present complaint. The Learned Judges conclusion in para 86 of the impugned order suffers from the same infirmity which has been highlighted by me while reversing his conclusion on the fairness of the inquiry. In this behalf para 86 and 87 of the impugned judgment can be reproduced for the sake of convenience and ready reference:

86. It appears that according to the company the Complainant has filled diesel in the vehicle at the petrol pump at the company plant in the absence of petrol pump attendant. Mr. Jagtap stated in cross examination that the complainant was trying to fill up diesel. Mr. Jagtap has also stated in his report dated 22.2.2003 that on 17.2.2003 he had seen that the complainant was attempting to fill diesel in the vehicle and he told the complainant to fill diesel in the vehicle. In fact, it was mere suspicion of Mr. Jagtap. No enquiry was made with Mr. Jagtap till 22.2.2003. Mr. Jagtap stated so in reply to question No. 26 on page 52 of the inquiry. Nextly the report/statement of Mr. Jagtap was recorded in the cabin of Chief Security Officer Mr. Bhide on 22.2.2003. Mr. Bhosale has reported about the discrepancy in the meter reading of diesel and actual consumption in his report purporting to be 18.2.2003. In fact, Mr. Bhosale who has given report dated 18.2.2003 stated in cross examination in inquiry in reply to question No. 77 on page 30 he did not make any report. Mr. Bhosale also stated in reply to Question No. 43 that he reported the incident to department head orally who then called Mr. Jagtap and Jagtap was verbally warned and cautioned by him. This shows that the report dated 18.2.2003 must not have been submitted on that day. Therefore, Mr. Bhosale did not recall the same and stated that he made oral report. It appears that the said report was prepared after the inquiry at petrol pump on 20.2.2003. Therefore, the departmental head has passed an order on 22.2.2003 CSO please investigate and report immediately. It appears that thereafter the chief Security officer has recorded the statement of Mr. Jagtap in his cabin. But before recording the said statement the purported statement of Mr. Kanore was shown to Mr. U.K.Bhide. I said so because there was signature of Mr. Bhide on the said statement copy of which was given to the complainant. During the enquiry the same has been produced by the complainant, in the enquiry at Exhibit 30 page 222 of the inquiry proceeding. Nextly there was no name of complainant in the report dated 18.2.2003 made by Mr. Bhosale. It has come in cross examination of Mr. Jagtap that the person namely Mr. Dharmarajan and driver of Mr. Johnny Mapgaonkar were present at the time when Mr. Avhad was present at the petrol pump in the plant. The presence of other persons at the petrol pump on 18.2.2003 though stated by Mr. Jagtap in inquiry is not appearing in his report and no inquiry has been made by Mr. Bhide with those persons shows that Mr. Bhide was shown the statement of Sanjay Kanore for preparing the record against the complainant and has put his signature thereon. 87. It appears that according to the complainant the portion containing the said

signature of Mr. Bhide is turned off after the said statement was filed in the enquiry proceeding. The enquiry officer has not dealt with the said issue. He has not given any findings whether the lower portion of said statement is Mr. Kanore is turned or not. The fact that the enquiry officer has not signed the said purported statement of Sanjay Kanore though produced in the enquiry which is at page 60 of the enquiry proceeding also shows that the enquiry Officer has avoided to put signature on the said statement or has allowed to remove the said statement from the enquiry proceeding for tearing off the said portion containing the signature of Mr. Bhide. This fact shows that when the management can go to the extent of tearing of certain portion of the document it cannot be ignored lightly. I said so because the dispute is between two unequal the management can prepare any record if it has to terminate the services of workman. Therefore, in such cases if there is some doubt regarding the evidence or the document produced, the benefit of the same should go to the weaker section i.e. to the workman.

65. It is pertinent to note that these and other adverse remarks against the Management by the First Labour Court have been expunged by the Industrial Court. That apart, in my view, from the reasons assigned by the Learned Judge in para 88, it can safely be held that the Learned Judge has misdirected himself and acted beyond the scope of his powers while rendering the finding on the preliminary issues. The Learned Judge could not have recorded the conclusion that the Enquiry Officer has relied upon documents which are not proved. He could not have concluded in the light of his own observations and findings that the Enquiry Officers findings cannot be said to be based on truthful, legal and acceptable evidence. This conclusion is rendered by relying upon the fact that Sanjay Kanore was not examined at the inquiry. The Learned Judge has allowed this fact to weigh with him all throughout. He has heavily relied upon Sanjay Kanore not being examined at the Enquiry. At the same time he holds that nothing prevented the workman from examining Sanjay Kanore as his witness. It is not necessary to once again criticize and comment upon the approach of the Learned Judge in relying upon this fact. I have already observed and held that this aspect of the matter has not vitiated the inquiry nor the conclusions of the Enquiry Officer in any manner. This is not a case of mere suspicion but a conclusion of guilt by the Enquiry Officer of the chargesheeted Workmen based upon preponderance of probabilities. There was legally acceptable evidence. The conduct of the chargesheeted Workmen throughout shows that he has filled in diesel to the extent of 5 lts at Nasik but has deliberately got a receipt issued for 30 lts. Thereafter, he kept the vehicle in his custody at Bombay and tried to show that the tank was emptied upon arrival at Mumbai. Hence, the tank was required to be refilled at the plant of the company. Therefore, he filled in 24 lts of diesel but suppressed this fact and tried to show that he filled in 15 litres only. In such circumstances, the learned Judge could not have termed the findings of the Enquiry Officer as perverse. The Learned Judge was clearly aware of the fact that besides the statement of Sanjay Kanore there was other material before the

