
(1993) 03 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 1446 of 1985

Mahindra and Mahindra Ltd.

APPELLANT

Vs

S.A. Patil and Others

RESPONDENT

Date of Decision : 10-03-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (1994) 2 LLJ 438

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : P.K. Rele, for the Appellant; A.R. Kulkarni, for the Respondent

Final Decision : Allowed

Judgement

Ashok Agarwal, J.—By judgment and order, passed by the Industrial Tribunal, on June 10, 1985, in Application IT No. 113 of 1983 u/s 33(2)(b) of the Industrial Disputes Act, in Reference IT No. 95 of 1978, the prayer of the petitioner for grant of approval of the company's action of dismissal of the second respondent workman is refused. The said order is impugned in the present petition.

2. The incident, which has given rise to the present proceeding, took place on July 30, 1982. The second respondent, at the material time, was working as Machine Operator "C" in Engine Shop of the petitioner's establishment. On July 30, 1982 at about 5.45 p.m. while a worker of the establishment Shri S.J. Tarlekar was waiting on Plat Form No. 2 of Kandivli Railway Station for boarding a Suburban Train, the second respondent alongwith one other worker Shri R.S. Kesarkar, accosted Tarlekar, caught him by his shirt and hit him on his forehead, slapped him on his face and threatened him of dire consequences. Later, the second respondent as also his companion Kesarkar boarded a compartment of a train in which another worker AB. Gujar was commuting. Respondent No. 2 accosted Gujar caught him by his shirt, banged his head on the door of the compartment and hit him with fist blows. While doing so respondent No.2 asked Gujar as to how much money the latter had received out of Rs. 60,00,000/- paid

by the company to the Union for agreeing to shift the engine assembly to Igatpuri. Gujar attempted to get down at Malad where he stays and thereafter at Goregaon station, but the second respondent and Kesarkar blocked his way and obstructed him from getting down. The second respondent continued to assault Gujar till the latter with great difficulty managed to alight at the Jogeshwari Railway Station. While Gujar was alighting, the second respondent threatened him that they would see the others who got a share of Rs. 60,00,000/- and those of the Company's Officers who are involved in the matter. Respondent No. 2 threatened Gujar that the second respondent and Kesarkar will go to his house and teach him a lesson and threatened him of dire consequences if Gujar did not resign from the Works Committee.

3. The above incident led to disciplinary proceedings being initiated against respondent No.2. On August 2, 1982 a chargesheet was served upon the second respondent. By the chargesheet, the second respondent was charged with having committed misconduct as defined under the Companies Certified Standing Order 24. Disciplinary proceedings commenced on August 20, 1982 and concluded on June 30, 1983. On July 29, 1983, the Inquiry Officer gave his findings. He found that the second respondent had acted in a disorderly manner by adopting indecent behaviour and had committed acts subversive of discipline and good behaviour inasmuch as he manhandled and slapped co-workers S.T. Tarlekar and A.B. Gujar. He found that, though the incident in question had taken place outside the premises and precincts of the Company, it had resulted in subversion of discipline and good behaviour within the premises or precincts of the company. Consequent upon the said findings, the second respondent, by an order passed on September 23, 1983, was dismissed from service.

4. On September 23, 1983 the petitioner filed an application u/s 33(2)(b) of the Industrial Disputes Act for grant of approval to the action of the company of dismissal of the second respondent, from service. By a judgment and order dated June 10, 1985 the learned Member of the Industrial Tribunal was pleased to hold that the incident of assault on the part of respondent No. 2 has been proved. He, however, declined to accord approval on the ground that the acts of misconduct complained of were committed outside and away from the premises of the company. The said order is impugned in the present petition.

