
(2016) 11 BOM CK 0046
In the Bombay High Court
Case No : Writ Petition No. 7211 OF 2016

Ravindra Bhimrao Patil

APPELLANT

Vs

The Executive Director

RESPONDENT

Date of Decision : 22-11-2016

Acts Referred:

Citation : (2017) 3 AIRBomR 600 : (2017) 3 ALLMR 270 : (2017) 1 BCR 838 : (2017) 2 MhLJ 648

Hon'ble Judges : V. Ravindra Ghuge, J.

Bench : Single Bench

Advocate : Shri Patil Shrikant S., Advocate, for the Respondent; Shri Kshirsagar Hemraj P., Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

V. Ravindra Ghuge, J. Oral - Heard learned Advocates for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the judgment dated 29.8.2015 delivered by the Industrial Court, Dhule, by which the Part I judgment of the Labour Court, vitiating the enquiry dated 2.2.2015 has been quashed and set aside and the enquiry has been sustained.

5. I have heard the learned Advocates for the respective sides.

6. In so far as the conducting of the enquiry is concerned, the Labour Court has not concluded as to how the principles of natural justice have been violated. In order to vitiate the enquiry for violation of principles of natural justice, specific instances are to be indicated, which would convince the Labour Court that prejudice was caused to the delinquent and he was deprived of a reasonable opportunity of participating and defending himself in the enquiry. No such

findings have been arrived at by the Labour Court. Nevertheless, the enquiry, in my view, will have to be vitiated on the aspect of perversity in the findings of the enquiry officer.

7. The Labour Court has concluded that the enquiry officer's findings are unsustainable and perverse. The Industrial Court, while dealing with the revision petition filed by the respondent / management for challenging the Part I judgment dated 2.2.2015, has concluded that the witnesses of the management have stated that during the period 21.3.2012 till 29.3.2012, the petitioner was instigating the workers to stop working. The witnesses on behalf of the petitioner denied the charges levelled upon him. The Industrial Court concluded that as the witnesses have stated that the petitioner used to instigate other workers in between 21.3.2012 to 29.3.2012, the findings of the enquiry officer are not perverse.

8. In my view, the Industrial Court should have concentrated on the contents of the charge sheet, which is fundamental to the disciplinary proceedings. It is trite law that the charge sheet must be specific and specific acts purported to have been committed have to be mentioned with specific details and particulars in the charge sheet so as to enable the delinquent to realize as to what is he charged with and what are the acts alleged to have been committed by him. So also, the acts must be amounting to misconducts under specific clauses of the Standing Orders and the said Standing Orders have to be mentioned / quoted in the charge sheet so as to indicate to the delinquent as to which act amounts to a misconduct under which specific Standing Order.

9. This Court in the case of *Griffon Laboratories Pvt. Ltd. v. Maharashtra Shramik Sena and others* [2001 III CLR 655], has observed as under:-

10. The first point to which it would be necessary to advert is the question as to whether the Part-I Award of the Labour Court by which the Court came to the conclusion that the charge-sheet was vague suffers from any infirmity. The Learned Counsel appearing on behalf of the Union and the workmen submitted that the employer was now estopped from challenging the correctness of the finding of the Labour Court that the enquiry was not fair and proper since on the basis of that finding, the employer had sought and availed of the opportunity to adduce evidence before the Labour Court on the charge of misconduct. The submission was that since the employer had elected to lead evidence before the Labour Court without reserving to himself a right to challenging the Part-I Award, the employer now should not be permitted to invoke the jurisdiction of this Court under Article 226 of the Constitution to do so. There cannot be a hard and fast rule in such cases. Indeed, as the Supreme Court noted in *Cooper Engineering Ltd. v. P.P. Mundhe*, (1975) IILLJ 379 SC, the Court should not normally encourage a challenge to a Part-I Award upon a finding that the enquiry was not fair and proper since it is open to the employer to seek an opportunity to lead evidence before the Labour Court upon which a challenge to the finding which has been arrived at can always be preferred. However, it would be appropriate in

