

(1976) 03 BOM CK 0043
In the Bombay High Court
Case No : Spl. C.A. No. 2949 of 1974

Pure Drinks Pvt. Ltd.

APPELLANT

Vs

Mumbai Mazdoor Sabha, Bombay and Another

RESPONDENT

Date of Decision : 26-03-1976

Acts Referred:

Constitution of India, 1950 — Article 311
Criminal Procedure Code, 1973 (CrPC) — Section 162, 537

Citation : (1978) 2 LLJ 218

Hon'ble Judges : M.N. Chandurkar, J; B. Lentin, J

Bench : Division Bench

Judgement

Lentin, J.—This Special Civil Application has been filed by the petitioner-company against the Mumbai Mazdoor Sabha, viz., the 1st respondent, for setting aside the order dated 8th November, 1974 passed by the Industrial Tribunal.

2. The petitioner-company carries on business of manufacturing soft drinks and aerated waters at Bombay. The 1st respondent is a trade union representing the workers employed by the petitioner-company. One of such workers was Inderjit Singh (referred to here after as "the workman") who until his dismissal on 18th February, 1972, was in the employment of the petitioner-company as a driver-cum-salesman. On 30th November, 1971 the petitioner-company gave a show cause notice to the worker to which he gave his explanation on 2nd December, 1971. After the completion of preliminary inquiries by the petitioner-company. The workman was given a charge sheet dated 6th December, 1971 in respect of certain acts of misconduct, to wit, misappropriation. The date for holding the inquiry was fixed as 10th December, 1971. On 7th December, 1971, the workman wrote to the petitioner-company asking for copies of statements made by the checker and shipper of the petitioner-company, as also a copy of the statement of another employee one B. B. Singh in the petitioner-company. In reply, by its letter dated 9th December, 1971 the petitioner-company declined to furnish those statements and stated that all the persons who had made statements during the preliminary investigation would be produced and be

examined in the presence of the workman before the enquiry officer and that the workman would be given full opportunity to cross examine each and every one of them. Thereafter, the departmental inquiry commenced on 14th December, 1971.

3. At this departmental inquiry, the workman not only participated but was assisted by one Joe Sanches, a co-worker. The evidence of the company's witness, Amrit Singh, Chaddha, as also the evidence of B. B. Singh, and other witness was led in the presence of the workman and Joe Sanches and they were subjected to cross-examination by Joe Sanches in the presence of the workman. The inquiry concluded on 5th January, 1972. On 12th February, 1972, the enquiry officer submitted his report and findings to the petitioner-company's Secretary. On 18th February, 1972, the company's general manager, after examining all the papers and records of the inquiry and the findings of the enquiry officer, and after taking into account the past record of the workman, ordered his dismissal from service with effect from 18th February, 1972.

4. On an industrial dispute being raised by the 1st respondent-union, the same was referred to the Industrial Tribunal. The 1st respondent-union filed a statement of claim contending that the workman was innocent, that his dismissal was improper, unjust and illegal, that the charge-sheet was vague, that opportunity to defend had been denied to him, that the inquiry was in violation of the principles of natural justice, that the report of the enquiry officer was defective and his findings perverse, that the enquiry officer relied on material not forming part of the evidence and the dismissal amounted to victimisation for trade union activities. In reply, the petitioner-company filed its written statement, the relevant excerpts whereof insofar as they pertain to the matter before us, are as under :

"..... The company states that no statements, either of the complainant or of the shipper and checker recorded earlier, were produced before the enquiry officer or taken on record at the domestic enquiry held against the said workman. The company states that the complainant as well as all other witnesses were examined in the presence of the said workman Inderjit Singh and the entire evidence was recorded in the presence of the said workman Inderjit Singh and his co-workman Joe Sanches, who was assisting in the defence of the said witness Inderjit Singh."

5. On 6th November, 1973, the 1st respondent-union filed an application before the Tribunal for the examination of witnesses before the Tribunal instead of filing affidavits and for a decision of the entire reference at one stage instead of at two stages. The petitioner-company had no objection to the first prayer but opposed the second prayer. By its order dated 9th October, 1974, the Tribunal laid down, by consent of parties, the procedure to be followed viz., (1) the Tribunal would find out whether the inquiry stood vitiated ex facie after examining the statement of claim, written statement of claim, written statement and the inquiry papers; (2) if the inquiry did not appear to be vitiated ex facie, the parties would be allowed to lead evidence confining the same to the grounds of perversity of

finding of the enquiry officer and victimisation; (3) if, after hearing the arguments on the preliminary issue whether the inquiry was vitiated or not, the Tribunal came to the conclusion that the inquiry was vitiated, the petitioner-company would be allowed to lead evidence to justify its action; and (4) if the Tribunal found that the inquiry did not stand vitiated, arguments on merits would be heard and the petitioner-company would have no opportunity to lead any further evidence.