5. Shri Rele, the learned Counsel appearing on behalf of the petitioner, has pointed out that the Tribunal has answered the questions of fact in favour of the petitioner. It has held that the second respondent is guilty of assaulting his co-workers. According to Shri Rele, the learned Member of the Tribunal has fallen in error in declining to accord approval for the dismissal of the second respondent from service, on the ground that the acts complained of had not been committed on the premises or within the precincts of the establishment. Shri Rele pointed out that the facts of the present case are akin to the facts in the case of Mulchandani Electrical and Radio Industries Ltd. Vs. The Workmen, and were distinct from the facts in the case of Glaxo Laboratories (I) Ltd. Vs. Presiding

Officer, Labour Court, Meerut and Others, . According to Shri Rele, the decision in Mulchandani's case still holds the field. That case deals with a standing order which is identical to the standing order which arises for consideration in the present case. The facts in the case of Mulchandani are also similar to the facts of the present case. The decision in the case of MA. Glaxo Laboratories pertains to facts which are entirely distinct and deals with a standing order which is entirely different. According to Shri Rele the present case will be governed by Mulchandani's case and not by the case of M/s. Glaxo Laboratories.

6. In the case of Victory Flask Company (P) Ltd. v. Govind Bhagoji Borje 1976 II LLJ 560 this Court (Coram : Lentin, J. (as he then was) while dealing with the very same standing order, which arises for consideration in the present case, observed:

"On a plain reading of standing order 24(1), I have no hesitation in coming to the conclusion that the words, "on the premises of the establishment", must be read in conjunction with the words immediately preceding, viz. "subversive of discipline or good behaviour" and not with the opening words, "commission of any act". It is not that the act need be committed on the premises, of the establishment, but that the result of such an act would be subversive of discipline or good behaviour on the premises of the establishment. The commission of the act has no nexus or connexion with the premises of the establishment. It is the effect or result of that act, viz., indiscipline or bad behaviour which must make itself manifest on the premises of the establishment".

7. In the case of Mulchandani Electrical and Radio Industries Limited (supra) the facts were as under:

The delinquent workman called on another workman of the company and in a train between Thane and Muland he assaulted him. The assault was outside the factory premises. On these facts, the Supreme Court considered standing order No. 24 which is the very same standing order which arises for consideration in the present case i.e., commission of any act subversive of discipline or good behaviour within the premises or precincts of the establishment. The Supreme Court observed: (p. 394):

"In our opinion, on a plain reading of the clause, the words "within the premises or precincts of the establishment" referred not to the place where the act which is subversive of discipline or good behaviour is committed but where the consequences of such an act manifest themselves. In other words an act wherever committed, if it has the effect of subverting discipline or good behaviour within the premises or the precincts of the establishment, will amount to misconduct under the Standing Order 24(1). We are unable to agree that the Standing Order 24(1) leaves out of its scope an act committed outside though it may result in subversion of discipline or good behaviour within the premises or precincts of the establishment in questions. Such a construction in our view

would be quite unreasonable".

8. In the case of M/s. Glaxo Laboratories (supra) the facts were as under; "Some workmen of Glaxo were on strike and they were gathering near the gate of the factory and were intimidating and obstructing other workmen desiring to report for duty. The company approached the Civil Court and obtained injunction restraining the striking workman from obstructing the loyal workmen. The company had engaged a bus exclusively for the use of the loyal workmen commuting between the city and the factory. Some of the drunk workmen boarded the bus and during the journey in the bus at different places manhandled loyal workmen. The company, therefore, chargesheeted 9 workmen under Clauses 10, 16 and 30 of the Standing Order 22. The relevant clause 10 of the Companies Standing Order 22 reads:

"Drunkness, fighting, indecent or disorderly behaviour, use of abusive language.....committed within the premises of the establishment or in the vicinity thereof".

