

**(2001) 07 BOM CK 0066**

**In the Bombay High Court**

**Case No :** Writ Petition No's. 2866 to 2870 of 2001

Permanent Magnets Ltd., Mumbai

APPELLANT

Vs

Vinod Vishnu Wani

RESPONDENT

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**Date of Decision :** 23-07-2001

**Acts Referred:**

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

**Citation :** (2002) 1 ALLMR 797 : (2002) 1 BomCR 310 : (2002) 4 BOMLR 6 : (2002) 93 FLR 32 : (2002) 3 MhLj 413

**Hon'ble Judges :** R.M.S. Khandeparkar, J

**Bench :** Single Bench

**Advocate :** Ravindra Ghuge, for the Appellant; Pradeep Shahane, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

R.M.S. Khandeparkar, J.—Heard the learned Advocates for the parties, Perused the records.

2. Since a common question of law arises in all these five petitions, they are being heard together and being disposed of by this common judgment.

3. Rule. Rule made returnable forthwith by consent.

4. The petitions arise from the judgments and orders dated 6th April, 1999 passed by the Labour Court, Jalgaon in Complaint (ULP) Nos. 152/1995 138/1995, 134/1995, 153/1995 and 135/1995 and confirmed by the Industrial Court, Jalgaon in Revision Application (ULP) Nos. 778/1999 by judgment and order dated 16-1-2001. No. 782/1999 by judgment and order dated 19-1-2001, No. 779/1999 by judgment and order dated 23-1-2001, No. 781/1999 by judgment and order dated 25-1-2001, and No. 780/1999 by judgment and order dated 29-1-2001. The challenge to the impugned judgments and orders is on the ground that the petitioner-employer was not given an opportunity to lead

evidence in support of disciplinary action by the petitioner against the respondents, after the Labour Court had held that the findings arrived at by the Enquiry Officer were not based on legal and acceptable evidence and hence, were perverse.

5. The facts, in brief, relevant for the decision are that the complaint came to be filed by the respondent contending that on false reports, charge sheets for alleged misconduct came to be issued against the respondents. Pursuant to the enquiries conducted not in fair and proper manner and not in compliance of the principles of natural justice, and on the basis of the reports of the Enquiry Officer, the punishment of dismissal from services was imposed for the alleged misconduct. The complaints were contested by the petitioner denying all the allegations against the petitioner and justifying the action taken against the respondents. The Labour Court by its preliminary order held that the inquiry was conducted in a fair and proper manner and in accordance with the principles of natural justice. Thereafter, the complainants led evidence to point out the perversity in the findings and on the point of quantum of punishment which was sought to be countered by leading evidence on behalf of the petitioner and, thereafter, the judgment dated 6th April, 1999 came to be passed by the Labour Court holding that the findings of the Enquiry Officer were not based on legal and acceptable evidence and hence, perverse and the punishment imposed was also shockingly disproportionate as compared to the gravity of the proved misconduct and to that extent, the petitioner had indulged in unfair Labour practice under Item No. I(d) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter called as "the said Act"). Further, the petitioner was directed to reinstate the respondents along with payment of 75% of backwages with interest @ 9% per annum. The Industrial Court refused to interfere in the said order in the revision applications filed by the petitioner. Hence, the present petition.

6. Placing reliance upon the decision of the Apex Court in the matter of Karnataka State Road Transport Corporation v. Lakshmiddevamma (Smt.) and Anr. reported in 2001 2 CLR 640 and Bharat Forge Company Ltd. Vs. A.B. Zodge and another, the learned Advocate for the petitioner submitted that the petitioner in its written statement had specifically prayed for an opportunity to lead proper evidence to substantiate the charges of misconduct and the final action as well as the validity and legality of the Domestic Enquiry. Considering the law laid down by the Apex Court to the effect that in case disciplinary action taken by the employer is held to be vitiated, then the employer would be entitled to adduce evidence in support of the charges of misconduct before the Labour Court, it is sought to be contended that the Labour Court having held for the first time by the order dated 6-4-1999 that the findings of Enquiry Officer were not based on legal and acceptable evidence and hence perverse, the petitioner as a matter of right, was entitled to have an opportunity to lead evidence in support of the charges and punishment imposed and the same having been denied to the petitioner, the Labour Court had clearly acted in improper exercise of jurisdiction

and on that count alone, the impugned judgments along with the judgments of the Labour Court cannot be sustained. It was also submitted that the occasion for request of exercise of the right to lead evidence subsequent to the finding of the Labour Court regarding to the Domestic Enquiry being vitiated, does not arise once, specific pleadings in that regard are made in the written statement itself. It is for the Tribunal to afford opportunity to the employer once, it finds the Domestic Enquiry to be vitiated, to lead necessary evidence in support of the charge of misconduct and the punishment imposed. The Labour Court, in the case in hand, having not followed the well established principles of law in this regard, the impugned judgments are contrary to the rulings of the Apex Court referred to above and hence, are liable to be set aside.

