

(1998) 07 BOM CK 0015

In the Bombay High Court

Case No : O.O.C.J. W.P. No. 2377 of 1994

Pest Control (India) Limited and Others

APPELLANT

Vs

C.D. Konale and Others

RESPONDENT

Date of Decision : 21-07-1998

Acts Referred:

Payment of Wages Act, 1936 — Section 7

Citation : (2000) 3 LLJ 588

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Judgement

A.P. Shah, J.—The 1st petitioner is a company registered under the Companies Act, 1913 and is engaged in providing pest control services in Mumbai and other cities in India. The 2nd respondent is a union registered under the Trade Unions Act, 1926. Under a settlement dated July 21, 1982 the 2nd respondent was recognised as the sole collective bargaining agent on behalf of the 1st petitioner's employees. Sometime in December, 1985 Shri D.S. Mankar, General Secretary of the 2nd respondent union made an application to the company seeking time off for attending his union's Court cases. The company granted the request of Shri Mankar subject to certain conditions as mentioned in the letter dated December 18, 1985. It appears that this concession was continued by the company from time to time. However, according to the company, Shri Mankar started misusing the time off concession and, therefore, the company was constrained to discontinue the same with effect from March 31, 1988. The 2nd respondent challenged the discontinuation of the concession by filing complaint (ULP) No. 492 of 1988 before the Industrial Court. By an interim order dated April 28, 1988 the Industrial Court directed the company to continue the concession which was granted by letter dated December 18, 1985. It may be stated at this stage that the Complaint (ULP) No. 492 of 1988 was finally dismissed by the Industrial Court and the order of dismissal was confirmed by this Court. Pending the above complaint, the concession was continued by the company as per interim order of the Industrial Court. According to the company,

the time off concession was misused by Shri Mankar despite repeated warning letters issued on April 1, 1993, April 3, 1993 and April 12, 1993. The company, therefore, issued show cause notices on December 16, 1993, May 12, 1993 and May 13, 1993 calling upon Shri Mankar to show cause as to why his salary should not be deducted for unauthorised absence from the company's premises. The case of the company was that Shri Mankar was whiling away his time under the pretext of attending Court cases. This was of course denied by Shri Mankar by his replies to the show-cause notices. By order dated May 21, 1993 the company directed that Shri Mankar's salary for 13 hours and 05 minutes should be deducted on account of wastage of time and failure to attend office work, by abusing the concession granted to him and failing to comply with the conditions prescribed under letter dated December 18, 1985.

2. The 2nd respondent challenged the action of the company by filing Complaint (ULP) No. 652 of 1993 under Section- 28 read with Items 7, 9 and 10 of Schedule IV and items 4 (a), 3 and 2(b) of Schedule II of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "MRTU & PULP Act"). The gravamen of the said complaint was that the deduction of wages for 13 hours and 05 minutes, as finally ordered, was punitive, allegedly in breach of the Standing Orders and that Shri Mankar was being harassed only because he was fighting cases against the management.

3. The company resisted the complaint by filing written statement. The company maintained that Shri Mankar had misused the time off concession and remained absent on several occasions. The company also maintained that it was not necessary to hold any enquiry before deducting the wages. It was also pointed out that a show cause notice was issued to Shri Mankar and his explanation was sought before deducting the wages.

4. The Industrial Court by order dated September 29, 1994 held, inter alia, that the action of the company was unlawful inasmuch as no enquiry was conducted before deducting the wages. Therefore, according to the Industrial Court there was violation of principles of natural justice and consequently the action of the company deducting the wages is rendered unlawful. In this view of the matter, the Industrial Court declared that the company has indulged in unfair labour practices under Items 7, 9 and 10 of Schedule IV of the MRTU & PULP Act and directed the respondents to withdraw and cancel the decision of deducting the salary for the period of 13 hours and 5 minutes and pay the full wages of D. S. Mankar for the month of May, 1993.

5. Mr. Singh, learned counsel appearing for the petitioners contended, inter alia, that the deduction from wages for absence from duty is normally the deduction made u/s 7 of the Payment of Wages Act, 1936 ("Act" for short) and Section 7 of the said Act does not provide for any, prior opportunity to be given to the workman before making the deduction. It is argued by Mr. Singh that under the scheme of the Act, there is no necessity to grant an opportunity before making deduction for absence from duty. He also argued that even the Model Standing

Orders applicable to the workmen do not contemplate any enquiry for the purpose of deduction from wages on account of unauthorised absence. Mr. Singh urged that absence from duty of Shri Mankar was unauthorised and hence the deduction made u/s 7(2)(b) of the Act was authorised deduction.

6. On the other hand, Shri Mankar, who appeared in person, contended that the deduction of some amount from the pay is a monetary loss, a civil consequence has resulted in out of the deduction. Hence, without giving an opportunity to the workman to deduct a portion of the salary tantamounts to imposing civil liability on the part of the worker. Hence, there is violation, of principles of natural justice.

