

(1998) 01 MAD CK 0038
In the Madras High Court
Case No : W.A. No. 433 of 1992

Management of Thanjavur Textile Mills Limited	APPELLANT
Vs	
Presiding Officer, First Additional Labour Court and Others	RESPONDENT

Date of Decision : 09-01-1998

Acts Referred:

Citation : (1999) 2 LLJ 442

Hon'ble Judges : V. Kanagaraj, J;Raju, J

Bench : Division Bench

Advocate : N. Balasubramaniam, for the Appellant; K. Chandru and D. Hariparanthaman for Respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Thanjavur Textiles Ltd. Vs. B. Purushotham and Others, AIR 1999 SC 1290 : (1999) 2 JT

364 : (1999) 1 LLJ 1049 : (1999) 2 SCALE 216 : (1999) 3 SCC 316 : (1999) SCC(L&S) 677 : (1999) 1 SCR 1150 : (1999) AIRSCW

979 : (1999) 3 Supreme 409

Raju, J.—The above writ appeal has been tiled by the management, which was arrayed as first respondent in W.P. No. 5846 of 1989,

against the order passed by a learned single Judge of this Court dated December 13, 1991, whereunder the learned single Judge while sustaining

the claim of the workers, ordered relief (sic) in the following terms:

As I am setting aside the impugned order on the ground that the domestic enquiry conducted in this case is not valid and remanding the matter to

the Labour Court for the purpose stated above, it is not necessary to deal with the other contentions raised by the learned counsel for the

petitioner.

In view of the above discussion the writ petition is allowed, the order challenged in this writ petition is set aside, the matter is remanded to the

Labour Court to enable the parties to lead evidence with regard to the charges framed against the petitioners and the Labour Court is directed to

dispose of the matter according to law within 4 months from today. The Labour Court is also directed to decide the question whether the

petitioners are entitled to wages from the date of dismissal of the petitioners till the final award of the ""Labour Court according to law, in the event

of the Labour Court ultimately upholding the dismissal of the petitioners on the basis of the evidence to be let in pursuant to the order in this writ

petition. No costs.

2. Having regard to the nature of disposal the appeal deserves, it is unnecessary to delve at length the entire gamut of facts, which in our view, has

been adverted to the required extent by the learned single Judge in the order under appeal. In respect of the incident which was said to have taken

place on August 15, 1980, the appellant appears to have served separate charge memos on respondents 2 to 4. So far as respondents 2 and 3 are

concerned, apart from the common charges, an additional charge that they jumped into the power house and attempted to cause damage to the

switch board was also framed. The workers denied the charges and took the stand that they did not report to work as per the decision taken by

the Union. Not satisfied, the management ordered that a domestic enquiry has to be conducted appointing one J.R. Sachidanandam, Advocate as

enquiry officer. After the completion of the enquiry, the enquiry officer found that the charges framed against respondents 2 and 3 stood proved

and findings on that basis appear to have been submitted on October 24, 1980. so far as the charge against the 4th respondent is concerned, the

finding about the proof of the same also appears to have been submitted on October 25, 1980. After issuing separate second show cause notice,

dated October 31, 1980, to which workers offered explanation, the appellant management passed separate orders on November 24, 1980

dismissing respondents 2 to 4 workmen from the service of the appellant - Mills. Aggrieved, the Union - Thanjai Noorpalai Thozhilalargal Sangam

raised an industrial dispute relating to the non-employment of the workers. The

matter was ultimately referred to the first respondent by the State

Government, which entertained the proceedings as I.D. No. 417 of 1981. The first respondent - Labour Court after enquiry and trial, in which

exhibits were marked by the Management, passed an award in the following terms:

In the result, an award is passed dismissing the I.D. holding as follows: The reference to this Court made by the Government of Tamil Nadu over

the non employment of the workers B. Purushothaman and K.P. Natarajan and T.S. Anbu is not valid and proper. The non-employment of the

workers B. Purushothaman and K.P. Natarajan is justified in view of the serious misconduct committed by them on August 15, 1980. The worker

Anbu is not entitled to any relief inspite of the fact that his non-employment is not a justified one, since the reference to this Court made by the

Government of Tamil Nadu over his non-employment is not valid and proper. No costs.

