

(1996) 06 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 1380 of 1993

Ram Shiromani Son and another

APPELLANT

Vs

The Bombay Dock Labour Board and others

RESPONDENT

Date of Decision : 12-06-1996

Acts Referred:

Evidence Act, 1872 — Section 3

Citation : (1996) 4 BomCR 663 : (1997) 2 LLJ 448 : (1997) 2 MhLj 610

Hon'ble Judges : V.P. Tipnis, J;F.I. Rebello, J

Bench : Division Bench

Advocate : J.P. Cama, for the Appellant; P. Ramaswamy, instructed by Mulla and Mulla, R.C. Master and K.J. Gandhi, for the Respondent

Judgement

F.I. Rebello, J.—The petitioner No. 1 is a workman employed with the first respondent. Petitioner in his petition has set out that he is a senior and active member of the Bombay Transport and Dock Workers Union. Petitioner was served with a letter dated April 29, 1991 on May 4, 1991. The said letter was issued by the Labour Officer, suspending the petitioner No. 1 pending enquiry in terms of Regulation 44(3) of the Bombay Dock Workers (Regulation of Employment) Scheme, 1956. The order of suspension also called on the Petitioner No. 1 to submit his explanation in writing within three days of the receipt of the order why severe disciplinary action should not be taken against the petitioner No. 1 in respect of the incident that occurred on April 26, 1991 at about 1.00 p.m. In the said letter, it was also set out that the Secretary of the first respondent had forwarded a complaint lodged by Shri M. N. Shinde, Senior Assistant and Shri S. B. Chuneekar, Clerk-cum-Typist of the Welfare Section that the petitioner along with Shri Chattu Jathan and Shri Narottam R. Jaiswal alongwith other workers numbering about 25 entered the Office premises and started making enquiries about the allotment of housing quarters. In the said letter, it was also disclosed that Shri M. B. Shinde, Senior Assistant was called upon to explain the said fact and as Shri Shinde was about to explain the stand taken by the Secretary, the petitioner No. 1 alongwith Shri Chattu Jathan and Shri Narottam Jaiswal started

assaulting Shri Shinde mercilessly for no cause or any provocation and apart from Shri Shinde, Shri S. B. Chuneekar, Clerk-cum-Typist who was nearby was also assaulted. Petitioner No. 1 by his representation dated May 4, 1991 replied to the said show-cause notice. In his reply, at the very outset, the petitioner set out that the petitioner No. 1 on April 26, 1991 was in the High Court of Judicature at Bombay right from 11.00 a.m. before the Division Bench, whereby a matter pertaining to their Union being Writ Petition No. 762 of 1991 was listed, that the petitioner was present in the High Court alongwith the present General Secretary and 50 other workers, that the matter reached at about 1.20 p.m. and was adjourned to June, 1991, that thereafter, the petitioner accompanied the President, General Secretary and other office bearers for the conference with the Union's Lawyer and reached the Union Office at about 16.00 hrs. The petitioner by the said explanation also requested that his suspension be revoked. Petitioner thereafter has immediately sent other representation requesting that his suspension be revoked. However, the said request was not accepted.

2. The further contention of the petitioner No. 1 that he was served with the notice of enquiry proceedings on July 17, 1991 to he held on July 24, 1991. The enquiry was to be conducted by the Labour Officer who had issued the suspension order. Petitioner No. 1 also averred that at the time of giving his explanation to the show-cause notice, the petitioner No. 1 had requested for a copy of the alleged complaint forwarded by Shri Shinde and Shri Chuneekar. The petitioner No. 1 once again reiterated his request by his letter dated July 18, 1993 to the Enquiry Officer-cum-Labour Officer. The petitioner No. 1 thereafter was given a copy of the complaint which accompanied letter dated July 24, 1991. The enquiry commenced on July 24, 1991. At this stage, it would be pertinent to note that the enquiry was a joint enquiry in respect of three employees viz., the petitioner No. 1 Mr. Chattu Jathan and Mr. Narottam R. Jaiswal. On behalf of the employers Board, several witnesses were examined. Similarly, the petitioner No. 1 examined as defence witnesses several co-workers. The Enquiry Officer thereafter submitted his report dated April 29, 1992 in respect of the joint enquiry. The Enquiry Officer in the finding report held that Shri Chattu Jathan did not participate in the said melee; that Shri Narottam R. Jaiswal had proceeded on privilege leave from April 16, 1991 and returned only on July 6, 1991. That, in so far as the petitioner No. 1 was concerned, the Enquiry Officer held the petitioner No. 1 guilty of the charges levelled. The Enquiry Officer thereafter forwarded the finding report to the Deputy Chairman, the Disciplinary Authority in terms of Clause 44(4) for the purpose of imposing higher punishment. In the said finding report, it was mentioned that the finding report is being forwarded for imposing higher punishment apart from the petitioner No. 1, also on the other two employees. By a memo dated February 16, 1993, the Deputy Chairman informed the petitioner No. 1 that on careful consideration of the Enquiry Officer's Report and the evidence on record submitted to the Deputy Chairman in terms of Clause 44(5) of the Scheme, the Deputy Chairman accepts the finding and the report of the Enquiry Officer that the petitioner No. 1 was