6. Thereupon the Tribunal proceeded to hear arguments of the parties on the basis of the statement of claim written statement and the original inquiry papers, to ascertain whether the inquiry stood vitiated *ex facie*.

7. By its impugned order dated 8th November, 1974, the Tribunal repelled the 1st respondent-union's contention that the charge-sheet was vague. However, the Tribunal held that it was incumbent upon the petitioner-company to have supplied a copy of the statement of B. B. Singh to the workman to enable him to effectively cross-examine B. B. Singh, and that the failure by the company to do so had deprived the workman of that opportunity, and hence was a material defect sufficient to vitiate the inquiry. The Tribunal observed that the statement of Amrit Singh during the preliminary investigation, as recorded by B. B. Singh, should also in fairness have been furnished to the workman, having vitiated the inquiry, the Tribunal directed the petitioner-company to lead evidence and justify its action. Hence the present Special Civil Application.

8. At the outset, we may mention that the Tribunal's observation pertaining to the necessity of a copy of Amrit Singh's statement being supplied to the workman appears to be a passing one. Neither before the Tribunal nor before us, were any arguments advanced regarding the non-furnishing of Amrit Singh's statement to the workman. The arguments before the Tribunal, as they were before us, were confined only regarding the non-production of B. B. Singh's statement during the preliminary investigation. This position is preliminary investigation. This position is conceded by both the learned counsel before us.

9. Mr. Shetye, learned counsel appearing on behalf of the petitioner-company, challenged the impugned order on the ground that the petitioner-company was neither under any obligation to furnish, nor was the workman entitled to as of right to be supplied with, a copy of the statement of B. B. Singh, in view of the fact that this statement was made during the preliminary investigation and was not even taken on record or relied upon by the enquiry officer during the inquiry proceedings, and the same did not form even the slightest basis for the findings arrived at by the enquiry officer or the basis on which the dismissal order was passed against the workman. Mr. Shetye further contended that, apart from the above considerations, the question of furnishing B. B. Singh's statement to workman did not arise, inasmuch as evidence was led in the presence of the workman and Joe Sanches not only of B. B. Singh but also of the other workman including Amrit Singh and Chaddha, who were all cross-examined in detail by Joe Sanches during the inquiry. Mr. Shetye further contended that no prejudice has

been caused to the workman by his not being furnished with the copy of the statement made by B. B. Singh during the preliminary investigation. Thus Mr. Shetye summarised, there was no violation of the principles of natural justice which, Mr. Shetye contended, were observed during the departmental inquiry.

10. On the other hand, Mr. Damania, the learned counsel appearing for the 1st respondent-union, attempted to support the impugned order by contending that the workman was in law entitled to the statement of B. B. Singh, so that he could have had the opportunity to prepare in advance for the cross-examination of B. B. Singh and which opportunity he had been deprived of. Thus, according to Mr. Damania, the failure to supply a copy of this statement to the workman, despite the same being demanded, amounted to a violation of the principles of natural justice. Mr. Damania elaborated that natural justice was a right to defend oneself which in turn implied the right to conduct the cross-examination not perfunctorily or as a formality, but effectively.

11. In support of their rival contentions, both Mr. Shetye and Mr. Damania cited certain decisions which we shall advert to presently.

12. Mr. Shetye invited our attention to the decision of the Supreme Court in *Khaddah Co. Ltd. Vs. Their Workmen*, , where it was held that it was desirable that all witnesses on whose testimony the management relies in support of its charge against the workman should be examined in his presence. Recording the evidence in the workman's presence served a very important purpose. The witness knows that he is giving evidence a particular individual who is present before him and, therefore, he is cautious in making his statement. Besides, when evidence is recorded in his presence, there is no room for persuading the witness to make convenient statements and it is also easier for the workman to cross-examine the witness if his evidence is recorded in his presence. Unless there are compelling reasons, all evidence should be recorded in the presence of the workman who stands charged with the commission of the acts constituting misconduct. It was observed that care must always be taken to see that these inquiries are not reduced to an empty formality.

13. This decision does not directly concern itself with the controversy which we are invited to adjudicate upon. However, it serves to emphasise the importance of witnesses being examined in the presence of the concerned workman. Admittedly, this was done in the matter before us.

