
(1997) 11 MAD CK 0141

In the Madras High Court

Case No : Writ Petition No. 14387 of 1988

Management of Thanjavur Textiles Ltd.

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 18-11-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1998) 3 LLJ 1285

Hon'ble Judges : Rengasamy, J

Bench : Single Bench

Advocate : N. Balasubramanian, for the Appellant; D. Hariparanthaman, for the Respondent

Final Decision : Dismissed

Judgement

Rengasamy, J.—This writ petition for the issue of writ of certiorari has been filed to quash the award passed in I.D. No.42 of 1982, dated March 30, 1988, and the common order passed in I.A. Nos. 952 and 1167 of 1987 in I.D. No. 42 of 1982, dated March 25, 1988, by the first respondent, the Presiding Officer, 1st Additional Labour Court, Madras.

2. The facts, as narrated in the affidavit of the petitioner, in brief, are as follows:

The second respondent, who was working under the petitioner, which is a textile mill in Thanjavur, on March 29, 1981, had refused to obey the directions of the supervisor of the mill to work in another section and he also refused to leave the mill. Therefore, a charge memo was issued to the second respondent on March 30, 1981, for which an enquiry was conducted by the Personnel Officer of the company. On the side of the management, three witnesses were examined. Before the examination of the second witness for the management, the second respondent wanted to recall the first witness without assigning any reasons. Therefore, the enquiry officer refused to recall the witness and thereafter, the other two witnesses were fully examined and also cross-examined by the second

respondent. The enquiry Officer gave his findings holding that the second respondent was guilty of all the charges alleged against him and, therefore, the management had dismissed him from service by their order dated May 5, 1981, with effect from March 29, 1981. The second respondent raised an industrial dispute in I.D. No. 42 of 1982, which was referred for adjudication before the first respondent, 1st Additional Labour Court, Madras. The first respondent framed the issue on the preliminary point whether the enquiry conducted by the Personnel Officer of the company against the workman was fair and proper for the reason that the first witness of the management was not permitted to be recalled, the Labour Court has found that the enquiry was not fair and it was defective. The matter was thereafter posted for further hearing on July 28, 1987. In view of the preliminary order, the management filed LA. No. 952 of 1987 contending that the first witness, who was examined on the side of the management, died on October 3, 1985, and, therefore, the Labour Court could rely upon the evidence of the other two witnesses recorded by the enquiry officer. The second respondent-workman filed I.A. No. 1167 of 1986 to reinstate him in service as the enquiry conducted by the Personnel Officer was not fair. The learned Presiding Officer of the 1st Additional Labour Court has refused to reappraise the evidence of M.Ws.-2 and 3, the witnesses examined before the domestic enquiry, and he took the view that their evidence has to be eschewed as the enquiry was found defective and as no evidence was let in before him, he allowed the application of the second respondent-workman, viz., I.A. No. 1167 of 1987 ordering for the reinstatement of the workman whereas he : dismissed I.A. No. 952 of 1987 refusing to reappraise the evidence. In view of these findings, the management has filed this writ petition to quash the above orders.

3. The short question that has come up for consideration is whether the first respondent Tribunal is entitled to eschew the evidence recorded in the domestic enquiry and ignore the same for the reason that the enquiry was found unfair and defective and call for fresh evidence from the management to adjudicate upon the dispute.

4. The first respondent, when I.D. No. 42 of 1982 was referred for adjudication, has found in the preliminary question that as the enquiry officer did not recall the first witness examined on the side of the management for further cross-examination, the enquiry was not fair and it was defective. This preliminary award is dated July 3, 1987. Thereafter, the Tribunal called upon the parties to produce the fresh evidence to go into the question with regard to the alleged misconduct on the part of the workman and, therefore, the matter was adjourned to July 28, 1987. It is not in dispute that the management was given opportunity to produce evidence before the, Tribunal to substantiate their allegation and support the order of dismissal of the workman. However, the management was not inclined to examine any witness on their side but had filed I.A. No. 952 of 1987 stating that the first witness examined on the side of the management by name Ramiah had expired oh October 3, 1985, and as other two witnesses, M.Ws.-2 and 3, were fully cross-examined by the workman and

nothing was alleged in the procedure of examining those witnesses, their evidence in the domestic enquiry is sufficient to prove the charges against the workman and, therefore, the Tribunal might reappraise the evidence of those two witnesses and decide the charges. Therefore, the management had refused to let in evidence afresh before the Tribunal to substantiate the allegation of misconduct on the part of the second respondent workman. It is only in this context that the first respondent Tribunal has held that as the domestic enquiry itself was found to be defective and unfair, there is no question of reappraising the evidence of M.W.-2 and M. W.-3 recorded by the enquiry officer and the entire evidence recorded in the domestic enquiry has to be eschewed and as there was no other evidence placed before the Tribunal by the management, the Tribunal has no other option except to hold that the alleged misconduct of the workman has not been proved and, therefore, the Tribunal held that the workman has to be reinstated with back-wages.

