
(1993) 01 BOM CK 0026
In the Bombay High Court
Case No : L.P.A. No. 71 of 1992

Maniram and others

APPELLANT

Vs

Richardson and Cruddas (1972) Ltd.

RESPONDENT

Date of Decision : 28-01-1993

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78, 79
Constitution of India, 1950 — Article 14, 21

Citation : (1994) 1 BomCR 593 : (1993) 95 BOMLR 285 : (1993) 2 LLJ 852

Hon'ble Judges : M.B. Ghodeswar, J;H.D. Patel, J

Bench : Division Bench

Advocate : S.D. Thakur, for the Appellant; R. Pillai, for the Respondent

Judgement

H.D. Patel, J.—The appellants were in employment of the respondent Company since the year 1968-69 and belonged to the security staff. They are dismissed from service by the Company vide order dated July 1, 1986 with immediate effect. The order of dismissal was challenged by the appellants under Sections 78 and 79 of the Bombay Industrial Relations Act. The Labour Court dismissed the application. On appeal being preferred to the Industrial Court, it came to be allowed. The order of dismissal issued to each of the appellants was held to be illegal, improper and the action was held to be an illegal charge. As a result thereof, each of the appellants was ordered to be reinstated in service with continuity of employment and payment of back wages. The order passed by the Industrial Court was challenged by the respondent Company in Writ Petition No. 53 of 1992. Vide order dated April 6, 1992 the order passed by the Industrial Court was set aside and the writ petition came to be allowed. It is against the said order this Letters Patents Appeal is filed.

2. Though the appellants were engaged earlier, they were allotted quarters in the year 1974. The allotment was subject to conditions mentioned in letter dated July 31, 1974. It was open for the management to cancel the order allotment without assigning any reason. In the year 1984 the respondent Company issued

notices to the appellants to vacate the quarters. The reason for calling upon the appellants to vacate the quarters was mentioned in their memorandum dated May 20, 1984. It was mentioned therein that the land over which the temporary quarters will built is required by the respondent Company for expanding its activities and these quarters are required to be demolished. One month's time was given for the purpose. Time was, however, extended upto Diwali of that year upon their request on humanitarian grounds. The appellants failed to vacate and hence power and water supply was discontinued. Upon representation by the Elected Representatives of Employees to restore the power and water supply connections and permit them to occupy the premises till April 30, 1985 on account of the education of the children, the request was allowed by the Company. It was so because the Elected Representatives had given an undertaking that they take the responsibility to get the quarters vacated. Even then the quarters were not vacated. The appellants were charge-sheeted on May 20, 1985 under Clause 22 of the Model Standing Orders of wilful insubordination or disobedience of any lawful and reasonable order of the superior and also habitual breach of any law, rules or Standing Orders applicable to the establishment. An enquiry was held and upon the misconduct having been established, the appellants were dismissed from service.

3. The first ground of attack was that the charge-sheet itself was illegal and consequently the order of dismissal, because the facts constituting the misconduct are outside the scope of Standing Orders. The submission was, as we have understood, that failure or refusal to vacate the residential quarters by an employee is not described as a misconduct under the Standing Orders. In other words, the refusal to vacate the residential quarters by an employee is not described as a misconduct under the Standing Orders. In other words, the refusal to vacate the residential quarters cannot be read as an act which constitutes misconduct in Clause 22 of the Standing Orders. Therefore, the respondent Company could not have issued a charge-sheet on that ground. The contention is totally misconceived and baseless. This is clear from the fact that even the learned Industrial Court, who granted relief to the appellants, did not agree with the proposition sought to be laid. The refusal to vacate the quarters when called upon to do so would ultimately result in the act of omission as described in the Standing Orders and, that is, insubordination or disobedience of the reasonable and lawful orders of the employers. The fact constituting the misconduct cannot be expected to be found in the Standing Orders. It is not in dispute that the appellants are occupying the residential quarters belonging to the Company. They were asked to vacate the quarters by notice dated May 26, 1984 followed by two other notices dated July 15, 1984 and April 8, 1985. The Company had disclosed the reason in their very first notice that the site is required for expansion activities. Time was also extend upon request being made and the assurance given from time to time. It can never be said that the orders to vacate were unreasonable or unlawful. The persistent and obstinate behavior of the appellants in not obeying the orders clearly shows the wilful intention on their

part. We cannot, therefore, hold that the misconduct is beyond the purview of the Standing Orders. Needless to mention that the various cases cited have been exhaustively considered by the Industrial Court before drawing the conclusions.