3. It may be noticed at this stage that earlier to the stage of enquiry and final award passed, preliminary objections were taken in a number of

disputes including the one in I.D. No. 417 of 1981. It appears that the first respondent - Labour Court has passed an order on the preliminary

points on August 8, 1985 holding that the domestic enquiry against the workmen concerned are not in any way vitiated. So far as the preliminary

objection relating to the competency of the enquiry officer was concerned, that was relegated to the stage of the final award. Ultimately, as noticed

supra, a final award also came to be passed on April 28, 1988. Aggrieved, the workers filed W.P. No. 5846 of 1989 seeking for a writ of

certiorarified mandamus to call for and quash the award passed in I.D. No. 417 of 1981 and consequently direct the appellant -Management to

reinstate the workmen with back wages and other attendant benefits. The management opposed the claim before the learned single Judge.

4. The learned single Judge adverted to all the three grounds urged on behalf of the workers. The first ground, as could be seen from the orders of

the learned single Judge, related to the conclusion of the Labour Court that the reference to the Labour Court made by the Government relating to

the non-employment of the workers, is not a valid one. So far as the second ground is concerned, it related to the enquiry and the contention was

that the domestic enquiry conducted in the case was not fair and proper and not in conformity with the procedure prescribed by the Standing

Orders of the appellant - Mills and therefore, the domestic enquiry and the entire proceedings which culminated in the order or award of the

Labour Court is liable to be set aside. Consequently, the challenge was that the award of the Labour Court dated April 28, 1988 on merits also

could not be sustained for the alleged violation and non-compliance of the provisions of Section 9-A of the Industrial Disputes Act, that the past

record of service of the workers have not been taken into account before passing the order of punishment, that the finding of the enquiry officer

and the Labour Court are perverse and not based on evidence and that the Labour Court failed to take into account the principles enshrined in

Section 11-A of the Act.

5. After hearing the learned counsel appearing on either side, having regard to the very concession made by the learned counsel for the

Management, the learned single Judge held that the reference made of the industrial dispute about the non-employment of the workmen in question

is legal and valid and it did not suffer any incompetence. As for the second point urged that the domestic enquiry conducted was not fair, proper or

valid and in dealing with the stand taken for the Management that in the absence of challenge to the preliminary order dated August 8, 1985,

wherein the domestic enquiry was held to be fair and valid, and was not further challenged by the workmen, the learned single Judge was of the

view that the objection taken by the Management has no merit and it was permissible for the workers to canvass the correctness of the findings

recorded in the preliminary order also while challenging the final award of the Labour Court, in the writ petition filed before this Court. So far as

the challenge made to the domestic enquiry on three grounds is concerned, the learned single Judge was of the view that the refusal on the part of

the enquiry officer to permit the representative of the workers, namely observer, to cross-examine the witnesses examined on the side of the

management, would not vitiate the enquiry, since according to the learned single Judge, even the presenting officer also played a passive role by

being present in the enquiry like an observer without any opportunity to cross examine the witness and therefore, there was no infirmity on this

ground. As for the second objection relating to the legality of the domestic enquiry, the learned single Judge also was pleased to reject the same on

the ground that since the witnesses were examined in the domestic enquiry in the presence of the workers, it cannot be said that the domestic

enquiry stood vitiated on the ground that the enquiry officer failed to furnish copies of the statement of the witnesses examined on the side of the

management to enable the workers to let in rebuttal evidence.

6. It is really the third ground of attack on the domestic enquiry based on the provisions contained in Standing Order 62(c) of the appellant -

Company with which the learned single Judge got convinced and held that the domestic enquiry conducted by an Advocate is not in compliance

with the requirement of Standing Order 62(c) and therefore, the same was incompetent and without jurisdiction and consequently, the entire

proceedings, which culminated in the award of the Labour Court challenged in the writ petition stood vitiated as illegal and required to be set aside.