found guilty under Clause 44(5) of the Bombay Dock Workers" (Regulation of Employment) Scheme, 1956 read with Clauses 7 & 10 of the Standing Orders for Registered Dock Workers of the Bombay Dock Workers" (Regulation of Employment) Scheme, 1956. The petitioner No. 1 was informed that in terms of Clause 44(6), it was proposed to impose on the petitioner No. 1 the penalty of dismissal from BDLB service. Petitioner No. 1 was therefore, called upon to submit within 14 days from the date of receipt of the memo such representation as he wished, against the reposed penalty of dismissal based on the basis of the evidence advanced during the enquiry. Petitioner No. 1 was further informed that if no representation is submitted within the period specified, it will be presumed that the petitioner has no representation to make and proposed penalty would be imposed without any further reference to him.

3. Petitioner No. 1 by his representation dated February 22, 1993 acknowledged the receipt of the memo dated February 16, 1993. The petitioner No. 1 by the said representation requested the Disciplinary Authority to make available some documents including requisite Standing Order etc. in order to enable him to reply to the memo dated February 16, 1993. The documents sought for by the petitioner No. 1 were forwarded to the petitioner No. 1 by the memo dated February 25, 1993.

4. Petitioner No. 1 thereafter by his representation dated March 29, 1993, showed cause against the proposed punishment. The petitioner reiterated the stand taken by him initially, that he was not present at the time of the alleged incident. The petitioner No. 1 also invited the attention of the Disciplinary Authority to the fact that the Enquiry Officer had sought to rely on the word of the complainant when the Enquiry Officer had come to the conclusion that the statements of the complainants were false against one of the accused viz. Mr. Narottam R. Jaiswal. The petitioner No. 1 also drew attention of the Disciplinary Authority to the evidence recorded before the Enquiry Officer and as to why the evidence of the said witnesses examined on behalf of the employer should be relied upon. The petitioner No. 1 also in his representation pointed out that there was an inter Union rivalry between the petitioner No. 1's union and another union viz. Transport and Dock Workers" Union of which Mr. Shinde was a member.

5. Subsequent to the said representation, the petitioner No. 1 received an order dated May 11, 1993 signed by the Deputy Chairman who was the Disciplinary Authority. By the said order, the Disciplinary Authority held out that he had considered the report of the Enquiry Officer, the representation made by the delinquent employee and that after considering the same, the Disciplinary Authority was pleased to dismiss the petitioner No. 1 from service of the Bombay Dock Labour Board with immediate effect. For the said order, the period of suspension was also to be treated as such with all its consequences.

6. Shri Cama, learned Counsel for the petitioner challenges the said order. The principal challenge to the order is that, the order of dismissal, is based on no material and/or is perverse. Shri Cama contended that the Enquiry Officer

ignored relevant evidence, both documentary and oral; rejected the plea of alibi on irrelevant grounds; did not consider the fact that the enquiry was a joint enquiry and that once the Enquiry Officer himself had rejected the testimony of the witnesses examined on behalf of the Board while holding one of the charged employees Narottam R. Jaiswal not guilty of the charges, the Enquiry Officer had come to the conclusion that the witnesses could not be believed in the case of Narottam Jaiswal, and as such the evidence of the said witnesses also could not be considered and or had to be discarded while considering the case of the petitioner No. 1 herein, as it was not credible.

