
(1960) 07 BOM CK 0012

In the Bombay High Court

Case No : Complaint (I.T.) No. 12 of 1960, in Reference (I.T.) No. 225 of 1959

Nagappa Balayya Madrasi

APPELLANT

Vs

Sangli City Municipality

RESPONDENT

Date of Decision : 11-07-1960

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 25F, 33, 33(1), 33(2)

Citation : (1960) 2 LLJ 455

Hon'ble Judges : P.D. Sawarkar, J

Bench : Single Bench

Judgement

1. This is a complaint under S. 33A of the Industrial Disputes Act, 1947. The contentions in the complaint are briefly as follows. There are two groups of scavengers in the Sangli City Municipality. Most of the scavengers who come from the south are members of one particular union which is favoured by a councillor belonging to the majority party in the municipality. The complainant, though a South Indian scavenger, refused to join that union and joined the General Workers' Union and persuaded others also to join it. Ever since then the complainant was harassed by the municipal officers. Some time in September 1959, the complainant was chargesheeted and placed under suspension. He was deliberately not paid subsistence allowance although the municipal rules lay down that such allowance should be paid to suspended employees. Similarly, although the rules lay down that no employee should be suspended longer than three months, the complainant was kept under suspension for nearly five months. During the departmental inquiry held against the complainant, proper opportunity was not given to the complainant to defend himself. At that inquiry, the chief officer, who was holding the inquiry, assured the complainant that if he tendered an apology, he would be reemployed. The complainant therefore tendered a written apology. Two months went by and on 9 February, 1960 the complainant was informed that he was dismissed. The complainant contends that the mandatory provisions of S. 33 were not followed by the municipality and that therefore his dismissal must be held to be wrongful. It is prayed that the

complainant be directed to be reinstated with all back-wages.

2. The municipality contends as follows.

The complainant is not a workman concerned in the dispute which is pending before this tribunal. The complainant was not a scavenger but a gutter-coolie. The municipality knows nothing about there being this groups among the scavengers. The municipality does not favour any particular union. There was no reason for the municipality to harass this complainant or any other employee. On 13 September, 1959, the complainant while on duty assaulted the mukadam and a female worker. A report was made to the sanitary committee. That committee placed the complainant under suspension and directed the chief officer to hold an inquiry. All possible opportunity was given to the complainant to defend himself. The chief officer never gave the complainant any assurance of reemployment. He was not competent to give such an assurance. The complainant freely and voluntarily tendered the written apology. The past record of the complainant was taken into consideration by the sanitary committee. The complainant was found to have three convictions under the Prohibition Act. The sanitary committee therefore did not accept the apology and resolved to dismiss him. There was no motive of victimization in the mind of the sanitary committee for dismissing him.

3. Before I go into the merits of the case. I shall deal with the preliminary objection raised by the municipality, namely that as the complainant was not a workman concerned in the dispute pending before me, S. 33 has no application. It is not disputed that S. 33(2) is the sub-section which we must need. That sub-section reads as follows :

"33. (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, -

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, the workman :

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

The demands of the workmen which are sent down for my adjudication in Reference (I.T.) No. 225 of 1959 are annexed to the written statement in this proceeding. The first demand relates to pay-scales of employees in

(1) octroi department,

(2) mechanical department,

- (3) water-works department and
- (4) establishment and other branches.

The categories in the last-mentioned department are

- (a) jamadar,
- (b) peons,
- (c) rat campaign and anti-malaria men,
- (d) orderlies,
- (e) mali,
- (f) mukadam.

Then there is a demand for adjustment and acting salary. The second demand relates to the refund of pay deducted from the salary of five workmen whose names are mentioned. Complainant is not one of them. And the, third demand relates to cycle allowance to valvemen in the water-works department. Thus it is true that the complainant would not be a workman "concerned" in the dispute in the strict and narrow sense of the expression.

