

(2023) 03 BOM CK 0107
In the Bombay High Court
Case No : Writ Petition No.-7238 Of 2021

M/S Crane Process Flow Technologies Pvt. Ltd

APPELLANT

Vs

Amol V. Waghmale

RESPONDENT

Date of Decision : 29-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 136, 226
Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices
Act, 1971 — Section 44

Citation : (2023) 03 BOM CK 0107

Hon'ble Judges : N. J. Jamadar, J

Bench : Single Bench

Advocate : Kiran Bapat, Gaurav Gawande, Nitin A. Kulkarni

Final Decision : Dismissed

Judgement

N. J. Jamadar, J,

1) Rule. Rule made returnable forthwith and heard finally.

2) This Petition takes exception to a judgment and order passed by the learned Member Industrial Court, Satara in Revision Application (ULP) No. 4 of 2020, dated 11th June, 2021, whereby the Revision Application preferred by the petitioner- employer came to be dismissed upholding the judgment and award (part-1) dated 27th January, 2020, passed by the learned Presiding Officer, Labour Court in complaint (IDA) No.30 of 2018, preferred by the respondent-workman holding that the findings recorded by the Inquiry Officer in the Departmental Enquiry instituted against the respondent were perverse.

3) Background facts necessary for determination of this Petition can be summarized as under:-

(a) The petitioner is an engineering company. Respondent was appointed as a trainee operator with the petitioner on 13th November, 2009. Respondent was confirmed in service in the year 2011. Respondent was the president of the trade

union. On 18th April, 2017, the respondent allegedly entered into the Shop Floor of the factory premises without any authority, whilst he was not on duty. Respondent behaved in an indecent and disorderly manner. Respondent made the other workmen to stop the work on the pretext that a casual worker was employed to work in polymer lining cell. Respondent allegedly threatened Mr. Adsul, the production supervisor, with dire consequences, once the later came out of the factory premises.

(b) Upon a report being made, a show cause notice was issued to the respondent on 2nd May, 2017. Respondent gave explanation thereto on 4th May, 2017. A charge-sheet was served on the respondent on 11th May, 2017, alleging misconduct under Clauses 24-K, 24-L, 24-Q and 24-R of the Standing Orders applicable to the respondent. A written explanation thereto was submitted by respondent on 18th May, 2017.

4) During the course of Departmental Enquiry, the management examined two witnesses and respondent examined himself and three witnesses in his defence. After appraisal of the evidence and material, the Inquiry Officer returned the finding of guilt against the respondent and it was held that the respondent had committed misconduct within the meaning of Clauses 24-K, 24-L, 24-Q and 24-R of the Standing Order, vide report dated 26th December, 2017.

5) Respondent had initially lodged a complaint being complaint (ULP) 10 of 2018. In the said complaint, the petitioner stated that the respondent was dismissed from service. Contesting the fact that the dismissal order was served on the respondent and alleging that the respondent was prevented from resuming duty, the respondent preferred complaint (ULP) No.30 of 2018, alleging Unfair Labour Practices under Items No.1 (a), (b), (c), (d), (f) and (g) of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the Act, 1971").

6) The Labour Court after appraisal of the rival contentions and submissions canvassed across the bar, decided the preliminary issues by judgment and award (part-1) dated 27th January, 2020. It was held that the domestic enquiry was legal, fair and proper. However, the findings drawn by the Inquiry Officer were held to be perverse.

7) Being aggrieved the petitioner-employer invoked the revisional jurisdiction of the Industrial Court under Section 44 of the Act, 1971. The revisional Court was not persuaded to interfere with the findings recorded by the Labour Court. It was held, inter alia, that the petitioner had not examined independent witnesses though available and Inquiry Officer had not properly appraised the evidence and, therefore, the findings recorded by the Labour Court did not warrant any interference in exercise of limited revisional jurisdiction.

8) Being further aggrieved, the petitioner has invoked the writ jurisdiction of this Court.

9) I have heard Mr. Bapat, the learned Senior Counsel for the Petitioner and Mr. Kulkarni, the learned Counsel for the respondent at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record including the charge-sheet, inquiry report and the impugned judgment.

10) Mr. Bapat strenuously submitted that both the courts below fell in a manifest error in interfering with the findings arrived at by the Inquiry Officer as if the courts below were exercising appellate jurisdiction. In the process, the courts below, according to Mr. Bapat, misdirected themselves in reappreciating the evidence to arrive at a different finding.