7. Shri Ramaswamy, learned Counsel appearing for the Respondents Nos. 1 and 2 contended that this was not a case of no evidence or that there was no material on record to support the findings of the Enquiry Officer and as such the Court should not go into the sufficiency or adequacy of the material based on which the Enquiry Officer came to the conclusion that the workman was guilty of the charges levelled. Before considering the arguments, it may be relevant to note that the Supreme Court in *State Bank of India and Others Vs. Samarendra Kishore Endow and Another*, while considering the power of the High Court under Article 226 has observed as under at p 876 :-

"The power under Article 226 is one of the judicial review. It is not an appeal from a decision but a review of the manner in which the decision was made."

"The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the authority after according a fair treatment, reaches on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of the Court."

7-A. Taking the first contention of Mr. Cama, it is seen that the Enquiry Officer ignored relevant material, viz. the N.C. Report dated April 26, 1991 which was a contemporaneous document. A perusal of the said complaint would show that the persons alleged to be the accused have been shown as (1) Chaturam Jathan Jaiswal; (2) N. D. Varma; and (3) two others. The name of petitioner No. 1 and that of the other two charge-sheeted workmen do not figure in the said N.C. Complaint though in the evidence of Shinde, it has come on record that he recognised the petitioner at the police station where he had gone to lodge the complaint. A perusal of the complaint dated April 26, 1991 which was addressed to the Secretary, Bombay Dock Labour Board by Shri M. B. Shinde and Shri S. B. Chuneekar, the name of the petitioner No. 1 and the other two charge-sheeted workmen have been set out. It has come on record that this report was prepared after Shri Shinde, the complainant went to the Union Office and was got prepared in the Union Office. The names of the persons which were found in the N.C. Complaint, do not figure in the subsequent complaint made by Shri Shinde and Shri Chuneekar. The Enquiry Officer has totally ignored this aspect of the matter.

8. The second contention is that, the plea of alibi taken by the petitioner No. 1

has been ignored for irrelevant reasons. It can be seen from the record that the petitioner No. 1 was issued a show-cause notice and the order of suspension by a letter dated April 29, 1991. The petitioner No. 1 immediately on receipt of the said letter, filed his representation dated May 4, 1991. In the said representation, the petitioner No. 1 pointed out to the Labour Officer that on the aforesaid date i.e. April 26, 1991, the petitioner No. 1 was before a Division Bench of this Court wherein Writ Petition No. 762 of 1991 filed by his union viz. Bombay Transport and Dock Workers' Union was on board for hearing and the matter came up at 13.20 p.m. and the matter was adjourned till June, 1991. That, thereafter, the petitioner No. 1 alongwith some other workers who attended the matter, remained behind for consultation with the lawyer and by the time they came back to union office, it was about 16.00 hrs. The petitioner No. 1 in his defence examined several witnesses to establish his alibi that he was in the Court when the alleged incident in respect of which he had been charge-sheeted allegedly took place. From the records, it can be seen that though these witnesses were available for cross-examination, the said witnesses were not cross-examined except one witness i.e. Shri Shriram Varma. The record further discloses that it was the complainant Shri Shinde who was cross-examining the witness. This fact by itself would have great bearing and importance as it was the case of the complainant himself that the petitioner No. 1 was there at the time of alleged incident and if that had been the case, Shri Shinde would have surely cross-examined the witnesses produced on behalf of the petitioner No. 1 in defence. Shri Shinde has not done so, nor has the Enquiry Officer sought any explanation or clarification from the defence witnesses about the presence of the petitioner in Court. The Enquiry Officer has noted the defence evidence but has rejected it on the ground that it was stereo-type and further that no certificate had been produced from the High Court to show that the petitioner No. 1 was present in the Court. It may be noted that Courts do not issue certificate as to the person or persons who are present in the Court and as such, the rejection by the Enquiry Officer of the defence evidence is thus based on irrelevant reasons.