7. On the other hand, the learned Advocate for the respondent, placing reliance in the decision of the learned Single Judge in the matter of Chandrika Prasad Mishra v. Shree Babulnath Mandir Charties and another reported in 2000 Lab 1C 1677 has submitted that the facts of the case clearly disclose that the petitioner had not availed the opportunity to lead evidence after the Labour Court had held that the findings arrived at by the Enquiry Officer were not based on legal and acceptable evidence. Once the petitioner having not availed such opportunity, it is not permissible for the petitioner to raise such issue in the writ petition under Article 227 of the Constitution of India. Attention was sought to be drawn to the memo of revision application filed before the Industrial Court contending that it was never the contention of the petitioner that the petitioner was not given opportunity to lead evidence after the decision of the Labour Court regarding the perversity in relation to the findings of the Enquiry officer in the Domestic Enquiry. As regards the pleadings in the written statement, it is the contention of the learned Advocate for the respondent that there is no specific prayer in the written statement for allowing the petitioner to lead evidence in case the findings of the Enquiry Officer are held to be perverse and the pleadings in the written statement were restricted to the validity and legality of the Domestic Enquiry which means that it was in relation to the manner in which the enquiry was held and whether it was in accordance with the principles of natural justice or not. That apart, even during the course of arguments, subsequent to the evidence being led by the parties, no request was made for allowing the petitioner to lead evidence in support of the charges and the punishment in case the Tribunal was to hold that the findings of the Enquiry Officer were not based on legal and acceptable evidence and, therefore, perverse.

8. The Apex Court in Bharat Forge Company Ltd.'s case has held that a domestic enquiry may be vitiated either for non compliance with the rules of natural justice or for perversity. Disciplinary action taken on the basis of a vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is well-recognised.

9. In Karanataka State Road Transport Corporation's case, the Constitutional

Bench of the Apex Court has ruled thus : --

"Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, the directions issued by this Court in Shambhu Nath Goyal's case, (1984) 64 FJR 37 need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic inquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambhu Nath Goyal's case is just and fair. .... For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shambhu Nath Goyal (1984) 64 FJR 37 is the correct law on the point. In the present case, the appellant employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was vitiated. Applying the aforesaid principles to these facts, we are of the opinion that the High Court has rightly dismissed the Writ Petition of the appellant, hence, this appeal has to fail. The same is dismissed with costs."

10. It is apparent from the decision of the Constitutional Bench of the Apex Court that the right of the employer to adduce evidence, in case the Domestic Enquiry is held to be vitiated for non-compliance of the rules of natural justice or perversity or in case the disciplinary action taken on the basis of the vitiated enquiry is held to be bad, would arise only in cases where the employer has expressed its desire to lead evidence in support of charges and the action taken while filing its written statement itself. The observation of the Apex Court the appellant employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was vitiated in the Karnataka State Road Transport Corporation's case, clearly discloses that the law laid down by the Apex Court as regards the right of the employer to adduce evidence in such cases is available to be exercised by the employer only in cases where such a right is reserved while filing written statement itself and it cannot be claimed as a matter of right after the Labour Court arrives at a conclusion about the Domestic Enquiry being vitiated.

11. The written statement filed in the case in hand and the relevant pleadings as regards the right to lead evidence in case of Domestic Enquiry is held to be vitiated, the pleadings read thus : --

"In case the said enquiry is held to be affected by breach of any principle of law either relating to natural justice or otherwise the Respondent craves leave to substantiate charges of misconduct by leading proper evidence and additional evidence and justify the final action against the complainants. The Respondent

therefore prays that necessary issue relating to validity and legality of the domestic enquiry conducted by the Respondent may kindly be framed."

12. The contention sought to be raised by the respondent in this regard is that the prayer to frame issue is restricted to the validity and legality of the Domestic Enquiry and, therefore, right reserved by the petitioner to lead evidence was only in case the enquiry is held to be not in accordance with the principles of natural justice. It cannot be disputed that strict interpretation of the pleadings would disclose a prayer to frame issue in relation to validity and legality of the Domestic Enquiry. The pleadings do not disclose a specific prayer for framing of any other issue. However, it is always to be remembered that framing of issue is primarily the function of the Court and it is not for the party to make prayer in that regard. The issues are to be framed based on the pleadings of the parties. Merely, because the party does not pray for framing of an issue, the Court is not absolved of its duty of framing the issues, which otherwise arise from the pleadings of the parties. This does not mean that the parties are forbidden from rendering necessary assistance to the Court in framing of issues. However, it is primarily the duty of the Court to frame issues, based on the pleadings. Viewed from this angle, mere absence of the prayer to frame issue cannot result in any prejudice to the petitioner. The Apex Court in *Makhan Lal Bangal v. Manas Bhunia* and others reported in, 2001 AIR SCW 90, has ruled that an obligation is cast on the Court to read the plaint/petition and written statement/counter, if any, and then determine with the assistance of the learned counsel for the parties the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the Court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the Court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues.