It is in such circumstances, the final orders as set out in the earlier portion of this order came to be passed remitting the matter to the Labour Court

on the terms specified therein, to the extent indicated by the learned single Judge cannot be passed. It may also be pointed out at this stage that in

paragraph 14 of the order, the learned single Judge observed that since he is remanding the matter to the Labqur Court to enable the parties to

adduce evidence with regard to the charges framed against the petitioner, the nature of the order that has to be passed in this regard will depend

upon the ultimate outcome of the proceedings before the Labour Court on the basis of the evidence that may be let in and consequently, the

question of whether the workers are entitled to the entire wages from the date of dismissal till the date of final award of the Labour Court was also

left open to be decided by the Labour Court at the time of passing of final award. In taking a view on the scope of Standing Order 62(c), strong

reliance has been placed by the learned single Judge on the decision of a learned singe Judge reported in (Desh Raj Gupta Vs. Industrial Tribunal

IV, U.P., Lucknow and another, wherein construing a similar Standing Order, it was held that the domestic enquiry in the teeth of the Standing

Order of the nature could not be got held through an Advocate and therefore, the enquiry conducted by him was illegal. Hence, the above appeal,

at the instance of the management.

7. Mr. N. Balasurbamaniam, learned counsel appearing for the appellant - Management vehemently contended that the decision which was relied

upon by the learned single Judge was reversed by a Division Bench of Rajasthan High Court (Jaipur Bench) in Appeal (Writ) No. 77 of 1990

dated April 15, 1991 and that, therefore, the very basis of the order of the learned single Judge in so far as it held against the appellant-

management lost its ground and that the order of the learned single Judge is liable to be set aside. The learned counsel for the appellant invited our

attention to the decision of the Division Bench of Rajasthan High Court reversing the decision in Desh Raj Gupta's case (supra).

8. In answering the above claim of the appellant-management, Mr. K. Chandru, learned Senior Counsel appearing for respondents 2 to 4 placed

reliance upon the decision of the Apex Court in The Workmen Employed in B and C Mills, Madras Vs. The Management of B and C Mills,

Madras, wherein a similar Standing Order came up for consideration, to contend that though he may not be in a position to justify the extreme view

taken by the learned single Judge that a lawyer could not have been appointed within the framework of Standing Order 62(c), having regard to the

law laid down by the Supreme Court in the decision in B & C Mills' case (supra) the enquiry Officer appointed could have only recorded the

evidence and gathered the materials placed before him without giving any finding on the guilt of the worker concerned and placed all the materials

before the authority, which could take action within the meaning of Standing Order 62(c) and inasmuch as in the case on hand, the second show

cause notice issued on October 30, 1980, copies of which have been filed at the time of hearing of the writ petition, disclosed that the management

has acted only on the finding of the enquiry officer, namely, the advocate appointed in this case and therefore, in terms of the principles laid down

by the Apex Court in B & C Mills' case (supra), the order of dismissal stood vitiated. To substantiate his claim, the learned Senior Counsel for the

respondents pointed out the recitals in the preamble portion of the second show cause notice, wherein it is stated that in the domestic enquiry

conducted by the enquiry officer on the charges levelled against the workers, the enquiry has found the workers guilty and that the finding recorded

by the enquiry officer has been accepted by the management. The learned Senior Counsel for the respondents also placed reliance upon an

unreported decision on a Division Bench judgment of this Court dated November 13, 1979 in W.A. No. 170 of 1978, wherein the principles laid

down in B & C Mills" case (supra) have been applied.