11) Mr. Bapat further submitted that by a catena of decisions, it is well neigh settled that the Disciplinary Authority is a sole judge of facts. In a disciplinary inquiry, the strict and technical rules of evidence do not apply. Adequacy of evidence or for that matter the reliability of evidence, is an arena into which the Court/Tribunal can not enter into. Mr. Bapat thus submitted the Labour Court as well as Industrial Court have not kept in view the settled position of law in arriving at an erroneous conclusion that the findings recorded by Inquiry Officer are perverse.

12) To lend support to these submissions, Mr. Bapat placed reliance on the judgments of the Supreme Court in the cases of Deputy General Manager (Appellate Authority) and Others Vs. Ajai Kumar Shrivastava (2021) 2 SCC 612, B.C. Chaturvedi Vs. Union of India and Others (1995) 6 SCC 749, West Bokaro Colliery (TISCO LTD) Vs. Ram Pravesh Singh (2008) 3 SCC 729 and a judgment of this Court in the case of Siddheshwar Urban Co-op. Bank Ltd., Sillod Vs. Ganesh s/o Tejrao Bangale 2016 (2) Mh.L.J. 880 .

13) In contrast to this, Mr. Kulkarni would urge that the Courts below were fully justified in arriving at the conclusion that the findings recorded by Inquiry Officer were perverse. To arrive at the said finding, according to Mr. Kulkarni, the Courts below have not ventured into the exercise of reappreciation of evidence. Keeping themselves within the strict bounds of the judicial review, the Court below have found the findings recorded by the Inquiry Officer are such that no reasonable person could have arrived at the said findings.

14) Inviting attention of the Court to the relevant portions of the inquiry report and the statements of the witnesses, it was urged on behalf of the respondent that the findings recorded by the Courts below are not amenable to interference by this Court in exercise of writ jurisdiction.

15) I have given anxious consideration to the rival submissions. To begin with, it may be apposite to note that the gravamen of indictment against the respondent was that the respondent barged into the Shop Floor of the factory premises unauthorizedly, whilst he was not on duty, raked up quarrel with Mr. Adsul, (Management witness No. 1), the production supervisor, on the pretext that a casual worker was employed at polymer lining cell, made the co-workers to stop the work and threatened Mr. Adsul of dire consequences.

16) In the backdrop of the said indictment, the Inquiry Officer on the strength of the evidence of Mr. Sagar Adsul, (MW-1) and Mr. Balasaheb Pande, Value stream Manager (MW-2) was persuaded to hold that there was adequate evidence in proof of the aforesaid misconduct attributed to the respondent.

17) It would be contextually relevant to note that the Labour Court was persuaded to return a finding that the findings recorded by the Inquiry Officer were perverse primarily for two reasons. One, non-examination of two other persons, who were allegedly present at the time of the occurrence and two non-consideration of the evidence led by the respondent in his defence.

18) On a fair reading of the impugned judgment the later reason of not attaching due weight to the defence evidence seems to have weighed with the learned Presiding Officer, Labour Court more than the first one. The learned Member Industrial Court, in turn, also commented upon the non examination of the persons, who were the alleged witness to the occurrence, and went on to approve the approach and findings of the Labour Court. Whether the aforesaid approach of the Courts below is justifiable ?

19) Undoubtedly, the Departmental Enquiry proceedings stand on a different footing than a prosecution. Strict rules of evidence do not apply. Nor the technical rules of procedure govern the disciplinary proceedings. What is of salience is the fairness in action. Whether the Disciplinary Authority gave a fair treatment to the employee and offered a reasonable opportunity of hearing and whether the findings arrived at by the Inquiry/Disciplinary Authority are based on some evidence are the questions which are germane in exercise of judicial review.

20) A Court/Tribunal in exercise of power of judicial review is not free to re-appreciate and arrive at its own independent finding as an Appellate Court would do. It can interfere only when the disciplinary proceedings were conducted in violation of statutory rules governing the inquiry or principles of natural justice. Surely the Court/Tribunal is duty bound to interfere where the findings are arrived at by the Disciplinary Authority based on no evidence. Likewise, if the finding is such that no reasonable person could ever have arrived at such a finding rendering it perverse the Court/Tribunal would be justified in interfering with such findings.