Enquiry Officer. The inquiry cannot be termed as a mere formality. The Learned Judge was not called upon to give any personal opinion. There was no occasion for him to support the stand of Sanjay Kanore. There were other materials as well. In such circumstances, it cannot be said that this is a case of mere suspicion.

66. In this behalf, paras 91 and 92 of the impugned judgment need to be reproduced:

... It appears that according to respondents I have observed in the para 52 in earlier order on Exhibit U-2 that the charges are proved but the said observation is not final adjudication and it being only prima facie it can not operate as res-judicata. The Court can decide the issues on the basis of evidence adduced and on the basis of submissions made on behalf of both the parties while deciding the relevant issues.

92. In view of the above discussions and findings I hold that the enquiry conducted against that complainant was mere formality and cannot be said as legal and fair. The findings based on the evidence adduced in such enquiry in the absence of consideration of the documents in correct perspective can be said as perverse.

67. In my view, the Learned Judge has relied upon his findings and observations in the interim order whenever it was convenient for him to do so. Whenever it was not so, he has brushed them aside by holding that they do not operate as Resjudicata. When he relies upon some of his findings in the interim order, while rendering his conclusion on the issue of fairness of the inquiry, then, he should not have brushed aside the same on other aspect, namely, perversity of findings.

68. It is not necessary to render any independent finding with regard to the Industrial courts order. Once I have concluded that the Labour Courts conclusions on the preliminary issues are totally perverse, contradictory and wholly unsustainable, then, it was the plain duty of the Industrial Court to have stepped in its Revisional jurisdiction u/s 44 of the MRTU and PULP Act. That it has failed to do so, is clear from the perusal of this order. Its observations in its short and cryptic order would show that it has failed to exercise the jurisdiction that is vested in it u/s 44 of the MRTU and PULP Act. It merely reaffirms the conclusions of the Labour Court, without applying its independent mind to the contentions raised before it. In this behalf, this Court has in the case of The Union Carbide (India) Ltd. Vs. Ramesh Kumbha and others, , the following to say about the scope of Revisional jurisdiction:

... As far as the order of the Industrial Court dismissing the petitioners revision, it appears that the Industrial Court has misread and mis-interpreted the provisions of Section 44 of the 1971 Act. While Section 44 gives power to the Industrial Court to have superintendence over all the Labour Courts and pass certain orders, it must be conceded that such a power does not include the power to re-appreciate the evidence merely because a different conclusion was

possible. But where the evidence on record, taken as a whole, leads to only one inference, it would be the duty of the Industrial Court, in exercise of its powers u/s 44, to examine the findings of the Labour Court and to decide whether they are vitiated, either as a result of non-application of mind or perversity in approach. Where there is an error of law apparent on the face of the record and where the cumulative effect of the oral and documentary evidence leads only to one conclusion, in my view, the Industrial Court has precluded from exercising its powers and setting aside the finding recorded by the Labour Court.

69. In the result, I am of the opinion that the Learned Member of the Industrial Court should have allowed the Revision Application of the petitioner. It should not have merely expunged the remarks of the First Labour Court. Once it was satisfied that the remarks were adverse and wholly unjustified, then, the Revision Application should have been allowed. The conclusion in para 13 and 14 of the judgment of the Industrial Court would show that the Industrial Court also failed in its duty as a Revisional Court.

70. The decisions relied upon by Ms. Gayatri Singh have also been perused by me. There cannot be any dispute with regard to the propositions laid down in the case of *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, which have been followed in *Neeta Kaplish Vs. Presiding Officer, Labour Court and Another*, . However, as observed in the case of *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, , if the findings on the preliminary issue are worthy of acceptance, then the principles would apply. However, if they are vitiated and are perverse in the manner set out above, then, they cannot be upheld. The other decisions relied upon by her are also distinguishable on facts. It is not a case where the evidence was not legally acceptable or hearsay and purely conjectures. This is a case where legal evidence has been discarded and that is not permissible.