4. But Sri B. G. Naik who appeared for the complainant referred me to the case of New India Motors (P) Ltd. New Delhi Vs. K.T. Morris, . In that case the Supreme Court had to deal with the very point with which I am called upon to deal. There a field representative was discharged while a dispute was pending before an industrial tribunal. The dispute, however, related to the question of termination of seven apprentices. With that dispute the field representative had nothing to do. This is what their lordships observed :

Page 554 : "The appellant (the company) contends that the dispute was in regard to the discharge of seven apprentices employed by the appellant, and it is only the said seven apprentices who were concerned in the said dispute. The respondent was not concerned in the said dispute, and so the termination of his services cannot attract the provisions of S. 33(1)(a). Prima facie the argument that "workman concerned in such dispute" should be limited to the workmen directly or actually concerned in such dispute appears plausible, but if we examine the scheme of the Act and the effect of its material and relevant provisions, this limited construction of the clause in question cannot be accepted."

Then their lordships dealt with the definition of the phrase "industrial dispute," with the provisions of S. 18 and of S. 33 and observed :

Page 555 : "During the pendency of an industrial dispute status quo should be maintained and no further element of discord should be introduced. That being the object of S. 33, the narrow construction of the material words used in S. 33(1)(a) would tend to defeat the said object. If it is held that the workmen concerned in the dispute are only those who are directly or immediately

concerned with the dispute, it would leave liberty to the employer to alter the terms and conditions of the remaining workmen and that would inevitably introduce further complication which it is intended to avoid. Similarly it would leave liberty to the other employees to raise disputes and that again to not desirable. That is why the main object underlying S. 33 is inconsistent with the narrow construction sought to be placed by the appellant on the material words used in S. 33(1)(a)."

Then their lordships refer to certain decisions and point out that the wider construction which their lordships placed on the material words had also been placed by the Labour Appellate Tribunal and by the High Courts of Madras and Andhra. Their lordships have also referred to the case of *New Jehangir Vakil Mills Ltd., Bhavnagar Vs. Industrial Tribunal, Rajkot and Others*, where the Bombay High Court adopted the narrow construction and have observed that, "the Bombay view is not justified on a fair and reasonable construction of the relevant clause." In view of this very clear direction of the Supreme Court, I hold that the complainant must be treated as a workman concerned in the dispute.

5. Sri B. G. Naik referred me to the proviso to S. 33(2)(b) and argued that unless the employer complied with the mandatory provisions of that proviso, the action taken by the employer would not be justified. The mandatory provisions are :

- (1) payment of one month's wages, and
- (2) making an application to the tribunal for its approval.

The Bombay High Court has held in the case of *Premier Automobiles, Ltd. v. Ramchandra Bhimayya Polkam* : (1960)ILLJ44Mad that one month's wages must be paid before action is actually taken. Their lordships referred to the proviso and observed :

Page 447 : "It is true that the words, which are contained in the last part of the proviso and in Sub-section (5), "approval of the action taken by the employer," suggest that the application may be made after action has been taken. But in order to bring these words in harmony with the remaining part of the proviso, the words "action taken" will have to be construed as "action proposed to be taken."

6. We must also refer to another Supreme Court decision, viz., *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, . In that case their lordships were dealing with the mandatory provision of S. 25F(b) of the Industrial Disputes Act, 1947. Their lordships said that payment of retrenchment compensation before the act of retrenchment was a condition precedent which must be complied with if the retrenchment is to be valid. Their lordships upheld the Bombay High Court view that since the employer had not complied with the condition precedent, the retrenchment was bad [vide p. 255]. The two conditions prescribed in the proviso to S. 33(2)(b) are equally mandatory. The intention of

the legislature in laying down certain mandatory conditions in Ss. 25F and 33(2) (b) is the same. They are safeguards prescribed for the protection of the employees. And even if an employer were to take action with the purest of motives, if he disregards the mandatory conditions precedent, his action would be bad in law.