14. Mr. Shetye invited our attention to the decision of the Supreme Court in *The Tata Engineering and Locomotive Co. Ltd. Vs. S.C. Prasad and Another*, . In that case, 3 charges were levelled against the concerned workman. Two charges were established. The punishing authority stated in his order that the charges levelled against the workman were proved. The order of dismissal clearly stated that the dismissal was on the basis of the proved charges only. Upholding the validity of the order of dismissal, it was held by the Supreme Court that the non-production at the domestic inquiry of the preliminary report collected by the management to

ascertain whether disciplinary action should be launched or not did not vitiate the inquiry. At page 812 of the report, the following passage is material :

"The last ground was the omission by the company to produce the preliminary report on the strength of which the charges against those workman were founded. Those reports were collected by the company to satisfy itself whether disciplinary action against these workman should be launched or not. They did not form part of the evidence before the inquiry officer nor were they relied on by them officer nor were they relied on by them for arriving at their findings. That being so, it was not obligatory on the company to disclose them and the omission could not be a ground for holding that their non-disclosure was a non-observance of the rules of natural justice."

15. This decision of the Supreme Court is by itself sufficient to induce us to accept the contentions of Mr. Shetye in preference to those of Mr. Damania. In the matter before us, it was not even Mr. Damania's contention that the statement or report of B. B. Singh, or for that matter the statements of any of the other witnesses found their way on the record or that any of the enquiry officer or the dismissing authority or that any of those statements weighed either with the enquiry officer while making his report and submitting his findings or at any other time, or with the dismissing authority while passing the order of dismissal. It was not contended by Mr. Damania, and no doubt rightly so, that during the inquiry proceedings or thereafter, even the slightest reliance was placed on B. B. Singh's statement or report, or for that matter, the statements made by the other witnesses during the preliminary investigation. Prior to the issue of the charge-sheet, all that was done by the petitioner-company was to collect information by way of a report or statements in order to ascertain and satisfy itself whether there was any prima facie case to initiate disciplinary action against the workman. Those documents never formed part of the evidence before, or the record of, the enquiry officer. It is, therefore, difficult to see how such statements or report collected at the preliminary investigation could be insisted upon as or right by the workman to be made available to him.

16. Analysing the matter in the widest range permissible, we may state that we went through the evidence recorded by enquiry officer. The cross-examination of the company's witnesses by Joe Sanches is detailed and probing. Though he did ask for a copy of the statement of B. B. Singh to be furnished, the failure to do so by the petitioner-company can, in no way be said to have prevented an effective cross-examination of the company's witnesses by Joe Sanches. The loss of sight of is that, in the main, in all material particulars the evidence of B. B. Singh is based on what he was informed by Amrit Singh and which B. B. Singh in his turn conveyed to Chaddha. The Tribunal has itself, in the impugned order observed :

"Amrit Singh seems to have made a verbal report which was recorded by B. B. Singh with a view to forward it to the office of management".

Hence the evidence of B. B. Singh before the enquiry officer is at best essentially hearsay. Mr. Shetye produced before us a copy of the statement of B. B. Singh during the preliminary investigation. Mr. Shetye emphasised that he was producing this document from that the files of the company and not from the record before the enquiry officer. This was not challenged by Mr. Damania with his habitual fairness. This statement is dated 29th November, 1971 and is in the form of a letter or report addressed by B. B. Singh to the Manager of the petitioner-company. In order to make assurance doubly sure that no prejudice whatsoever could have been caused to the workman, we perused this latter or report. It reveals that all that B. B. Singh has stated to the manager is based entirely on hearsay, namely what B. B. Singh was informed by Amrit Singh. We passed on this document to Mr. Damania for his persual, observing that the contents thereof were hearsay. Mr. Damania was unable, and rightly so, to contend to the contrary after perusing the document. It is difficult to see how any prejudice could conceivably have been caused to the workman by the non-supply to him of a copy of this statement or report. B. B. Singh was not a witness on whom anything of consequence revolved. The fact that in addition to B. B. Singh, Amrit Singh, Chaddha and other persons were also called as witnesses further whittles down the importance of B. B. Singh as a witness of any consequence. The gravamen of the grievance of the 1st respondent-union before us, as was before the Tribunal, was the failure of the petitioner-company to furnish the statement at B. B. Singh, who was not a witness of any great importance. The main and essential witness were Amrit Singh and Chaddha and other employees of the company who gave evidence against the workman, regarding whom no grievance has been made no doubt discreetly so, in respect of non-furnishing of statements made by them during the preliminary investigation.