On these facts, the Supreme Court observed: (1984-I-LLJ-16 at 23):

"Having examined the matter both on principle and precedent, it would clearly emerge that Clause 10 of Standing Order 22 which collects various heads of misconduct must be strictly construed being a penal provision in the sense that on the proof of a misconduct therein enumerated, penalty upto and inclusive of dismissal from service can be imposed. We see no reason for departing from the well-established canon of construction that penal provisions must receive strict construction, and not extended beyond their normal requirement. The framer's intention in using the expression "committed within the premises of the establishment or in the vicinity thereof are the words of limitation and they must receive due attention at the hands of the interpreter and the clause should not receive such broad construction as to render the last clause redundant".

9. While referring to the case of Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, :

"Further, in that case, the Court put a wide construction on a penal measure but did not choose to set out its reason for departing from the well-established principle that penal statutes generally receive a strict construction. "A statute is regarded as penal for the purpose of construction if it imposes fine, penalty or forfeiture other than penalty in the nature of liquidation of damages or other penalties which are in the nature of civil remedies. It is a general rule that penal enactments are to be construed strictly and not extended beyond their clear meaning"...It cannot be seriously questioned that S.O. 22 is a penal statute in the sense that it provides that on proof of misconduct penalty can be imposed. It cannot be disputed that it is a penal statute. It must, therefore, receive strict construction, because for a penalty to be enforced, it must be quite clear that the case is within both the letter and the spirit of the statute. If the expression "committed within the premises of the establishment or in the vicinity thereof is

given a wide construction so as to make the clause itself meaningless and redundant, the penal statute would become so vague and would be far beyond the requirement of the situation so as to make it a weapon of torture. A clause with a statutory flavour like legislation must at all costs be interpreted in such a manner that it could not operate as a rogue's charter...If any misconduct committed anywhere irrespective of the time-place content where and when it is committed is to be comprehended in Clause 10 merely because it has some remote impact on the peaceful atmosphere in the establishment, there was no justification for using the words of limitation such as "committed within premises of the establishment or in the vicinity thereof. These are words of limitation and they must cut down the operation of the clause. Therefore, these words of limitation must receive its due share in the interpretation of Clause 10 and Clause 10 cannot receive such a construction as to make the words of limitation wholly redundant".

10. A short question that arises for consideration in the present petition is, whether the present case is covered by the ratio laid down in Mulchandani's case or one in the Glaxo case. In my view, though certain observations in the Glaxo case do seem to suggest that the ratio laid down in Mulchandani's case has been overruled or has been watered down, however, if one carefully examines the said observations, it is apparent that the same were made for the decision of the facts which arose in that particular case. In that case, the facts as also the standing order, which was under consideration, is entirely distinct, whereas the facts in Mulchandani's case are practically identical to the facts arising in the present case and the standing order that arose for consideration in that case and which arises for consideration in the present case is one and the same.

11. The above two decisions of the Supreme Court fell for consideration in two cases before this Court. The first being the case of Bhavani Metal Works v. Pandurang R. Sawant and Ors. decided by my learned brother Dhanuka, J. and reported in 1991 1 CLR 147. In paragraphs 6 and 7 of the judgment, this is what has been observed:

"6. The Labour Court in substance has proceeded on the footing as if the earlier judgment of the Hon'ble Supreme Court in the case of Mulchandani Electrical and Radio Industries Ltd. v. Their Workmen (supra) has ceased to be good law. The Labour Court has taken this view by interpreting the subsequent judgment of the Hon'ble Supreme Court in the case of Glaxo Laboratories (I) Ltd. v. Labour Court, Meerut and Ors. The earlier judgment of the Hon'ble Supreme Court in the case of Mulchandani Electrical and Radio Industries Ltd. was cited before the Hon'ble Division Bench of the Hon'ble Supreme Court in the case of Glaxo Laboratories (I) Ltd. The said earlier judgment was cited by the Hon'ble Supreme Court in the Glaxo Laboratories case and has not been overruled. It could not have been so overruled, because the earlier judgment was also delivered by a Bench of three Hon'ble Judges of the Hon'ble Supreme Court.