7. The principal question which falls for consideration is whether it was necessary for the company to hold an inquiry before, deducting the wages on account of alleged unauthorised absence of the workman from duty. The company has heavily relied upon the provisions of the Act. Section 7 of the Act states that wages of any employee shall be paid to him. without deduction of any kind except those authorised by or under the Act. Section 7(2) states that deductions from the wages of an employed person shall be made when there is absence from duty of the employed person. Section 8 of the Act provides for notice, when deduction is made for fine. Section 9 provides that deductions should be made under Clause (b) of Sub-section (2) of Section 7 only on account of the absence of an employed person. from the place or places where, by the terms of his employment he is required to work, such absence being for the whole or any part of the period during which he is so required to work. When notice is directed to be issued in case of certain deductions and there is no such notice contemplated before deduction for absence the implication is that no notice is contemplated in such cases. In the case of Pandian Roadways Corporation Ltd. Vs. The Principal District Judge and Others, a single Judge of the Madras High Court observed that the purpose of the notice of enquiry before an order is passed or decision is taken of affecting any civil right of a citizen is to give him an opportunity to defend, if there is a possibility to defend. The principle behind the granting of an opportunity is that the affected person should not be taken by surprise, i.e., his right should not be affected in a surprising or unexpected manner, but when the workman is aware of the consequences of his own action or he is expected to know about such consequences when he does not act, it cannot be said that even in such circumstances, a decision has been taken or order has been passed affecting his rights to the surprise of the persons affected. Same view is taken in the case of P.R. Corporation Ltd. v. Dy. Commissioner of Labour 1997 (77) FLR 543.

8. There are number of decisions of various High Courts namely, (i) Sukumar Bandyopadhyay and Ors. v. State of West Bengal and Ors. 1976 DC LTC 1689, (ii) Algemene Bank Nederland Vs. Central Government Labour Court and Others, (iii) V. Ramachandran Vs. Indian Bank, , (iv) Dharam Singh, Rajpur and Ors. v. Bank of India, Bombay and Ors. (1979) 12 LTC 1079, (v) R. Rajamanickam, for himself and on behalf of Awardee Staff v. Indian Bank 1981 II-LLJ367 Mad(vi)

R.N. Shenoy and Anr. etc. v. Central Bank of India and Ors. (1984)18 LTC 1493 , (vii) Prakash Chandra Johari Vs. Indian Overseas Bank and Another, wherein it has been held that it is not only permissible for the employer to deduct wages for the hours or the days for which the employees are absent from duty but in cases such as the present, it is permissible to deduct wages for the whole day even if the absence is for a few hours. It is also held that the contract is not indivisible. Some of the decisions have also held that the deduction of wages can also be made under the provisions of the Payment of Wages Act and similar statutes where they are applicable. It is further held that deduction of wages in such cases is not a penalty but is in enforcement of the contract of employment and hence no disciplinary proceedings need precede it.

9. On behalf of the respondent union reliance was placed on the judgment of the Madras High Court in D. Jayabalakrishnan Vs. Tamil Nadu Water Supply and Drainage Board, . In that case the wages for one day were deducted without giving an opportunity to show cause as to why salary should not be deducted. The workman was not put on notice before the salary was deducted. The learned single Judge relying upon a decision of the Supreme Court in Bhagwan Shukla v. Union of India and Ors. 1995 II LL 726 (SC) held that there was violation of the principles of natural justice. With respect, I find myself unable to agree with the view expressed by the learned single Judge of the Madras High Court. The decision of the Supreme Court in Bhagwan Shukla v. Union of India and Ors. (Supra) deals with a case of reduction in pay scale and not deduction of wages on account of absence. Therefore, the said decision is clearly inapplicable to the present case. In my opinion, it is settled position of law that an action by the management for reduction in wages on account of unauthorised absence need not precede with disciplinary authority. This legal position is accepted almost by all High Courts in the country.

10. Shri Mankar next relied on the decision of the Supreme Court in Bank of India Vs. T.S. Kelawala and Others, . He placed heavy reliance on paragraphs 37 and 38 of the said decision. I have gone through the two paragraphs relied upon by Shri Mankar and I find that the observations made therein are in the context of case of a go-slow. The Supreme Court held that when wages are sought to be deducted for breach of contract on account of go-slow, the quantum of deduction may become a bone of contention in most of the cases inevitably leading to an industrial dispute to be adjudicated by an independent machinery statutory or otherwise as the parties may resort to. It is necessary to emphasise this because unlike in the case of a strike where a simple measure of pro rata deduction from wages may provide a just fair remedy, the extent of deduction of wages on account of go-slow action may in some case raise a complex question. The simplistic method of deducting uniform percentage of wages from the wages of all workmen calculated on the basis of the percentage fall in production compared to the normal or average production may not always be equitable. It is, therefore, necessary that in all cases where the factum of go-slow and/or the extent of the loss of production on the account of it, is disputed, there should be

a proper inquiry on charges which furnish particulars of the go-slow and the loss of production on the account. The rules of natural justice require it, and whether they have been followed or not will depend on the facts of each case. In the instant case we are not dealing with a case of go-slow or strike. Here the employer has deducted the wages on the ground that Shri Mankar remained unauthorisedly absent misusing the time off concession given to him. A show cause notice was duly issued to him and reply was called. The order of deduction was made only after considering the explanation given by Shri Mankar. Under these circumstances, the Industrial Tribunal clearly erred in holding that it was necessary for the management to have held a full-fledged inquiry before ordering deduction.

11. Now the next question is whether the deduction made by the company was legal and proper? Mr. Singh fairly stated that having regard to the fact that the amount involved is very small and the workman has already recovered the amount as per the order of the Industrial Court, the company does not want to press claim for refund of the said amount from Shin Mankar. In this view of the matter, it is not necessary to express any opinion on the controversy whether Shri Mankar was guilty of whiling away time by using the time off concession. Writ petition is disposed of accordingly. No order as to costs.