

(1961) 03 SC CK 0063

In the Supreme Court Of India

Case No : Civil Appeal No. 121 Of 1960

M/S Brooke Bond India Private Ltd., Bangalore

APPELLANT

Vs

S. Subba Raman & anr

RESPONDENT

Date of Decision : 15-03-1961

Acts Referred:

<Industrial Disputes Act, 1947 — Section 33

Citation : (1961) 2 LLJ 417

Hon'ble Judges : K.N. Wanchoo, J;P.B. Gajendragadkar, J

Bench : Division Bench

Advocate : C.K. Daphtary, Janardhan Sharma

Judgement

1. This appeal by special leave arises from a dispute between the appellant and two of its workmen. The brief facts necessary for present purposes are these. The appellant framed charges against the two workmen involving gross negligence of duty and moral turpitude and two separate enquiries were held in the matter. The appellant came to the conclusion that the charges had been proved and the two employees should be dismissed. Thereafter it made two applications under Section 33 of the Industrial Disputes Act, No. 14 of 1947, for permission to dismiss the two workmen. These applications were heard by the Commissioner of Labour. He was well aware of the limits of his jurisdiction in dealing with an application under Section 33, for he himself says in the order that what a tribunal was concerned with in such cases was to ascertain if full and free opportunity had been given to an employee to present himself at the enquiry and to defend himself and that it was not the purpose of an enquiry under Section 33 to adjudicate upon any industrial dispute and all that had to be seen is whether the circumstances justify the lifting of the ban which is imposed on an employer by Section 33. Having said this the Commissioner of Labour held that the employees on the facts of this case were not given full and free opportunity to place their cases at the enquiry and therefore in the circumstances he was not prepared to grant the permission necessary under

Section 33. It is this view which is being challenged in the present appeal.

2. The first employee concerned is Subba Raman. It appears that on the date of enquiry he appeared before the Enquiry Officer with counsel and insisted that he should be allowed to be represented by counsel in the inquiry and that his counsel would cross-examine the witnesses and present his case. The Enquiry Officer refused this and thereupon Subba Raman withdrew from the enquiry. The enquiry officer then carried on the enquiry ex parte, examined a large number of witnesses and found the charges proved, with the result that it was decided to dismiss Subba Raman and ask for permission from the Commissioner of Labour.

4. The Commissioner of Labour has held that the refusal of the Enquiry Officer to permit counsel in one case and an outsider in the other was unjustified and therefore there was no full and fair enquiry into the charges against the two employees. He therefore refused to give the permission as prayed.

5. The matter is now concluded by the decision of this Court in *Kalindi v. Tata Locomotive and Engineering Co. Ltd.* [(1960) 3 SCR 407] . In that case it was held that-

"A workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union, though the employer in his discretion, can and may allow him to be so represented.... and it cannot be said that in any enquiry against a workman natural justice demands that he should be represented by a representative of his union."

6. In the present case the two employees even went further; one of them wanted to be represented through counsel while the other wanted to be represented through an outsider. Neither of them apparently wanted to be represented by somebody from the union. In view therefore of the decision in *Kalindi's case* [(1960) 3 SCR 407] we cannot agree that as a counsel or an outsider was not allowed to appear on behalf of the employees there was no fair or full enquiry in the case. The enquiry proceedings show that after the workmen withdrew from the enquiry the enquiry officer carried on the enquiry ex parte as he could not do otherwise and examined a large number of witnesses. Thereafter he recorded his conclusions and held the charges proved. In the circumstances there was nothing more that the Enquiry Officer could do and the conclusion of the Commissioner of Labour that the enquiry in the two cases was not full and fair must fail. In the circumstances this is a proper case in which the permission asked for should have been granted. We therefore allow the appeal, set aside the order of the Commissioner of Labour and grant the permission to the appellant under Section 33 of the Industrial Disputes Act to dismiss the two respondents. In the circumstances we pass no order as to costs.