5. Mr. N. Balasubramanian, learned counsel for the petitioner, contented that Section 11-A of the Industrial Disputes Act has been inserted in the Industrial Disputes Act on December 15, 1971, to make it obligatory on the part of the Labour Courts, Tribunals and National Tribunals to rely upon only the materials on record before such Tribunals and the Courts have interpreted the materials on record are not only the evidence placed before the Tribunals but also the evidence recorded before the enquiry officers and, therefore, when the evidence of M.Ws.-2 and 3 recorded in the domestic enquiry is a material, which was available before the first respondent, the first respondent ought not to have ignored this evidence as if it has been diluted on account of the finding that the domestic enquiry was unfair and when the evidence of M.Ws.-2 and 3 was very much available before the first respondent, the first respondent was bound to adjudicate upon the materials placed before it and, therefore, eschewing the evidence of M.Ws.2 and 3 by refusing to reappraise the evidence of those two witnesses, the first respondent Tribunal has failed to properly adjudicate upon the dispute on the wrong finding that there was no material placed before it for adjudication. In this connection, Mr. Balasubramanian, learned counsel for the petitioner relied upon the decision of the Apex Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, Section 11-A of the Industrial Disputes Act empowers the Tribunals to set aside the order of discharge or dismissal by its award if it was not satisfied with the domestic enquiry and also direct for reinstatement of the workman. As it stood originally, if the enquiry was conducted properly and it was fair and order of dismissal was passed, the Tribunal had no powers to interfere with the punishment imposed by the management. So this Section was introduced empowering the Tribunal to interfere with the punishment also. The proviso to this Section reads that the Tribunal shall rely upon only the materials on record and shall not take any fresh evidence in relation to the matter. The Apex Court, in the above decision, has interpreted that the expression "material on record" in the proviso, refers to (1) evidence taken by the management at the enquiry, or

(2) in addition to the above evidence, any further evidence let in before the Tribunal, or (3) the evidence placed before the Tribunal for the first time in support of the action taken by an employer as well as the evidence adduced by the workman contra. In view of this position taken by the Apex Court that the material on record mentioned in Section 11-A of the Act includes the evidence let in by the management at the time of the domestic enquiry, learned counsel would contend that the first respondent has erred in eschewing the evidence of M.Ws .-2 and 3 though it was very much available before the first respondent. Learned counsel relied upon the decision of the Kerala High Court in Idukki District Estate Workers" Union Vs. Labour Court and Another, . In that decision also, relying upon the decision of the Apex Court referred supra, the Kerala High Court has held that the finding that the domestic enquiry was found to be vitiated, it will not have the effect of obliterating the evidence recorded in the domestic enquiry. Learned counsel for the petitioner refers to the view taken by this Court in W.P. No. 3852 of 1984, dated November 2, 1992, and also W.P No. 10869 of 1987, dated September 5, 1996. In W.P. No. 3852 of 1994 this Court has relied upon the decision of the Kerala High Court in Idduki District Estate Workers" Union v. Labour Court concurring with the view of the Kerala High Court and has held that the evidence recorded in the, domestic enquiry also forms part of the evidence before the Tribunal. In the latter decision of this Court in W.P. No. 10869 of 1987, this Court has relied upon the decision of the Apex Court in Workmen of Firestone Tyre and Rubber Co. of India P Ltd. v. Firestone Tyre and Rubber Co. of India P. Ltd., (supra). But the contra view of the other High Courts and the view taken by the Supreme Court in other matters, were not brought to the notice of this Court while disposing of these two writ petitions. Therefore, though this Court has taken a view in the two writ petitions that the evidence before the enquiry officer also will be the evidence before the Tribunal even if the enquiry was found to be unfair, it is my duty to refer to the divergent views of the other High Courts and the Apex Court.

6. The Gujarat High Court in Shantilal Chandulal Shah Vs. Industrial Court, Ahmedabad and Another, , the Karnataka High Court in Radio and Electricals Mfg. Co. Ltd. Vs. Industrial Tribunal and Others, the Bombay High Court in Vinayak Bhagwan Shetye Vs. M/s Kismet Pvt. Ltd. and another, , and the Calcutta High Court in The Workmen of Food Corporation of India and Others Vs. Union of India (UOI) and Others, have taken the view that if the Tribunal has found that the domestic enquiry conducted by the management was found to unfair and defective, the evidence recorded by the enquiry officer cannot be looked into and fresh evidence has to be adduced before the Tribunal if the management wants to prove the charges against the workman.