7. In the case of Mulchandani Electrical and Radio Industries Ltd v. Their

Workmen (supra), another co-workman is supposed to have been assaulted while he was travelling in the train between Thane and Mulund stations, which was outside the factory premises of the establishment. The question before the Court was as to whether the assault on another workman by the chargesheeted workman while he was travelling in the train between Thane and Mulund could be construed as a misconduct within the meaning of Standing Order 24(1) reproduced in paragraph 6 of the said judgment. It was held by Gupta, J., speaking for the Bench of the Supreme Court that the said Standing Order 24(1) did not take within its sweep merely the acts committed on the premises or precincts of the establishment. It was held by the Court that the acts subversive of discipline and good behaviour would constitute misconduct if consequences of such acts had the effect of the said Standing Order 24(1) within the premises or precincts of the establishment. In other words, if one workman assaulted another workman at a place far away from the factory premises, which assault has no consequence on the working of the factory itself, such an act would not amount to misconduct. It would be "private assault", if one may use this expression, and the employer will have no right to adopt proceedings to punish a workman by adopting disciplinary proceedings. A somewhat similar question arose before the Hon"ble Supreme Court in the case of Glaxo Laboratories (I) Ltd. v. Labour Court, Meerut, and Ors. (supra), to which a reference is already made above. The Standing Order required to be interpreted in that case was not worded in the same language as the Standing Order which came for interpretation in Mulchandani's case was worded. In paragraph 12 of the judgment in Glaxo Laboratories" case one finds relevant discussion. In the above referred subsequent judgment, the Hon"ble Supreme Court distinguished the earlier judgment in Mulchandani's case by inter alia observing as under: Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, :-

"The decision (meaning thereby the decision in Mulchandani's case) proceeds on the language of the Standing Order which came for interpretation before this Court. There is a marked difference between the language of Clause 10 of S.O. 22 under which action is proposed to be taken by the appellant in this case (meaning thereby Glaxo Laboratories" case) and Standing Order 24(1) that came for interpretation in that case."

I do not wish to express any opinion on the question as to whether the ratio of the judgment in Glaxo Laboratories" case is attracted in this case or whether the ratio of the judgment in Mulchandani's case is attracted. That would depend upon interpretation of the Standing Order relied upon by the Petitioner-employer and also the findings of fact which will be recorded in this case by the Labour Court in view of its larger jurisdiction u/s 11-A of the Industrial Disputes Act, 1947. I must, however, make it clear that the judgment of the Hon"ble Supreme Court in Mulchandani's case is not overruled and both these judgments will have to be considered, interpreted and applied in the light of the contents of the Standing Order relied upon by the Petitioner-employer in this case and also in the light of the factual findings which will be recorded by the Labour Court after

reappraisal of evidence and other material on record".

12. It is clear that my learned brother has also found that the decision of the Supreme Court in Mulchandani's case has not been overruled by the Glaxo Laboratories' case and both the judgments will have to be considered, interpreted and applied in the light of the contents of the standing order in question, as also in the light of the factual findings which are arrived in a particular case.

13. In the case of Murlidhar Raghoji Savant Vs. General Manager, Mather and Platt (I) Ltd. and Others, my learned brother Shrikrishna, J. was also concerned with the model standing Order 24 which is the very same standing order at hand. My learned brother after reviewing several decisions on the question, observed : (at pp. 400-401)

"The proposition of law deducible from a conspectus of authorities, during the period 1953 to 1975, appears too firmly settled and could not have been intended to be dislodged, by a sidewind, by the pronouncement in Glaxo Laboratories' case. It is difficult to accede to the contention advanced on behalf of the petitioner that the judgment in Glaxo Laboratories' case (supra) is a radical departure from the law laid down in Mulchandani's case. Both Mulchandani and Glaxo Laboratories were judgments of Benches of the Supreme Court consisting of three Judges. There is no evidence in the Glaxo Laboratories case that the law laid down in Mulchandani's case was departed from or, much less, intended to be over-ruled. The observations of the Supreme Court in paragraph 12 of the judgment (LLJ) make it clear that the decision in Glaxo Laboratories case turned solely on the peculiar phraseology of the Standing Order which their Lordships were considering. Though Mulchandani's case was cited as laying down a broad proposition of law on the subject, the Supreme Court distinguished it on facts by observing:

"The decision proceeds on the language of the Standing Order which came for interpretation before this Court. There is a marked difference between the language of Clause 10 of S.O. 22 under which action is proposed to be taken by the appellant in this case and S.O. 24(1) that came for interpretation in that case".

