

(1999) 10 GUJ CK 0074

In the Gujarat High Court

Case No : Special Civil Application No. 6546 of 1999

Patel Filters Ltd.

APPELLANT

Vs

Barkatbhai V. Narsindani and Another

RESPONDENT

Date of Decision : 01-10-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 33A, 36

Citation : (2000) 1 GLR 562

Hon'ble Judges : R.M. Doshit, J

Bench : Single Bench

Advocate : Sangeeta N. Pahwa, for the Appellant;

Judgement

R.M. Doshit, J.—Heard the learned Advocates for the respective parties.

2. The petitioner before this Court is an Industry manufacturing Engineering goods, and challenges the judgment and order dated 17th April, 1999, passed by the learned Special Labour Judge, Ahmedabad, on Applications Exhs. 40 and 7, made on Complaint Nos. 2 and 23 of 1997 in Reference (LCIDAT) No. 74 of 1997. The respondents are the concerned workmen.

3. It appears that pending the Reference No. LCIDAT No. 74 of 1997 made in respect of the demands of the workmen for the alleged acts of misconduct committed by the respondents herein (hereinafter referred to as the "workmen"), they were suspended from service under the orders dated 8th June, 1996 and 10th April, 1996 respectively. After holding the due inquiry, under the orders dated 18th February, 1997, the workmen were dismissed from service. Feeling aggrieved, the workmen made above referred Complaint Nos. 2 and 23 of 1997 u/s 33A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). Under Application Exhs. 40 and 7, both the workmen raised a preliminary issue in respect of the validity of the disciplinary action held against them. The said preliminary issue has been tried and decided by the learned Special Labour Judge under the impugned order dated 17th April, 1999. The learned Labour

Judge has held that the workmen were pitted against a legally trained mind inasmuch as the Inquiry Officer was a legal practitioner and the Presenting Officer was also a legally trained mind. The principles of natural justice and fair play, therefore, required that the workmen be permitted to present their case through a lawyer. This having not been done, the disciplinary actions held against the workmen have been held to be violative of principles of natural justice and, therefore, bad and illegal.

4. The learned Advocate Mr. Gandhi appearing for the petitioner has submitted that the Presenting Officer was a Senior Officer (Personnel) of the Industry and cannot be said to be a legally trained mind. He has further submitted that the relevant Standing Order does not permit a delinquent workman to present his case through a lawyer. He has submitted that the relevant Standing Order required that a delinquent-workman may be permitted to present his case through another workman from the same Department. In consonance with the said Standing Order, the workmen herein were permitted to be represented through a co-worker. The inquiry, therefore, could not have been vitiated on this ground. In support of his contention, he has relied upon the judgments of Supreme Court in the matters of *Crescent Dyes & Chemicals Ltd. v. Ram Naresh Tripathi* 1993 I CLR 253 S.C. and of *M/s. Cipla Ltd. v. Ripu Doman Bhanor* 1999 I CLR 1077 S.C.

5. Learned Advocate Mrs. Pahwa appearing for the workmen has contested this petition. She has submitted that the impugned judgment and order being one on preliminary issue, this Court ought not entertain this petition at this stage. The impugned judgment can as well be challenged after the Reference is finally disposed of. She has also submitted that irrespective of the relevant rules/ Standing Order, when a delinquent workman has to face by a legally trained mind, the principle of fair play in action and natural justice requires that he shall be permitted to represent his case and defend himself by a lawyer. In support of her contention, she has relied upon the judgments of the Supreme Court in the matters of *D. P. Maheshwari v. Delhi Administration* 1983 LIC 1629; *Cooper Engineering Ltd. v. P. P. Mundhe* 1975 (2) LLJ 379; *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*, ; *J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others*, ; *Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union & Ors.* 1999 I CLR 518 S.C. and *Crescent Dyes & Chemicals Ltd. v. Ram Naresh Tripathi* 1993 I CLR 253 S.C.