The Bench of the Gujarat High Court in Shantilal Chandulal Shah Vs. Industrial Court, Ahmedabad and Another, , observes at p. 253 :

"Now, if the enquiry was held to be vitiated on the ground that it was conducted in violation of the rules of natural justice and yet if the evidence collected in such

an inquiry was to be taken into consideration, it would defeat the very purpose of providing that an inquiry held by a domestic Tribunal can be conducted in accordance with the principles of natural justice. The learned member, therefore, in view of his own finding, that the inquiry was vitiated as the petitioner had no reasonable opportunity to cross-examination the three workers whose previous statements were not made available to him, should not have taken into consideration that very evidence...."

7. The Karnataka High Court in *Radio and Electricals Mfg. Co. Ltd. v. Industrial Tribunal*, (supra) expresses its view in the following words at p. 136 :

"In my opinion, when the domestic enquiry is held invalid and the Tribunal decides to record evidence before it both the parties should adduce evidence afresh before the Tribunal and the Tribunal cannot rely on the evidence in favour of any party which was adduced in the very domestic enquiry which is held invalid."

With the same breathe, the Bombay High Court in *Vinayak Bhagwan Shethi v. Kismat P. Ltd.*, (supra) also expressed its view in the following words at pp 205-206 :

".... At this stage, Mr. John wanted to refer to the enquiry the statements recorded during the course of the enquiry by the enquiry officer. Such a course was clearly impermissible because the enquiry has been rejected as not fair and once the enquiry has been rejected and the employer has been given the opportunity to prove the misconduct by adducing independent evidence before the Labour Court, the matter before the Labour Court would have to be judged on the basis of such evidence as was adduced before the Labour..."

8. Apart from these views of the various High Courts, the Apex Court in *P.H. Kalyani Vs. Air France Calcutta*, has observed at p. 683:

"If the enquiry is defective for any reason, the Labour Court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified..."

This view otherwise directs that when the enquiry was found to be unfair or defective, the Tribunal should go only into the evidence adduced before it. So when the enquiry is found to be defective, it is for the management to adduce evidence before the Tribunal, if it wants to sustain the punishment imposed by the management. The Apex Court again in *K.N. Baruah v. Management of Bulda Beta Tea Estate*, 1967 15 FLR SC 40, has so categorically expressed its view as follows :

"It also follows from these observations that if the domestic enquiry is conducted in violation of the principles of natural justice, evidence must be adduced before the Tribunal by the employer to obtain the approval of the Tribunal to the dismissal order passed by it. This evidence must be adduced in the manner evidence is normally adduced before the Tribunal, i.e., witnesses must be

examined before it. Unless the parties otherwise agree, and the Tribunal assents to this, it is not the proper way to tender the record of evidence led before the domestic enquiry and ask the Tribunal to treat it as evidence before it."

This view of the Supreme Court bans the Tribunals to look into the evidence recorded in the domestic enquiry whenever the domestic enquiry is found to be defective. In *Mysore Steel Works v. Jitendra Chandra Kar*, (1971) 1 LLJ 543 also the Supreme Court again repeats:

"If the Tribunal, on the other hand, finds that the enquiry is defective for any reason, it would have to consider for itself on the evidence adduced before it whether the dismissal was justified."

9. The Apex Court has referred to the decision in *Kalyani v. Air France*, (supra) and holds that when the domestic enquiry is found to be defective, the witnesses must be examined before the Tribunal and not merely by tendering evidence led before the domestic enquiry, unless the parties agree and the Tribunal gives its assent to such proceedings.

From the above ratio, it is very clear that whenever the domestic enquiry is found to be unfair, the evidence led before the domestic enquiry can be looked into by the Tribunal only, if both sides agree for it and the Tribunal also gives its assent. In *State Bank of India Vs. R.K. Jain and Others*, , the Supreme Court has given the procedure to be followed when the domestic enquiry was found to be defective or unfair, and has held that in such circumstances, the management be given an opportunity to adduce independent evidence before it to establish the charge against the workman. Therefore, the consistent view of the Apex Court and the other High Courts is that once if the enquiry is found to be defective, the evidence recorded in that domestic enquiry cannot be looked into.