9. The third contention is that, it was a joint enquiry. That all the witnesses have been examined as common witnesses. That, in the case of Narottam Jaiswal, one of the charge-sheeted employees, the Enquiry Officer accepted the so plea of Shri Narottam Jaiswal that on the relevant date and time, he was not in Bombay and as such, could not have been present at the time of the incident and thus, held him not guilty of the charge levelled against him. That once, the Enquiry Officer came to this conclusion and rejected the evidence led on behalf of the Disciplinary Authority i.e. the employer, the Labour Officer had to come to the conclusion that testimony of these witnesses stood falsified. Once the Labour Officer had come to the conclusion that the evidence of these witnesses stood falsified, the Labour Officer should not have placed any credence on the evidence of the said witnesses to come to the conclusion that the petitioner was guilty of the charge. One more important aspect to be borne in mind is that, Shri Chuneekar, one of the co-complainant in his cross-examination has specifically

given a categorical answer that Shri Soni did not assault him a qua the complaint wherein it has been so stated.

10. Coming to the contention of Shri Ramaswamy, Counsel for the Respondents 1 and 2, that there is material on record to support the findings of the Enquiry Officer, it must be seen that it is only Shri Shinde, the complainant and Shri S. V. Rane who has corroborated the case of Shri Shinde. It is the contention of Shri Ramaswamy that as such, there was sufficient material to come to the conclusion that the Enquiry Officer was right in coming to the conclusion that the charge sheeted workman was guilty of the charges alleged. This contention of Shri Rane has to be rejected for the sole reason that the Enquiry Officer in the case of Shri Narottam Jaiswal has rejected the testimony of Shri Shinde and Shri Rane. Consequently, the said finding based on the evidence of Shri Shinde and Shri Rane has to be rejected.

11. Thus, from the above said findings, it can be clearly seen as contended by the counsel for the petitioners that the Enquiry Officer ignored documentary evidence in the form of N.C. complaint and the complaint lodged by Shri Shinde and Shri Chuneekar, and that he had rejected the evidence of defence witnesses solely on the ground that an authoritative letter had not been produced from the High Court, which finding ex-facie, is patently bad as nothing has been brought on record that Courts issue such letters of attendance of parties or persons. The most glaring circumstance that the Enquiry Officer has ignored is that the enquiry was a joint enquiry and that he had rejected the testimony of the witnesses in the case of Narottam Jaiswal and as such the said evidence had to be ignored in the case of the petitioner. Thus, the material on record before the Enquiry Officer, read with the contemporaneous document with the N.C. complaint; the oral evidence and the deposition of the defence witnesses show that there was no material whatsoever before the Enquiry Officer to come to the conclusion that the petitioner No. 1 was guilty of the charges levelled and as rightly contended by Shri Cama, Counsel for the petitioners the finding based on no evidence and/or on irrelevant material, is perverse and consequently, the conclusions arrived at by the Enquiry Officer.

12. The Disciplinary Authority has accepted the conclusions of the Enquiry Officer that the plea of alibi had not been established and further the Disciplinary Authority had accepted the conclusion of the Enquiry Officer that the petitioner No. 1 was guilty of the charges framed against him. The Disciplinary Authority has further relied on the evidence of Shri V. K. Singh. It may be relevant to point out that Shri V. K. Singh who was examined has himself deposed that he has deposed falsely on two occasions. Similarly, the other evidence considered by the Disciplinary Authority viz. the evidence of Shri R. V. Rane and Shri Jaikumar Nair also could not have been considered in view of the findings arrived at earlier by the Enquiry Officer in the case of Narottam Jaiswal. The conclusions of the Disciplinary Authority based on the findings arrived at by the Enquiry Officer have also therefore, to be rejected. Once the Court comes to the conclusion that

there was no material whatsoever before the Enquiry Officer to come to the conclusion that the workman was is guilty of the charges levelled against him, the consequential order must follow, namely that the order of dismissal dated May 11, 1993 has to be quashed and set aside.

13. For the foregoing reasons and considering the facts and circumstances of the case, the order dated May 11, 1993 is hereby quashed and set aside and consequently, the respondents Nos. 1 and 4 are directed to reinstate the petitioner No. 1 with full back wages and continuity of service and all other consequential benefits that he is entitled to in law. The order to be given effect within 4 weeks from today. Costs by Respondents Nos. 1, 2 and 4.