6. In the matter of *D. P. Maheshwari* (supra), the Hon'ble Supreme Court, in the year 1983, was hearing a decision on a preliminary issue in a dispute originated in 1969 and referred for adjudication in 1970. The Court found that time was whiled away by the Management by first challenging the order of Reference and then the decision on preliminary issue. The Court in the circumstances, held that, "We think it is better that Tribunals particularly those entrusted with the task of adjudicating labour disputes where delay may lead in misery and jeopardise

industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Art. 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Art. 226 of the Constitution nor the jurisdiction of this Court under Art. 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill-afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues avoiding decision on issues more vital to them. Arts. 226 and 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore, ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences". In the matter of Cooper Engineering Ltd. (supra), the Hon"ble Supreme Court held that, "When a case of dismissal or discharge of an employee is referred for industrial adjudication, the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue." The Court further held that, "We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication". In the matter of Crescent Dyes & Chemicals Ltd. (supra), considering the right to hearing, the Court held that, "Ordinarily, it is considered desirable not to restrict this right of representation by Counsel or an agent of one's choice but it is a different thing to say that such a right is an element of the principles of natural justice and denial thereof would invalidate the enquiry. Representation through Counsel can be restricted by law as for example. Section 36 of the Industrial Disputes Act, 1947 and so also by certified Standing Orders So also the right to representation can be regulated or restricted by statute. Such provisions in fact serve to underline the importance attached to the right to representation. "Having said this, and having considering the case law on the question, the Court held that "it seems clear to us that the right to be represented by a Counsel or agent of one's own choice is not an absolute right and can be controlled, restricted or regulated by law, rules or regulations. However, if the charge is of a serious and complex nature, the delinquent, request to be represented through a Counsel or agent could be considered It is, therefore, clear from the above case law that the right to be represented through Counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or Standing Orders. A delinquent has no right to be represented through Counsel or agent unless the law specifically confers such a right. The requirement of the rule of

natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through Counsel or agent The object and purpose of such provisions is to ensure that the domestic enquiry is completed with despatch and is not prolonged endlessly. Secondly, when the person defending the delinquent is from the department or establishment in which the delinquent is working, he would be well conversant with the working of the department and the relevant rules and would, therefore, be able to render satisfactory service to the delinquent. Thirdly, not only would the entire proceedings be completed quickly but also inexpensively. It is, therefore, not correct to contend that the Standing Order or Section 22(ii) of the Act conflicts with the principles of natural justice". A similar view has been expressed by the Supreme Court in the matter of M/s. Cipla Ltd. (supra)." In the matter of The Board of Trustees of the Port of Bombay (supra), while answering a similar question, the Hon"ble Supreme Court held that "in our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner, the refusal to grant this request would amount to denial of a reasonable request to defend and the essential principles of natural justice would be violated. In the matter of J. K. Aggarwal (supra), the Court found that the Presenting Officer was a person with a legal attainment and experienced in law, while the delinquent officer had no legal background. Under the circumstances, the refusal of service of a lawyer was held to be denial of natural justice. In the matter of Bharat Petroleum (supra), the Court held that "a delinquent employee has no right to be represented in the departmental proceedings by a lawyer unless the facts involved in the disciplinary proceedings were of a complex nature in which case, the assistance of a lawyer could be permitted".

7. I do agree, the endeavour of the Court should be to hear and decide all the issues arising in a matter simultaneously nor should a party be permitted to while away time by challenging the orders on preliminary issues and not permitting the Court to decide the real issues. But this is not a case where the issue in question could have been decided along with other issues. The nature of the issue is such which has to be decided as a preliminary issue. This is the view taken by the Hon"ble Supreme Court in the matter of Cooper Engineering Ltd. (supra). Ordinarily, the Courts do not entertain petition against the decision on preliminary issues where such issues can as well be challenged after final adjudication. However, it cannot be accepted as universal principle of law to be applied in all cases irrespective of its merits. In the present case, the issue raised is a clear question of law and the relevant facts are undisputed. Since the question does not raise disputed questions of facts. I feel the matter can be entertained against the decision on preliminary issue also and that is what I am inclined to do.