13. The pleadings of the petitioner in the written statement quoted above, disclose that the petitioner had specifically stated that in case enquiry is held to be affected by breach of any principle of law either relating to natural justice or otherwise, the petitioner would lead evidence to substantiate charges of misconduct and to justify the final action against the complainants/respondents herein. The petitioner's statement therein is clear to the effect that it craved leave to substantiate the charges of misconduct and justify the final action against the complainants by leading evidence in case the enquiry is held to be in breach of any principles of law either relating to natural justice or otherwise. It cannot be disputed that the pleadings in question do not expressly use the phraseology like "the employer reserve its right to lead evidence in case the Labour Court holds the findings arrived at by the Enquiry Officer to be perverse". But, at the same time, it has stated that in case the enquiry is held to be not in accordance with the law applicable thereto, and the same is held to be not in compliance with the principles of natural justice or otherwise, the employer would lead necessary evidence to prove the charges and for justification of

punishment imposed. In interpreting the pleadings, as has been held by the Apex Court in *Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others*, , no pedantic approach should be adopted to defeat justice on hair splitting technicalities and it is the duty of the Court to ascertain the substance of the pleadings. At this stage, it is also necessary to consider the contention of the learned Advocate for the petitioner that the question of opportunity of leading the evidence in support of justification of the charges of misconduct and action thereupon by the employer could arise only in case where the findings of the Enquiry Officer are held to be perverse and not otherwise. To put in exact words of the learned Advocate "the right to lead evidence to the employer is borne only on the finding of the Labour Court that the findings of the Enquiry Officer are perverse." It cannot be disputed that once it is held that the Domestic Enquiry has been conducted in fair and proper manner and in accordance with the principles of natural justice, that by itself would not lead to conclusion that the findings arrived at by the Enquiry Officer were also perverse. Much to the contrary, the finding to that effect would be specifically required by the Labour Court. Once it is stated by the petitioner in the written statement that he craves leave to substantiate the charges of misconduct by leading proper evidence and to justify the final action, in case enquiry is to be held vitiated for non compliance of principles of natural justice or otherwise and considering the law laid down by the Apex Court regarding the reading and (Understanding of the pleadings. It is to be held that the petitioner had conveyed its intention to the Labour Court to lead evidence in case the Labour court comes to the conclusion that the inquiry was vitiated either on account of non compliance of the procedure or for violating the principles of natural justice or the findings arrived at by the Enquiry Officer being held to be perverse. On this count, therefore, the contentions of the learned Advocate for the respondent that the pleadings do not disclose reservation of right of the employer to lead evidence, in case of findings of Enquiry Officer being held as perverse, cannot be accepted.

14. Referring to the decision of the learned Single Judge in *Chandrikaprasad's* case, it was strenuously argued by the learned Advocate for the respondent that there was not even an attempt on the part of the petitioner in the course of argument to submit that the petitioner would lead evidence in support of the charges of misconduct, in case the Labour Court holds the findings of the Enquiry Officer to be perverse. Indeed, in *Chandrikaprasad's* case, the learned Single Judge while considering the point of failure on the part of the Labour Court to allow the employer to adduce evidence pursuant to the finding that the domestic enquiry was not fair and proper and the findings recorded by the Enquiry Officer were perverse. It was observed that in the written statement filed by the employer, no plea was raised in the alternative that in case the enquiry held against the employee is not fair and proper or is held to be perverse, the employer be given an opportunity to prove the charges against the employee and even when issues were framed after the parties had tendered draft issues, the employer had never pressed that the issue regarding fairness of the enquiry or