8-A. We have carefully considered the submissions of the learned counsel appearing on either side as to the main ground on which the learned

single Judge was pleased to allow the writ petition on the terms earlier noticed in the judgment. The apex Court in B & C Mills" case (1970-I-

LLJ-26) (supra), construed a similar Standing Order to enable the enquiry officer other than the one specified in the order itself, but acting under

the directions of the management, to only collect the materials and place the proceedings before the competent authority to arrive at a decision on

the merits of the charges and the guilt of the workmen concerned. In the words of the Apex Court, the legal position has been expressed as

follows:

It was the mill-manager who furnished the charge sheet to the workman under Ex.M.7 charging him with misconduct under Standing Order 13(d).

The Senior Labour Officer had been authorised by the mill-manager to collect the necessary materials. The Senior Labour Officer commenced the

proceedings on October 21, 1965 and, after drawing the attention of the workman concerned to the charge sheet and his reply, asked him

whether he was pleading guilty or not guilty. On the workman pleading not guilty the witnesses on the side of the management were examined. The

workman was given full opportunity to cross-examine the witnesses and, after those witnesses had been examined, and cross-examined, the

worker was asked to state whether he had anything further to say. Exhibit M.9 further shows that the Senior Labour Officer has stated that he will

place the proceedings before ""the mill manager who will send for the worker and give his decision. When the secretary of the staff union later on

made a representation that the extent of the damage which could be attributed to the conduct of the worker was to be ascertained as that

information might have a bearing on the question of the punishment to be imposed. The Senior Labour Officer, in view of this representation, again

summoned the worker and placed before him the particulars regarding the

quantum of damage. The worker indicated that he did not wish to examine the assistant in the finished warehouse from whom the particulars had been collected. Finally the Labour Officer has stated that the mill manager would look into the evidence and given his decision. It will, therefore, be seen that excepting collecting the necessary materials and placing them before the mill-manager for the purpose of enabling the latter, who is the authority to impose a punishment under the Standing Order, to come to a conclusion regarding the guilt or otherwise of the workers, the Senior Labour Officer had not expressed an opinion regarding the "merits of the case. That is as it should be in view of the limited function that the Senior Labour Officer was discharging".

It is the above passage, which weighed with the Division Bench also, which dealt with W. A. No. 170 of 1978 in taking a similar view.

9. The Division Bench of Rajasthan High Court though reversed the judgment of the learned single Judge of the said High Court, in *Capstan*

Meters (India) Ltd. Vs. Judge, Labour Court and Others, on which reliance has been placed by the learned single Judge to sustain the challenge

made at the instance of the workers, has not considered the limited nature of the role which alone could be played by the enquiry officer to collect

the materials as a delegate of the management: On going through the decision of the Division Bench of Rajasthan High Court, we find that the

Division Bench confined its decision to the question as to whether the Standing Order providing for holding any enquiry by an officer/ officers

appointed for the purpose to take within its fold the appointment of an Advocate as enquiry officer only and did not further consider as to the

extent upto which he can play his role within the meaning of the Standing Order. That exercise, in our view, has been specifically undertaken by the

Apex Court in the decision in *B & C Mills*" case (supra), and by the Division Bench in W.A. No. 170 of 1978. In view of the above,

notwithstanding the decision, of the Division Bench of the Rajasthan High Court reversing the judgment of the learned single Judge, though we

cannot approve of the broad proposition laid down by the learned single Judge in this case that an Advocate could not have been appointed within

the scope of Standing Order 62(c), applying the principles laid down by the Supreme Court in the decision in *B & C Mills*" case (supra), and that

a Division Bench of this Court in W.A. No. 170 of 1978, we hold that the enquiry officer could not have recorded his finding on the guilt of the workmen and the said finding could not have been adopted and accepted and acted upon by the management to proceed further in this case. The invalidity and irregularity pointed out in this case by the learned single Judge, in our view, will continue to exist, though in a varied form, but sufficient to the extent to vitiate the proceedings culminating in the order of dismissal and therefore, we are of the view that there is no need to interfere with the order of remand passed by the learned single Judge. In view of our conclusion as above, we are not deciding the other points raised by the learned counsel on either side. The writ appeal, therefore, fails and shall stand dismissed. There will be no order as to costs.