8. The question that arises is whether the delinquent workman is, as a matter of right, entitled to present his case through another person and that whether such

another person can be a legal practitioner. It is well accepted that a delinquent workman may present his case and defend the charge imputed against him through another person. It is also well accepted that unless there is a restriction under the relevant law, such another person can be legal practitioner. However, as discussed hereinabove, the Hon"ble Supreme Court has upheld the power of the employer to restrict or confine the presentation by a delinquent workman through a co-worker or a member or office bearer of the Union. The presentation through a legal practitioner is not considered to be a matter of principle of fair play or natural justice. But in cases where the delinquent workman is pitted against a legally trained mind or a legal practitioner or against the person having legal attainment, or in cases where the matter raises complex questions of facts and law, the Courts have held that if the delinquent workman makes a request for presentation through an advocate or a legal practitioner, such request should be granted. The principle of fair play in action and natural justice calls for a fair presentation through a lawyer or a legal practitioner. Keeping this principle in mind, the matter at issue is required to be decided on the facts of the present case.

9. The facts undisputed are that the relevant Standing Order does not entitle the delinquent workman to be represented either through a legal practitioner or through a member of the Union. It only permits the workman to be presented through the co-worker i.e. another workman serving in the same Department. Further, indisputably, the delinquent has been permitted to present his case through a co-worker. It is also not disputed that the Inquiry Officer was a legal practitioner and the Presenting Officer, the Senior Officer (Personnel) possessed a degree in Law. The imputation of charge made against the workmen also is not such which would raise complex questions of facts or law.

10. In my view, the role the Inquiry Officer is required to play in disciplinary action is limited to conducting the inquiry in accordance with the rules, law and the principles of natural justice. The presence of a legal practitioner or a professional as an Inquiry Officer should only ensure a fair trial against the delinquent workman. However, that should in no manner prejudice the delinquent workman. No delinquent, therefore, can be entitled to representation through a legal practitioner merely because the Inquiry Officer happens to be a professional. The question is who the Presenting Officer is. If the Officer presenting the case of the Company is a man of law or is legally trained then undoubtedly the principle of natural justice calls for fair treatment to the delinquent and in such a case permission to present his case through a lawyer shall be granted to the delinquent if he applies for the same. It is undisputed that in the present case the Presenting Officer was a Senior Officer (Personnel) who possesses a degree in Law. The question is whether possessing a degree in Law can be said to be a legally trained mind or having legal attainment. The answer shall necessarily be in negative. Merely by possessing a degree in Law one does not become a legal practitioner, nor can he be said to have achieved legal attainment. Possessing a degree in Law and being legal practitioner or having

attainment in Law are entirely different matters. No person can be said to be a legally trained mind or a person of legal attainment merely by acquiring a degree in Law. In the present case, it is not shown that the Presenting Officer had acquired legal training or attainment except the degree in Law. In that case, the workman cannot be said to have been pitted against a legal practitioner or a legally trained mind or a person having legal attainment. The workman therefore, had no right to present his case through a legal practitioner or an advocate. If such a permission is not granted, the same should not violate the principles of fair play or for that matter of natural justice nor should it vitiate the enquiry.

11. In my view, learned Judge has manifestly erred in invalidating the inquiry held against the workmen for this reason alone. The inquiry could not have been vitiated for the reason that the workmen were not given an opportunity to present their case through a legal practitioner or an Advocate.

12. In view of the above discussion, the judgment and order dated 17th April, 1999 passed by the learned Special Labour Judge, Ahmedabad, below applications Exhs. 40 and 7 in Complaints Nos. LCIDAT Nos. 2 and 23 of 1997 in Reference LCIDAT No. 74 of 1997 is quashed and set aside. The matter shall proceed further in accordance with law. Rule is made absolute. The parties shall bear their own costs.

13. Rule made absolute.