10. Mr. Hariparanthaman, learned counsel for the second respondent, cited the views of the author of *Departmental Enquiries*, B.R. Ghaiye, in page 1402, which are as follows :

"(f) If the enquiry is held to be invalid then the enquiry records cannot be used against delinquent.--When the enquiry is set aside by the Industrial Tribunal or the Labour Court as violating the principles of natural justice, then it cannot be contended that the statements of witnesses recorded during departmental enquiry should have been considered by the Industrial Tribunal, because when the whole enquiry is set aside, a part of the proceedings cannot be considered. Even if some admissions are made during enquiry those admissions cannot be looked into by the Industrial Tribunal, to show that the charges were established. If there is independent evidence before the Industrial Tribunal or the Labour Court and the decision is based on that evidence then the position is different. If, however, evidence led before the Magistrate was treated as evidence before the Industrial Tribunal, the Industrial Tribunal had a right to consider the same and to express its own views, on that evidence and it was in no way bound to see it, in the light of the Sessions Judge's views. When the domestic enquiry is held to

be invalid and fresh evidence is led before the Tribunal, then the Tribunal cannot rely on the evidence recorded during enquiry proceedings except with the consent of both the parties..."

11. Mr. Balasubramanian, learned counsel for the petitioner, contended that as Section 11-A of the Act was introduced only in the year 1971, the Supreme Court had taken the view prior to 1971, that the evidence recorded in the domestic enquiry cannot be looked into, but as the proviso to Section 11-A has been interpreted by the Apex Court in *Workmen of Firestone Tyre and Rubber Co. of India P. Ltd. v. Management*, (supra) these decisions prior to the view of the Apex Court in this case, cannot be relied upon. No doubt in *Workmen of Firestone Tyre and Rubber Co of India P. Ltd's case*, the Supreme Court has held that the material on record mentioned in the proviso to Section 11-A of the Industrial Disputes Act would include the evidence taken by the management at the enquiry and the proceedings of the enquiry. But it is not the contention of the second respondent that the evidence led before the domestic enquiry should be completely eschewed. When the domestic enquiry is found to be valid and proper, naturally, the Tribunal has to look into only that evidence to adjudicate upon the charges framed against the workman. But only when the enquiry was found to be unfair and defective, the Apex Court in the decision cited above has held that the evidence recorded in the domestic enquiry cannot be looked into. However, it has also indicated that if both parties agree to reply upon evidence and the Tribunal also gives assent for it, the evidence led before the domestic enquiry can be acted upon. Therefore, this view of the Apex Court taken in *Mysore Steel Works v. Jitendra Chandra Kar* (supra), *State Bank of India v. R. K. Jain* (supra), and *K. N. Baruah v. Management of Bulda Beta* (supra), is not inconsistent to the view taken in *Workmen of Firestone Tyre and Rubber Co. of India P. Ltd. v. Management* (supra).

Mr. Balasubramanian, learned counsel for the petitioner contended that of the three witnesses examined on the side of the management in the domestic enquiry, the first witness is dead and his evidence alone was challenged by the workman on the ground that he was not given opportunity to recall that witness but the evidence of the other witnesses, namely, M.-Ws.-2 and 3, was not questioned by the workman as he had thoroughly cross-examined the witnesses and, therefore, there cannot be any objection to rely upon the evidence of those witnesses recorded in the domestic enquiry. The Courts have held that when the domestic enquiry itself was found to be defective or unfair, it will amount to no enquiry at all *Shambu Nath v. Bank of Baroda*, (1998) II LLJ 415(SC). Hence, it cannot be treated that the evidence of M.-Ws.-2 and 3 was recorded in the proper manner when it has to be treated that there was no such enquiry. Hence, the management cannot contend that the evidence of the witnesses recorded in the domestic enquiry should have been relied upon by the Tribunal.

As mentioned above, it is not the contention of the management that they were not given opportunity to adduce evidence before the Tribunal after the

preliminary finding as to the validity of the domestic enquiry. The Tribunal has observed that the management was harping to reappraise the evidence of M.-Ws.-2 and 3 inspite of the opportunity given to them to adduce their evidence and they did not choose to produce any evidence to prove the charges independently before the Tribunal. Therefore, there was no proof before the Tribunal to substantiate the charge against Respondent No. 2-workman and the Tribunal has no other go except to allow the petition of the second Respondent I. A. No. 1167 of 1988, ordering for the reinstatement of the second respondent. It cannot be stated that the order passed by the Tribunal is illegal or erroneous,

12. Taking into consideration to all the circumstances, I find that the order passed by the first respondent-Tribunal is perfectly correct and needs no interference by this Court. Hence, this petition is dismissed. No costs.