21) These principles were illuminatingly postulated by Supreme Court in the case of State of Haryana and another Vs. Rattan Singh AIR 1977 SC 1512 . They read as under:-

"3. The principal ground on which the courts below have declared the termination bad is that none of the 11 passengers have been examined at the domestic enquiry. Secondly, it has been mentioned that there is a departmental instruction that checking inspectors should record the statements of passengers, which was not done in this case. The explanation of the State, as done out by the record, is that the inspector of the flying squad who had said that they had paid the fares but they declined to give such written statement. The third round which weighted

with the courts was, perhaps, that the co-conductor in the bus had supported with this evidence, the guiltlessness of the respondent.

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal. In conclusion, we do not think the courts below were right in over-turning the finding of the domestic tribunal."

22) In the case of B.C. Chaturvedi (supra) again a Three Judge Bench of the

Supreme Court enunciated the scope of judicial review in a disciplinary proceedings as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co- extensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

23) A profitable reference can also be made to a judgement of the Supreme Court in the case of *Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane* (2005) 3 SCC 254 , wherein it was observed as under:-

"9. From the above it is clear once a domestic tribunal based on evidence comes to a particular conclusion normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The

domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of Rattan Singh (supra) is not a condition precedent. We may herein note that the judgment of this Court in Rattan Singh's (supra) has since been followed by this Court in Devendra Swamy vs. Karnataka SRTC.

24) In a recent pronouncement in the case of Deputy General Manager (supra) after adverting to the previous pronouncements, the legal position was again reiterated as under:-

".....24. It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

.....

27. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.

28. The Constitutional Court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained....."

25) In the light of the aforesaid exposition of law, reverting to the facts of the case, the pivotal question that wrenches to the fore is whether findings recorded by the Inquiry Officer were so perverse as to justify interference by the Labour

Court/Industrial Court ? Perversity in findings may arise in a variety of ways. One, the finding is such that no reasonable person could on the basis of the material under consideration could have arrived at such a finding. Two, the finding is based on no evidence and is a matter of surmise or conjecture. Three, the finding is arrived at by ignoring the material/evidence which bears upon the determination of the question in controversy. Failure to give due weight to relevant material/evidence has the propensity to render the finding perverse.

26) In the case at hand, in the context of the indictment, the Inquiry Officer seems to have based the findings primarily on the evidence of Management's witness. If the entire context of the matter is kept in view then the conclusion arrived at by the Labour Court that the findings of the Inquiry Officer are perverse seems justifiable. There is material on record to show that at the time of the occurrence, the respondent was not on duty. An issue arose when the permanent employees of the petitioner noticed that a casual workman was entrusted the work in polymer lining cell in breach of the customary practice of entrusting such work to permanent employees only. The grievance raised by those workman was not immediately redressed. Those workers summoned the respondent, who was the then president of the trade union. Thereafter, an altercation ensued.

27) In the light of aforesaid sequence of events, the Inquiry Officer was enjoined to consider the evidence led by the respondent to the effect that the casual worker was indeed entrusted with the work with polymer lining cell and, therefore, there was a confrontation. In fact, Mr. Sainath Salunkhe, the casual worker in respect of the whose deputation in polymer lining cell the controversy arose, was examined by the respondent. Mr. Sainath Salunkhe (DW-3) in terms stated that on the day of occurrence, he was deputed by Mr. Adsul to perform production work in polymer lining cell. Nothing material could be elicited in the cross-examination of Mr. Salunkhe to discredit the aforesaid version.

28) The Inquiry Officer brushed aside the aforesaid evidence of Mr. Salunkhe on the ground that there was no evidence to show that Mr. Salunkhe actually worked on polymer lining cell and therefore it could not be established that Mr. Salunkhe was performing the duties of a permanent employee. Such finding is clearly against the weight of the record. This vitiated the entire approach of the Inquiry Officer.

29) In the circumstances, the Labour Court was within its rights in arriving at the conclusion that the findings of the Inquiry Officer were rendered perverse for not attaching due weight to the evidence led by the respondent. Though non - examination of a particular witness can not be a sole ground for interfering with the finding recorded by Disciplinary Authority, where there is other evidence which sustains the charge, yet, in the case at hand, the non consideration of the evidence led by the respondent is such a serious infirmity in the approach of the Inquiry Officer that the finding is rendered wholly perverse.

30) For the foregoing reasons, I am inclined to hold that no interference is warrant in exercise of extraordinary writ jurisdiction. The Petition, therefore, deserves to be dismissed.

Hence, the following order.

-:ORDER:-

1. The Petition stands dismissed with costs.
2. Rule discharged.