71. Further, almost all objections of the Workmen have been turned down by the Labour Court. In addition, there are findings recorded at the interlocutory stage that no case is made out of unfair labour practice under the subject items. The Labour Courts observations and findings, so also remarks have been expunged by the Industrial Court. In such circumstances, Ms.Singh cannot rely upon them. More so, when no cross petition is filed.

72. In the above circumstances, I am unable to agree with Ms.Singh, appearing for the Respondent, that this is not a fit case for exercising writ jurisdiction of this Court. Normally, this Court is reluctant to interfere at a preliminary stage. However, when illegality and perversity of the above nature is noticed and seen, when the Courts below do not perform their duty in accordance with law, so also, when exercise of powers vested in them results in miscarriage of justice, then it is the duty of this Court to interfere in the writ jurisdiction. I am unable to agree with any of the contentions of Ms.Singh and I am in agreement with those of the petitioner that the impugned judgments need to be quashed and set aside.

73. In the latest decision of the Supreme Court, it has been observed that judicial review would lie, even if there is an error of law on the face of the record. If statutory authority uses its powers in a manner not provided for in the Statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review. See Mathura Prasad Vs. Union of India (UOI) and Others, , paras 19 and 20.

19. When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review.

20. In S.N. Chandrashekar v. State of Karnataka this Court held (SCC pp.221-22, paras 34-36)

34. The Authority, therefore, posed unto itself a wrong question. What, therefore, was necessary to be considered by BDA was whether the ingredients contained in Section 14A of the Act were fulfilled and the same had not been satisfied, the requirements of the law must be held to have not been satisfied. If there had been no proper application of mind as regards the requirements of law, the State and the Planning Authority must be held to have misdirected themselves in law which would vitiate the impugned judgment.

35. In Hindustan Petroleum Corporation Ltd v. Darius Shapur Chenai this court referring to Cholan Roadways Ltd v. G. Thirugnanasambandam held : (SCC p.637, para 14)

14. Even a judicial review on facts in certain situations may be available. In Cholan Roadways Ltd v. G. Thirugnanasambandam this Court observed : (SCC p.2 53, paras 34-35)

34. ...It is now well settled that a quasi judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of *res ipsa loquitur* which was relevant for the purpose of this case, and thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issues, namely, that the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic inquiry, which is preponderance of probability and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out.

35. Errors of fact can also be a subject matter of judicial review (See *E. v. Secy. of State for the Home Deptt.*). Reference in this connection may also be made to an interesting article by Paul P. Craig, Q.C. titled *Judicial Review, Appeal and Factual Error* published in 2004 *Public Law*, p.788.

(See also *Sonepat Coop Sugar Mills Ltd. v. Ajit Singh*, SCC paras 23 and 24)

74. In Writ Petition No. 3125 of 2006 (*Indian Hotels Company Ltd v. Jagat Singh Gurow*) decided on 31.1.2007, I had an occasion to consider the legality and validity of an Award on preliminary Issues. In somewhat identical circumstances, following the Supreme Court decisions on the ambit and scope of the powers of a court/tribunal to interfere in departmental/disciplinary inquiries, I had observed as under:

28. More recently, the Supreme court in the case of *Bharat Heavy Electricals Ltd. Vs. M. Chandrasekhar Reddy and Others*, has held that there is no such thing as unlimited discretion vested in any judicial or quasi-judicial forum. An unfettered discretion is a sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority be it an administrative or judicial has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof. These observations have been made in the context of the powers conferred upon the labour court u/s 11A of I.D. Act and a reference has been made to all cases including the one relied upon by Mr. Dube-Patil. It reproduced in para 23 the observations in the decision of *Firestone Tyre (supra)*. Thereafter, it is observed "that if a proper enquiry is conducted by an employer and if correct finding arrived at recording misconduct, the Tribunal, even though it has now power to differ from the conclusions arrived at by the management, will have to give very cogent reasons for not accepting the view of the employer.

29 Learned Judge in this case was aware of the principles which have to be applied to domestic enquiries and while scrutinising the findings of the enquiry officer. If any reference is needed, then, it is enough to refer to the decision of Supreme court in the case of *Food Corporation of India Workers Union v. Food Corporation of India-Management* reported in 1996 (2) LLN 871 and *R.S. Saini Vs. State of Punjab and Others*, . If there is some evidence to reasonably support the conclusion in the enquiry, it is not the function of the Court to review the evidence and arrive at its own independent finding. Enquiry authority is the sole Judge of the fact and so long as there is some legal evidence to substantiate the findings then the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed in the Court. Standard of proof as required to be applied is of preponderance of probabilities.

75. In the result, Writ Petition succeeds. Rule is made absolute in terms of prayer Clause (a).

76. The complaint would now proceed, in so far as the issue of quantum of

punishment, in accordance with law. However, in the circumstances of the case, there will be no order as to costs.