4. It is not in dispute that the respondent Company is a Government of India Undertaking and the provision of Public Premises (Eviction of Unauthorised Occupants) Act, (hereinafter referred to as "The P.P. Act") applied. A bare reading of the provisions in the said Act will show that whenever it is necessary to get the public premises vacated, the procedure laid down in the P.P. Act is to be followed. It was hence urged on behalf of the appellants that the respondent Company ought to have initially taken recourse to the P.P. Act instead of charge-sheeting the appellants and initiating disciplinary proceedings against them. In this context, reliance was heavily placed on Clause 29 of the Model Standing Orders which provides that nothing contained in the Standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under an agreement or contract of service, custom, usage of award applicable to the Undertaking. It is rather surprising as to how the said Clause which is a saving provision, could come in aid of the appellants. In order that the law in force must prevail against the Model Standing Orders, the appellants must show that the particular Standing Order is in derogation of the law in force. No such derogation has been pointed out to us for holding that the respondent Company should first initiate an action under the P.P. Act instead of charge-sheeting the appellants. We find no force in the contention raised on behalf of the appellants.

5. It was then vehemently canvassed that the respondent Company followed the procedure prescribed under the Model Standing Orders for getting the unauthorised occupants of the quarter evicted which procedure is quite onerous, drastic, prejudicial and arbitrary vis-a-vis the P.P. Act and hence, action of the respondent Company is violative of Articles 14 and 21 of the Constitution. One of the reasons attributed for supporting this contention was that Model Standing Orders are not at all meant for getting the unauthorised occupants evicted from public premises. Reliance for the purpose was placed on the decision of Central Administrative Tribunal, Allahabad in the case of Hemandranath v. Union of India & Ors. 1991 (2) SLJ 479 (CAT). In our view, the submissions have no force whatsoever and must be rejected.

6. The submission advanced is based on a wrong premise that the two different procedures were available to the respondent Company for evicting the unauthorised occupants from the premises, one of which is substantially more drastic and prejudicial than the other. One of the two procedures as envisaged by the appellants is charge-sheeting the employees and the other was the procedure prescribed under the P.P. Act. We cannot agree that proceeding against an employee under the Model Standing Order is a procedure parallel to the one prescribed and to be followed in P.P. Act. As held in *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, , the two

procedure must operate in the same field, without any guiding policy or principle from the legislation as to when one or the other procedure shall be followed. It is in this backdrop that the law providing for more drastic and prejudicial procedure is liable to be condemned as discriminatory and void. In the present case, the two procedures on which the appellants rely operates in different fields. One of them, which is followed, relates to employer-employee relationship and the other provides for a speedy and a summary procedure to evict unauthorised occupants from public premises and for realising arrears of rent and damages. The main purpose for enacting the Act is to avoid complicated procedure of ordinary Civil Court. Since the two procedures are operating in different fields, it is difficult for us to accept that the respondent Company should not have followed the procedure of charge-sheeting the employees only because eviction of the appellants was possible under the P.P. Act.

7. It would be appropriate at this juncture to deal with the case of Hemandranath (cited supra) on which the Counsel for the appellants heavily relied. Even though the said decision has no binding value, enlightenment can be from any source. That decision pertains to the order of suspension on the ground of unauthorised occupation of Government quarter and the Appellate Authority's order to refuse to hear appeal against the order of suspension till the quarter was vacated. The order impugned in that case did not even disclose whether any disciplinary proceedings were in contemplation. The observations are that the suspension cannot be permitted as short-cut for accomplishing eviction for which recourse can be had under the P.P. Act. Thus, the ratio of the decision has no application to the matter at hand. No force or compulsion is used by the respondent Company to secure the eviction of the appellants.