my view in the facts of the present case to consider and dispose of the challenge by the employer to the correctness of the award of the Labour Court insofar as it held that the enquiry was vitiated on account of a vagueness of the charge-sheet. In the present case, the charge-sheet which was issued by the employer, informed the workmen that it had "come to the knowledge of the management that on 9th June, 1982 the workmen along with other workmen had indulged in violence, bodily assault and threat with further dire consequences against the employee of the Company." The charge-sheet cannot be described as anything but vague. The charge-sheet does not contain the identity of the employee who was assaulted, any details of the nature of the assault and absolutely no reference to the time or place of the incident. Significantly, the charge-sheet does not even purport to rely upon the alleged complaint dated 14th June, 1982, which was made to the management. The object of requiring the employer to present a charge-sheet with a degree of precision, containing a disclosure of the circumstances of the case which are alleged to constitute misconduct, is to enable the charge-sheeted workman to have a real opportunity of defending himself. To ask the workman to defend himself against a general allegation of misconduct without specification of particulars denies to him an effective right of defending himself. An employee who is called upon to defend himself must know what he has to defend himself against. What the employee is to defend himself against has to be discernible from the charge-sheet which is issued to him. charge-sheets of the kind involved in the present case are replete with a great potential of mischief because if such charge-sheets were allowed to stand, it would be open to the employer to lead any and every kind of evidence during the course of the departmental enquiry on the basis of vague and undefined allegations of misconduct. This would be a travesty of fairness and reasonableness and would lead to a grave miscarriage of justice. The requirement that the charge-sheet must be precise and must contain a statement of imputations constituting the foundation of misconduct is a basic principle of natural justice. Natural justice in a disciplinary enquiry must mean that the employee must have notice of the charges, first and foremost. This is a fundamental stipulation the non-compliance of which would vitiate the enquiry. Additionally, in matters relating to workmen to whom the Industrial Employment Standing Order Act, 1946 applies, the requirement of furnishing an appropriate charge-sheet containing relevant particulars is a requirement of the statute itself. In this regard, reference may be made to Model Standing Orders 25(3) and 25(4) of the Model Standing Orders framed in pursuance of the provisions of the Act. These provisions are as follows :-

"25(3) No order of dismissal under Sub-clause (d) of Clause (1) shall be made except after holding an enquiry against the workman concerned in respect of the alleged misconduct in the manner set forth in Clause (4).

25(4) A workman against whom an inquiry is proposed to be held shall be given a charge-sheet clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to appear himself for defending

him or shall be permitted to be defended by a workman working in the same department as himself or by any office bearer of a trade union of which he is a member. Except for reasons to be recorded in writing by the officer holding the inquiry, the workman shall be permitted to produce witnesses in his defence and cross-examine any witness on whose evidence the charge rests. A concise summary of the evidence led on either side and the workman's plea shall be recorded.

All proceedings of the inquiry shall be conducted in English, Hindi or Marathi according to the choice of the workman concerned and the person defending him.

The inquiry shall be completed within a period of three months : Provided that the period of three months may, for reasons to be recorded in writing be extended to such further period as may be deemed necessary by the inquiry officer."

The importance putting the workmen whose conduct is to be enquired into in a departmental enquiry on notice of the allegation of misconduct in an appropriately prepared charge-sheet has been laid down in a judgment of three Learned Judges of the Supreme Court in *Surath Chandra v. State of West Bengal*, (1971) 111 J 293 SC. The Supreme Court has held thus:

"The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This Rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him."

This Judgment of the Supreme Court was followed subsequently by a bench of two Learned Judges consisting of Mr. Justice E. S. Venkataramiah and Mr. Justice Saybyasachi Mukharji (as the Learned Chief Justices then were) in *Sawai Singh v. State of Rajasthan*, 1986(II) C.L.R. 1. The deficiencies which vitiate a vague charge-sheet cannot be allowed to be supplemented by recourse to evidence at a later stage. An employer cannot be heard to contend that he will issue a vague charge-sheet but, will put the employee whose conduct is being enquired into on notice of the allegations against him when evidence is adduced during the course of enquiry. Much prior to the evidence being adduced, the employee has to file a reply to the charge-sheet setting out the nature of his defence and it is in the preparation of this defence that the employee is prejudiced if he has not been told precisely what is the charge which he is required to meet. I am in respectful agreement with the principle enunciated by my Learned Brother Mr. Justice B. N.