It is thus clear that, far from over-ruling the judgment in Mulchandani's case, Glaxo's case distinguishes it on facts, as the phraseology of the concerned Standing Order was radically different, a doubt has arisen before the High Court as to the true construction of the Standing Order. The High Court resolved the difficulty by referring to the Hindi version, which, in no uncertain terms, indicated that what was defined as a misconduct could only be an act committed within the premises of the establishment or in the vicinity thereof. The Supreme Court specifically referred to this circumstance and distinguished Mulchandani's case (supra).

In my view, there is no difficulty in holding that it is the law laid down in

Mulchandani's case which must apply to the petitioner's case, for the simple reason that the petitioner's case is governed by Model Standing Order 24(1), which was the very same Standing Order considered and interpreted by the Supreme Court in Mulchandani's case. As I read them, with great respect, the observation in the Glaxo's judgment must be taken to be confirmed to and arising out of the peculiar phraseology of the Standing Order which was before the Supreme Court. I am in respectful agreement with the observations of the Supreme Court in Glaxo Laboratories:

"A clause with a statutory flavour like legislation must at all costs be interpreted in such a manner that it could not operate as a rogue's charter "Davis and Sons v. Alkin". In my judgment, interpreting the Standing Order applicable to the petitioner's case, in the manner suggested by the petitioner's counsel, would make it operate as a "rogue's charter".

The learned Judge further went on to add:(p.401)

".....As long as the employer keeps himself within the terms of the Standing Order, if the act of misconduct, though occurring outside the industrial establishment, has a rational nexus of impinging upon the industrial relations, then in my view, the act would be "subversive of discipline on the premises of the establishment", and squarely fall within the definition of misconduct given in Model Standing Order 24(1)."

14. In view of the foregoing decisions, in my view, the learned Member of the Industrial Tribunal has erred in relying on the case of Glaxo which case, as pointed out earlier, is distinct both on facts, as also on the standing order with which, the case concerned itself. In my view, the present case is governed by the case of Mulchandani whose facts are akin to the facts of the present case. Moreover, the standing order with which the Supreme Court in Mulchandani case was dealing with, is the very same standing order which arises for consideration in the present case. Hence, the present case is clearly governed by Mulchandani's case and not by Glaxo's case.

15. In view of the foregoing discussion, I am inclined to hold that the Tribunal has erred in refusing to accord approval u/s 33(2)(b) of the Industrial Disputes Act to dismiss the second respondent from service. In the result, the impugned order, passed on June ,10, 1985, by the learned Member of the Industrial Tribunal, in Application IT No. 113 of 1983, in Reference IT No. 95 of 1978 is set aside and the application of the petitioners to accord approval for dismissing the second respondent from service is granted. Rule absolute. There shall, however, be no order as to costs.

16. At this stage, Shri Kulkarni, the learned counsel, appearing on behalf of the second respondent, prays for stay of my order for a period of eight weeks in order to enable his client to prefer an appeal. He points out that the Appeal Court has passed an interim order directing the petitioner to pay full back wages right from the date of the order of dismissal and to continue to pay wages till the

disposal of the petition. According to him, if stay is not granted the petitioner will stop paying second respondent his future wages with effect from the date of this order. In my view, it will be open to the second respondent to apply for appropriate interim orders from the Appeal Court when the appeal is filed. The prayer for stay of this order is, therefore, rejected. Expedite the issue of certified copies.