7. What then is the remedy ? In the case of *Swadesamitran Limited, Madras Vs. Their Workmen*, the Supreme Court was dealing with the retrenchment of certain workmen. The retrenchment had been found to be improper. Therefore their lordships observed :

Page 509. - "Ordinarily, if a workman has been improperly and illegally retrenched, he is entitled to claim reinstatement ... This Court has consistently held that in the case of wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that the employer has engaged fresh hands."

Their lordships did not however mean to lay down an inexorable rule that in every case of a wrongful or illegal dismissal, discharge or retrenchment the only order that a tribunal could pass was the reinstatement of the employee concerned. Substantial justice could also be meted out by awarding compensation. Let us therefore look into the merits of the case before us.

8. The complainant was duly chargesheeted and called upon to appear at the departmental inquiry. He was first represented by one union leader Sri Shedbale and then by Sri B. G. Naik, president of another union. Several adjournments were obtained by the complainant. On 28 October, 1959 the mukadam who was alleged to have been assaulted by the complainant was examined. He was exhaustively cross-examined by Sri Naik. Then Sri Naik applied for an adjournment. The inquiry was resumed on 12 December, 1959 when the complainant tendered a written apology (Ex. M. 2). On 21 December, 1959 the chief officer submitted his report to the chairman of the sanitary committee (Ex. M. 3). There he made mention of the apology and suggested that the apology may be sympathetically considered and one more opportunity given to the complainant to mend his ways. The sanitary committee considered the report on 25 January, 1960 and came to the conclusion that in view of the gravity of the offence which the complainant had admitted and in view of the fact that he had been convicted and sentenced for prohibition offences on three previous occasions, it would be improper to accept his apology. The committee therefore resolved to dismiss him as from 15 September, 1959 the date on which he had been placed under suspension (Ex. M.W. 10). Accordingly the complainant was served with the dismissal order dated 8 February 1960 (Ex. U.W. 5). The complainant was thus under suspension for 4 months and 23 days.

9. A word about the apology will not be out of place. Sri Naik has filed an affidavit in which he says that the apology was tendered by the complainant on the express assurance of the chief officer that on receipt of the apology the

complainant would be reemployed. Sri Naik was cross-examined before me. He was once the president of the Sangli City Municipality. He knows all the rules of the municipality. He has admitted that the chief officer is not competent to accept anybody's apology. The matter rests with the committee of the department concerned. So Sri Naik, who wrote the apology for the complainant and who was present when it was tendered, could not have been under any misapprehension on that score. The chief officer did his duty by recommending to the sanitary committee that the apology may be sympathetically considered. If the committee did not accept the recommendation, it was not the chief officer's fault. I am not therefore prepared to say that the apology was taken under a false assurance. The apology was nothing but an admission of the offence. There was therefore no point in going on with the inquiry. It is not correct to say that the complainant was not given an opportunity to defend himself. On facts, therefore, the action taken by the municipality was not improper. It should, however, have complied with the provisions of S. 33(2)(b) which it did not do.

10. Sri Ghate, advocate for the municipality, referred me to Art. 20 of the Constitution of India and said that on the date of the commission of the offence, 13 September, 1959, no proceeding was pending before this tribunal and therefore no application for approval and no payment of one month's wages need have been made. I am not impressed by this argument. Article 20 only lays down that if a person is to be convicted of and punished for any offence, the law which was in force at the time of the commission of the offence must be followed. Sri Ghate said that the action taken by the municipality dates back to 15 September, 1959 when no proceeding was pending. But the sanitary committee proposed to take action against the complainant on 25 January, 1960, when the main reference was pending before this tribunal. Therefore it was incumbent upon the municipality to pay complainant one month's wage and apply for the approval of this tribunal before actually dismissing him.

11. In view of the above discussion I have come to the conclusion that although on merits the action taken by the municipality was justified, the dismissal was bad in law due to non-compliance with the conditions precedent. This is a fit case where reinstatement would not be an equitable order to pass. I direct that the municipality should pay the complainant three months' wages by way of compensation. "Wages" shall mean basic wages plus dearness allowance. The amount should be paid within two months of the date of the publication of this award.