the correctness of the findings recorded by the Enquiry Officer should be tried as preliminary issue. Not only that when during the course of arguments no request was made that if the Court holds that enquiry against the employee was not fair and proper or the findings recorded by the Enquiry Officer were perverse, the employer should be given opportunity to lead evidence. Having sat on the fence and allowed the proceedings to complete, it was not open to the employer, after the proceedings were closed before the Labour Court and judgment was delivered, to raise the contention, during the course of hearing of revision application for the first time even in absence of any ground in memo of revision that Labour Court ought to have asked employer to lead evidence to prove the misconduct on merits before the Labour Court. According to the learned Advocate for the petitioner, the facts of the case in hand are similar to those of Chandrikaprasad's case inasmuch as, there was no request made by the petitioner in the course of arguments for allowing the petitioner to lead evidence in case the Labour Court holds that the findings of the Enquiry officer to be perverse nor, the issue in that regard was requested to be tried as preliminary issue. It cannot be disputed that the petitioner could have certainly drawn attention of the Labour Court at the time of framing issues that the issue in relation to whether the findings of the Enquiry Officer to be perverse, ought to have been tried as preliminary issue. It is also a matter of record that on completion of the evidence led by the petitioner in answer to the evidence, led by the respondent, the petitioner had filed purshis closing its evidence. The impugned order also does not disclose any request having been made by the petitioner to the Labour Court in the course of arguments for reserving its right to lead evidence in support of the charges of misconduct and punishment imposed, in case the Labour Court holds the findings of the Enquiry Officer to be perverse. However, as rightly submitted by the learned Advocate for the petitioner, in spite of these facts, the point which is required to be considered is whether the employer was afforded or not an opportunity to exercise his right to adduce evidence once the tribunal holds that the findings of the Enquiry Officer are perverse. Undisputedly, the decision of the Labour Court that the findings of the Enquiry Officer in the Domestic Enquiry were perverse was arrived in the judgment and order dated 6th April, 1999 itself and not prior to the delivery of the said judgment and order and, thereafter, there was no opportunity made available to the petitioner to lead any evidence in support of the charges against the respondent in spite of the fact that the pleadings in that regard disclose the required alternative plea. Undisputedly, in Chandrikaprasad's case, there was no such plea raised in the written statement. Basically, therefore, the employer had not disclosed any willingness on its part to lead evidence in support of the charges and punishment imposed by the management in case the Labour Court comes to the conclusion that the findings arrived at by the Enquiry Officer were perverse. Considering the law laid down by the Apex Court in Bharat Forge Company Limited's case and Karnataka State Road Transport Corporation's case, it being the matter of right of the employer on necessary alternative plea being made in the written statement, it was necessary for the Labour Court to

afford an opportunity to the employer to lead evidence in support of the charges and punishment imposed once, the Labour Court has held that the findings arrived at by the Enquiry Officer were perverse. In this connection, it was sought to be contended by the learned Advocate for the respondent that there is no procedure prescribed whereby the parties are entitled to lead evidence in piecemeal on every issue. There can be no quarrel about the proposition canvassed by the learned Advocate for the respondent. However, the fact remains that it was necessary for the Labour Court to frame issue as to whether the findings of the Enquiry Officer being perverse along with the issue regarding the Domestic Enquiry to be in accordance with the principles of natural justice or not. For the lapse on the part of the Labour Court, the parties cannot be blamed in that regard. No doubt, the parties also could have assisted the Labour Court by bringing the said fact to the notice of the Labour Court at the time of holding of the enquiry in relation to the point as to whether the Domestic Enquiry was in accordance with the principles of natural justice or not. But, having not done so, apparently, the right of the employer to lead evidence in support of the charges and punishment imposed, once the Labour Court comes to the conclusion that the findings of the Enquiry Officer were perverse, cannot be denied to the employer, and more particularly, when denial of such right has resulted in prejudice to the petitioner.

15. It was also sought to be contended on behalf of the respondents that the plea that no opportunity was afforded to the petitioner to lead evidence after the said findings of the Enquiry Officer being held to be perverse, was not specifically raised in the revision application before the Industrial Court. However, the ground (C) of the revision application specifically refers to the point as to improper framing of issues resulting in miscarriage of justice and reference to the decisions of the Apex Court in Bharat Forge Company Ltd's case. Certainly, the decision of the Apex Court in Bharat Forge Company Ltd's case is regarding the employers right to adduce evidence in case the Labour Court comes to the conclusion that the findings arrived in disciplinary proceedings are perverse. Besides, the impugned judgment dated 16-1-2001 specifically refers to the arguments advanced in that regard and placing of reliance in the decision of the Apex Court in Bharat Forge Company Ltd's case. Being so, it cannot be said that it is for the first time the issue regarding the failure on the part of the Labour Court to give an opportunity to the employer to lead evidence pursuant to the decision regarding the findings of the Enquiry Officer being perverse is raised.

16. In the result, therefore, the petitions succeed. The impugned orders are hereby quashed and set aside to the extent the same are beyond the decision of the Labour Court on the point that the findings of the Enquiry Officer were not based on legal and acceptable evidence and hence, were perverse and the matter is remanded to the Labour Court to decide it afresh by giving opportunity to the petitioner to lead evidence in support of the charges framed and punishment imposed in the matter and, in accordance with the provisions of law. Considering the fact that the matter relates to the year, 1995, the Labour Court

shall expedite the hearing of the matter and dispose of the same. In any case, on or before 31st March, 2002, it is made clear that this Court has not expressed any opinion on the merits of the case and the Labour Court shall decide the matter in accordance with the provisions of law applicable to the case. Rule is made absolute in the above terms with no order as to costs.