17. At this stage, we can do no better than reproduce the observations of the Supreme Court in *State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan* AIR 1961 S.C. 1623, as under :

"... .. it is difficult and in-expedient to lay down any general rules; whether or not the officer in question has had a reasonable opportunity must always depend on the facts in each case. The only general statement that can be safely made in this connection is that observer the rules of natural justice and that if they are fair and that if they are fair and properly conducted, the decisions reached by the inquiry officers on the merits are not open to be challenged on the ground that the procedure followed was not exactly in according with that which is observed in courts of law.

Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party and that no materials

should be relied on against him without his being given an opportunity of explaining them".

18. Hence, looking at the matter from the widest angle permissible and giving the widest latitude possible to the workman, we cannot see our way to coming to the finding which M. Damania invites us to do, viz., that the refusal of the petitioner-company to furnish to the workman a copy of B. B. Singh's statement made by him during the preliminary investigation, caused the workman any prejudice or resulted in the violation of the principles of natural justice in any manner whatsoever.

19. What also cannot be lost sight of is that, as rightly contended by Mr. Shetye, not only was B. B. Singh cross-examined at great length, but none of the statements recorded at the time of the preliminary investigation formed part of the inquiry proceedings, nor was any reliance placed on the same by the enquiry officer while submitting his report nor was the order of dismissal based upon the statements recorded during the preliminary investigation. No material was relied upon or used against the workman without his being given an opportunity to explain it. In a departmental inquiry, such as the present, the observance of strict rules of evidence as contemplated by the Evidence Act is not called for. However, what is required is that the principles of natural justice must be observed. This was done in the matter before us.

20. Mr. Damania contended that by reason of the failure of the petitioner-company to furnish the statement of B. B. Singh an opportunity to prepare in advance for the cross-examination of B. B. Singh was denied to the workman. Mr. Damania invited our attention to certain paragraphs of the evidence of Chaddha who in cross-examination was asked to produce B. B. Singh's statement Chaddha replied as under :

"I will produce Mr. B. B. Singh here as my witness who will make a statement in your presence I have never mentioned that I don't have a complaint in writing from Mr. B. B. Singh of the other people involved in this case. But at this stage I would not like to show you so that it gives you a chance in advance to prepare your cross-examination of them. I am going to produce each and every witness here in your presence and they will make their statements in the presence of the E.O."

If the workman was not entitled to receive the statement made during the preliminary investigation, which he was not, much force is lost in the gravamen of Mr. Damania's grievance, viz., that if the statement of B. B. Singh had been furnished to the workman in advance, he would have had sufficient time to prepare for his cross-examination. This grievance is also set at naught by the fact that, as fairly conceded by Mr. Damania, no application was made to the enquiry officer after the examination-in-chief of B. B. Singh, for an adjournment in order to prepare for his cross-examination of B. B. Singh by Joe Sanches on behalf of the workman, discloses that the cross-examination was a detailed and a

probing one.

21. Mr. Damania relied on the decision in *Pulukuri Kottaya v. Emperor* AIR 1947 P.C. 67, where it was held that the right given to an accused person by S. 162 of the Cr. P.C., 1898, to be furnished with copies of statements made by witnesses to a police officer, was a made by witnesses to a police officer, was a very valuable right and often provided important material for cross-examination of the prosecution witnesses.

22. We respectfully agree with this ratio laid down by the Privy Council. However, what cannot be lost sight of is that, unlike the facts of the matter before us, this ratio of the Privy Council is based on the facts of the case before it, which was a matter under Ss. 537 and 162 of the Cr. P.C., 1898. There can be no doubt that under the Cr. P.C. of 1898, S. 162 thereof in terms gave right, and no doubt a valuable one, to the accused person to be furnished with copies of statements made by witnesses to a police officer. Hence a violation of such a right positively given in terms to the accused person under that section, resulted in the aforesaid ratio being laid down by the Privy Council. In the matter before us there is no such right given to the workman either by statute, orders or rules, viz., that he is entitled to be furnished with copies of statements or reports collected by a private employer during a preliminary investigations to ascertain whether disciplinary action should be launched against the concerned workman. This is brought to the forefront by the decision of the Supreme Court in *The Tata Engineering and Locomotive Co. Ltd. Vs. S.C. Prasad and Another*, . Hence this ratio of the Privy Council enunciated in the light of the facts and circumstance of the case before it, can be of no assistance to Mr. Damania in the facts and circumstance of the matter before us.