Srikrishna, in *Miraj Taluka Girni Kamgar Sangh v. The Manager, Shree Gajanan Weaving Mills, Sangh and Ors.*, 1991(2) C.L.R. 714. The learned Judge has held thus :-

" An employee faced with a vague charge that he is guilty of a described type of misconduct, would be extremely hard put to defend himself against the charge unless he is informed such particulars as would enable him to give an effective reply thereto and demonstrate that the charges are false or, otherwise not acceptable. Scanning the charge-sheet given to the petitioner in the present case, I am of the view that it can be used as a model for what a charge-sheet ought not to be. In my Judgment, therefore, the charge-sheet itself ought to have been quashed and struck down by the two Courts below on this very count. The fact that voluminous evidence is led in enquiry is no substitute for a charge-sheet clearly setting forth the allegations with sufficient precision and particulars so as to enable the employee to defend himself. That is the very purpose of a charge-sheet. This is the barest requirement of a charge-sheet consistent with principles of natural justice and any charge-sheet which fails to comply with this requirement is no charge-sheet at all. If the charge-sheet fails to stand up to this test, the rest of the domestic enquiry is useless and is merely an eyewash."

The Judgment of the Learned Single Judge in *Miraj Taluka Girni Kamgar Sangh's* case (*supra*) is a clear answer to the submission urged on behalf of the employer that though the charge-sheet was vague, the vagueness of the charge-sheet was duly taken care of by intimating to the workmen initially on 17th September, 1982 the name of the employee who was assaulted and by disclosing the complaint dated 14th June, 1982 in the course of the enquiry. The conduct of the Company in the present case was anything but fair. The charge-sheet itself was issued on 15th June, 1982 and as stated earlier, there was no disclosure of any details relating to the incident or the identity of the workman who was assaulted. The workmen immediately upon receipt of the charge-sheet complained on 17th June, 1982 of the vagueness of the charges levelled. It was only on 17th September, 1982, three months thereafter, that the Company stated that "for obvious reasons" it had not revealed the name of the assaulted employee in the charge-sheet of 15th June, 1982. The name of the employee was then divulged as J.G. Waje. There was nothing obvious in the reasons which motivated the employer from refusing to divulge the name of the employee who was assaulted. If the allegation was that the workmen had assaulted a particular co-workman, the failure to disclose the name of the workman could not be justified with reference to a desire to protect the workman. Even on 17th September, 1982 the employer did not divulge to the workmen the fact that a complaint or a statement has been made by the complainant-workman to the employer. But, what is of importance is that even at that stage there was no disclosure whatsoever of any details relating to the alleged incident. The allegation against the workmen was that they had assaulted the complainant who had called 11 temporary workmen for rendering work. It was alleged that the temporary workmen worked for only one day as a result of the threat and intimidation and

did not report thereafter. There was no disclosure as to who these 11 workmen were and something more will have to be observed on this issue at a subsequent stage of the Judgment when the evidence before the Labour Court is considered. The Learned Counsel appearing on behalf of the employer sought to contend that the cross-examination of the complainant-workman was exhaustive both in terms of the number of questions posed and the time which was consumed in the cross-examination. Cross-examination cannot supplant the deficiency in an improper framing of a charge of misconduct. Similarly, the disclosure of the alleged statement by the employer in the course of enquiry cannot exculpate the employer from the plain consequences of a vague charge-sheet. The production of documents and an opportunity of cross-examination are matters which relate to and arise in the context of the proof of misconduct. The framing of charges is one step anterior thereto and, perhaps as fundamental, involving as it does a disclosure of the imputations or allegations against the employee. In the circumstances of the present case, I have no hesitation in affirming the conclusion in the Part-I Award of the Labour-Court that the enquiry was thus not fair and proper."