8. It may not be out of place to mention here that by persistent and obstinate attitude of the appellants, the respondent Company is prevented from expanding its activities. The quarters are situated in one corner of the compound in which the factory is situated. It is not open for the employees to question the expansion activities. unless it is a mala fide attempt to oust the employees. The very fact that the appellants initially agreed to vacate the quarters does indicate that there was a genuine desire on the part of the respondent Company to expand the activities. This is clear from the fact that the Elected Representatives of the employees, who functioned in place of Representative Union, did not oppose the move of the respondent company. If in the circumstances the disciplinary action was resorted by the Company, they were, in our opinion, thoroughly justified.

9. It was next urged on behalf of the appellants that the management failed to supply the copies of the findings given by the Enquiry Officer before effecting the dismissal. The factual position as emerging from record is that the copy of the findings was supplied long with the order of dismissal. The non-supply of the copy of the findings before dismissal was effected violated the principles of natural justice and even on this ground the order of dismissal was liable to be set

aside. We do not think that even this submission carries any weight. This is clear from the decision of this Court in Ravindra Umesh Gokarn and Others Vs. Guest Keen Williams Ltd. and Others, . It is observed in that case that even in the case of Union of India and others Vs. Mohd. Ramzan Khan, it has been laid down that the proposition of law as contended on behalf of the appellants, it is made clear in that very judgment that the proposition was prospective in operation and that date is November 20, 1990. Therefore, the present orders of punishment, which were imposed much prior to that date cannot be disturbed on this ground. In this view of the matter, we are deciding the point urged on behalf of the respondent Company whether providing copy of the findings before dismissal is effected is a must, though such a procedure is not contemplated in the Standing Orders.

10. It was a next submitted that the Disciplinary Authority failed to consider the past record of service before effecting dismissal and, therefore, the order of dismissal stands vitiated. We have noted that though the Disciplinary Authority has considered the extenuating and the aggravating circumstances, the previous record is not taken into account. However, the behaviour of the appellants in relation to the misconduct itself is a glaring past record which can be taken into consideration. The appellants were called upon to vacate to quarters by letter dated April 16, 1984. However, they failed to vacate and the commission of misconduct is complete. In response to a representation made by the appellants for grant of time till Diwali of 1984 on the ground that it would be inconvenient to vacate the premises in rainy season, the request was granted upon their agreeing to vacate the premises as promised. But the assurance was not carried out. For the second time, the appellants disobeyed to comply with the order of the employer. Again on representation by the Elected Representatives of Employees, time came to be extended till April end, again on the assurance that appellants would vacate, the responsibility for which the Elected Representatives had taken. Still the premises were not vacated. It was then the charge-sheet was served and the enquiry held. The conduct clearly reveals not only the past record but also the aggravating circumstances. The misconduct, is still continuing and recurring. Therefore, to contend that this behaviour, which is nothing but past record, was not considered is a myth. Even otherwise, the misconduct proved against the appellants was so grave that by itself was sufficient to impose the penalty of dismissal irrespective of the fact what the other past record may be.

11. One more objection, which can well be described as technical, was raised on behalf of the appellants. The objection was that the order of dismissal was passed after more than six months from the date the misconduct came to the notice of the employer. For this purpose, reliance was placed on Section 78(1)D(i) of the Bombay Industrial Relations Act. It is no doubt a requirement of the said Section that in case the court finds that the order of dismissal was passed for misconduct committed by the employee which came to the notice of the employer more than six months prior to the date of the order, reliefs as specified in that very Section could be granted. It is now well-settled that the provision on which reliance is placed is not mandatory and it is open for the

employer explain the delay. That delay is explained on behalf of the respondent Company that the misconduct committed by appellants was of a continuing and recurring type and it persisted till stay was granted by the District Judge in appeal preferred by them under the P.P. Act. We have also observed that the misconduct committed by the appellants was of a continuous and recurring nature and in this situation, the misconduct came to the notice of the employer every day even after issuance of the charge-sheet even beyond the order of dismissal. We hence cannot accept the contention that due to lapse of time the charge-sheet and the subsequent proceedings are vitiated thereby.

12. For the aforesaid reasons, we find no merits in the appeal and it is accordingly dismissed. In the circumstances of the case, the parties are directed to bear their respective costs.