23. Mr. Damania next relied on the decision of the Supreme Court in the case of *The State of Punjab Vs. Bhagat Ram*, , where it was held that unless the previous statement of witnesses are supplied, the dismissed person will not be able to conduct an effective and useful cross-examination and hence it is unfair to deny the Government servant copies of the earlier statements of witnesses.

24. Mr. Damania also relied on the decision of the learned single Judge of the Allahabad High Court in *Misra (V.D.) Vs. Collector of Central Excise*, , where it was held that the failure to supply to the petitioner, a Government servant, the written complaint lodged by the complainant at the initial stage on which the inquiry was started and the failure to furnish him copies of statements of certain witnesses recorded by an officer the formal inquiry was started, resulted in an infirmity in the inquiry which disclosed that the petitioner did not get a reasonable opportunity to show cause against the proposed punishment as required by Art. 311 of the Constitution.

25. While we are in respectful agreement with the ratio laid down by the Supreme Court and the learned single Judge of the Allahabad High Court in the circumstances of the matters before them, the same can be of no assistance to

Mr. Damania in the facts and circumstances of the matter before us, which fall squarely within the Supreme Court in *The Tata Engineering and Locomotive Co. Ltd. Vs. S.C. Prasad and Another*, . Those matters were, unlike the matter before us, under Art. 311 of the Constitution, pertaining to a departmental inquiry against a Government servant. Furthermore, in *The State of Punjab Vs. Bhagat Ram*, , what was given to the Government servant was only a synopsis of the statements of the witnesses recorded by the Vigilance Department during the preliminary inquiry, whereas, entire statements, unlike in the matter before us, had been taken on record. This is brought to the forefront from the contents of para. 6 of the judgment which reads as under :

"The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence".

This passage discloses that the respondent in that case could possibly not have had the opportunity confronting the witnesses with the statements, unless they were on record. This is not the position in the matter before us, where none of the statements recorded during the departmental enquiry or thereafter. These are the salient features which distinguish those cases from the facts of the matter before us, which as we have already stated, falls within the ratio laid down by the Supreme Court in *Telco's* case.

26. Mr. Damania next relied on the decision of the learned single Judge of the Madras High Court in *Thangaswamy v. S.I.R. Employees' Co-op. Credit Society* 1961 2 L.L.J. 754, where it was held that in the absence of the rules, the question whether the inquiry is vitiated or not should be approached not from the point of view of a specific contravention of a particular rule, but from the point of view whether the result of the inquiry has been vitiated on the ground that the principles of natural justice and not been respected. It was further held that the omission to supply copies of statements of witnesses to the petitioner-employee in advance of the inquiry involved violation of the principles of natural justice and was prejudicial to the finding against him. It was further held, in the facts and circumstances of that case, that it was the plain duty of the inquiring body to supply the petitioner with statements of witnesses as requested by him or to give an opportunity to peruse the statements and take extracts on a date earlier than the date of inquiry.

27. It is unnecessary to dilate at any length on that decision of the learned single Judge of the Madras High Court, in view of the authoritative ratio and decision of the Supreme Court in *The Tata Engineering and Locomotive Co. Ltd. Vs. S.C. Prasad and Another*, , referred to above and by which we are bound.

28. Mr. Damania finally relied on certain observations of the Division Bench of the

Delhi Court in Daljit Singh Vs. Union of India, :

"The right to cross-examine means to cross-examine effectively. In the absence of the copies of these two statements the petitioner could not confront S. S. Duggal and E. N. Ramamurti when they appeared as witnesses, against him in the inquiry with their statements made to the Special Police Establishment."

29. Once again, while we are in respectful agreement with these observation, they must be read in the light in which they have been made and the facts and circumstances of that case, which was yet another case under Art. 311 of the Constitution, and which resulted in the Delhi High Court holding that the failure to furnish to the petitioner copies of the statements made by two persons before the Special Police Establishment in the criminal investigation and failure even to give inspection of these statements to the petitioner, amounted to a denial of reasonable opportunity to the petitioner of defending himself. In any event, it is unnecessary it dilate at any length on the decision of the Delhi High Court in Daljit Singh Vs. Union of India, in the light of the decision and ratio of the Supreme Court in Telco's case (supra) by which we are bound.

30. In the result, this Special Civil Application must succeed and the impugned order dated 8th November, 1974 must be set aside. Rule is made absolute with no order as to costs. The matter is remanded to the Tribunal to be proceeded with according to law in terms of the order dated 9th October, 1974.