10. The Honourable Apex Court in the matter of *Anant R. Kulkarni v. Y.P. Education Society and others* [(2013) 6 SCC 515], has held as under:-

" Enquiry at belated stage:

14. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, must be carefully examined, taking into consideration the gravity/magnitude of charges involved therein. The Court has to consider the seriousness and magnitude of the charges and while doing so the Court must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration, that the said proceedings are allowed to be terminated, only on the ground of a delay in their conclusion. (Vide: *State of U.P. v. Brahm Datt Sharma and Anr.* : AIR 1987 SC 943; *State of Madhya Pradesh v. Bani Singh and Anr.* : AIR 1990 SC 1308; *State of Punjab and Ors. v. Chaman Lal Goyal* : (1995) 2 SCC 570; *State of Andhra Pradesh v. N. Radhakishan*: AIR 1998 SC 1833; *M.V. Bijlani v. Union of India and Ors.* : AIR 2006 SC 3475; *Union of India and Anr. v. Kunisetty Satyanarayana* : AIR 2007 SC 906; *The Secretary, Ministry of Defence and Ors. v. Prabash Chandra Mirdha*:

AIR 2012 SC 2250; and Chairman, LIC of India and Ors. v. A. Masilamani : JT (2012) 11 SC 533).

Enquiry-on vague charges:

15. In *Surath Chandra Chakravarty v. The State of West Bengal*: AIR 1971 SC 752 this Court held, that it is not permissible to hold an enquiry on vague charges, as the same do not give a clear picture to the delinquent to make out an effective defence as he will be unaware of the exact nature of the allegations against him, and what kind of defence he should put up for rebuttal thereof. The Court observed as under:-

The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.

(Emphasis added)

16. Where the charge-sheet is accompanied by the statement of facts and the allegations are not specific in the charge-sheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a charge-sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge-sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. Evidence adduced should not be perfunctory, even if the delinquent does not take the defence of, or make a protest with against that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair-play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges. (Vide: *State of Andhra Pradesh and Ors. v. S. Sree Rama Rao* : AIR 1963 SC 1723; *Sawai Singh v. State of Rajasthan* : AIR 1986 SC 995; *U.P.S.R.T.C. and Ors. v. Ram Chandra Yadav* : AIR 2000 SC 3596; *Union of India and Ors. v. Gyan Chand Chattar* : (2009) 12 SCC 78; and *Anil Gilurker v. Bilaspur Raipur Kshetria Gramin Bank and Anr.* : (2011) 14 SCC 379)."

11. A single glance at the charge sheet dated 17.4.2012 would clearly indicate that the same is vague and ambiguous, except the first paragraph, wherein it has been stated that the petitioner refused to accept a notice dated 30.3.2012, which was offered to him at 8.00 a.m. on 3.4.2012. In the second and the third paragraphs, it is alleged that in between 21.3.2012 to 29.3.2012, the petitioner was behaving in an in disciplined manner, he was disobeying his superiors, he was violating the Rules and the notices, he was deliberately trying to cause loss to the property of the factory and he had conducted a meeting for instigating the workers against the management. Not a single instance has been specifically stated, which would indicate the specific act committed by the petitioner which would amount to a misconduct if proved.

12. It is trite law that unless specific charges are set out in the charge sheet, there can be no evidence without proper description of the charges. Even the witnesses examined on behalf of the petitioner have stated in a vague manner that in between 21.3.2012 to 29.3.2012, the petitioner was committing several misconducts and that he was in the habit of prohibiting workers from doing work. In my view, when the charges levelled are vague and ambiguous, the enquiry officer could not have concluded that the charges are proved because specific acts alleged to have been committed were not mentioned in the charge sheet at all. The Labour Court had, therefore, rightly vitiated the enquiry by the Part I judgment dated 2.2.2015.

13. In the light of the above, the impugned judgment of the Industrial Court dated 28.9.2015 is quashed and set aside. Revision (ULP) No. 3 of 2015 stands dismissed. This petition is, therefore, allowed and Rule is made absolute accordingly.

14. Needless to state, the respondent / management has reserved its right in the last paragraph of it's written statement dated 9.10.2012 stating that if the enquiry is vitiated, it would conduct a de-novo enquiry.

15. Since I have concluded that the charge sheet is vague and ambiguous, the management will have to be granted the liberty to file a proper charge sheet for specifically mentioning the acts alleged to have been committed. After the charge sheet is filed before the Labour Court within a period of six weeks from today, the respondent / management can proceed to conduct a de-novo enquiry before the Labour Court. Oral evidence adduced by the witnesses before the enquiry officer will, therefore, be discarded since in a de-novo enquiry, fresh oral evidence has to be adduced through witnesses, who are examined before the Labour Court. Documents and reports of incidents, which were subject matter of the enquiry can be utilized in a de-novo enquiry.