
(1992) 03 BOM CK 0087

In the Bombay High Court

Case No : Writ Petition No's. 6005 of 1986 and 2067 of 1987

Ravindra Umesh Gokarn and Others

APPELLANT

Vs

Guest Keen Williams Ltd. and Others

RESPONDENT

Date of Decision : 10-03-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Industrial Disputes Act, 1947 — Section 11A

Citation : (1992) 2 BomCR 606 : (1992) 65 FLR 360 : (1992) 2 LLJ 847

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

1. These two writ petitions, under Article 226 of the Constitution of India, impugn Part 1 Award dated April 30, 1985 and Part 11 Award dated April 30, 1986 made in Reference (IDA) Nos. 108 and 111 of 1978 (Writ Petition No. 6005 of 1986) and Part I Award dated July 30, 1984 and Part II Award dated April 30, 1986 made in Reference (IDA) Nos. 109 and 110 of 1978 (Writ Petition No. 2067 of 1987). Since the facts and circumstances giving rise to the present writ petitions are common and the contentions are identical, it would be convenient to dispose of both these writ petitions by a common judgment.

2. The petitioners in both the writ petitions were employed as workmen in the Industrial Establishment of the first Respondent in both the writ petitions. Writ Petition No. 6005 of 1986 pertains to two workmen, R. U. Gokarn and N. B. Dhamdhare, while Writ Petition No. 2067 of 1987 pertains to other two workmen, V. R. Thakurdesai and A. K. Maini.

3. The two Awards impugned by the petitioners in the writ petitions direct reinstatement of the petitioners with back wages at the rate of 60 per cent in the case of the three workmen other than Dhamdhare who has been granted back wages at the rate of 45 per cent. Though the impugned Awards are but instances of exercise of judicial discretion in moulding the relief to be granted u/s 11A of the Industrial Disputes Act, persistence and ingenuity of counsel have raised a

storm in the tea cup-literally and figuratively. But, first, the facts :

4. The first Respondent has an Industrial Establishment at Bhandup in Bombay where it manufactures Fasteners. The Industrial Establishment has a canteen attached to it wherein, in discharge of its statutory obligation under the Factories Act, the first Respondent makes available food and beverages to its workmen. The genesis of the storm in the tea cup was a complaint regarding the quality of tea supplied in the canteen. The workmen made a complaint that the tea supplied had a foul smell. Instead of sorting out the matter with the appropriate authority, on August 21, 1973, during the second shift, a large number of workmen, accompanied by the four petitioner-workmen, marched upto the first floor of the factory building and gheraoed the Works Manager D. Brewerton and nine other senior Management Staff members in the Works Manager's Office for about two hours. It is alleged that the Morcha and the Gherao was instigated by the four petitioner-workmen and further that during the period of Gherao, the four petitioner-workmen had shouted slogans using abusive and vulgar language against the officers of the first Respondent and threatened to strip them if they dared to come out of the room in which they were confined. When the police were summoned, the petitioner workmen took up the stand that if the police touched any of the Gheraoing workmen, then none of the Gheraoed Officers would be spared. The police, with difficulty, managed to rescue the victims of the Gherao and bring the situation under control.

5. On August 24, 1973 each of the petitioners was served with a charge-sheet detailing the allegations against him. Though there are minor variations in the charge-sheet served on each petitioner, the crux of the allegations was that each petitioner-workman had incited and instigated the workmen of the second shift to resort to an illegal strike, led the Morcha of the workmen to the Works Manager's Office and wrongfully and illegally confined the Works Manager and other Officers for about two hours. It was also alleged that the workmen had played an active role in the Gherao and issued threats. On these allegations each of the petitioner-workmen was charged with misconducts under Certified Standing Orders 22(2), 22(11), 22(12) and 22(18) which read as under :

"1. Standing Order No. 22(2) :

Participation in an illegal strike, or abetting, inciting, instigating or acting in furtherance thereof whether alone or in combination with others.

2. Standing Order No. 22(11) :

Drunkenness or riotous, disorderly or indecent behaviour, use of abusive language, threatening, intimidating or coercing other employees or wrongfully interfering with the work of other employees, assault or threat of assault either provoked or otherwise, within the establishment.

3. Standing Order No. 22(12) :

Commission of any act subversive of good behaviour within the establishment or

of the discipline of the establishment.

4. Standing Order No. 22(18) :

Organising, holding, attending or taking part in any meetings within the establishment without the prior sanction of the Manager or except in accordance with the provisions of any law for the time being in force."

In the case of the petitioner Thakurdesai, there was an additional ingredient to the charge-sheet, namely, that despite a specific request made to him to allow Mrs. Robello, Secretary to the General Manager, to leave the room in which she was wrongfully confined, he did not heed to the said request and continued the Gherao. Two detailed enquiries were held on the charge-sheets issued to the four petitioner-workmen. One enquiry was held jointly against Thakurdesai and Maini and, the other, jointly against Gokarn and Dhamdhere. As a result of the enquiry, all four workmen were found guilty of the charges of misconduct and dismissed from service. The petitioner workmen raised industrial disputes through the Union and the industrial disputes came to be referred to the second Respondent Labour Court at Thane, vide References (INA) Nos. 108 to 111 of 1978 under the Industrial Disputes Act (hereinafter referred to as "the Act")

6. The Labour Court recorded detailed evidence with regard to the rival cases of the parties as reflected in their respective pleadings. By its Part I Award dated July 30, 1984, the Labour Court held that the enquiries were not vitiated on account of the failure to observe the provisions of the Standing Orders or principles of natural justice. It was unable to take the view that there was any unfairness or impropriety about the domestic enquiries and that it could not be said that the findings were perverse. All four enquiries were upheld on these findings by the second Respondent Labour Court.

7. After upholding these enquiries, the second Respondent Labour Court took up the larger issues touching the exercise of its discretionary power u/s 11A of the Act. For this purpose the Labour Court framed the following issues and answered them as under :

"1. Whether the misconduct can be treated as proved in view of Part-1 Award ?

Ans. The misconduct cannot be treated as proved only on the basis of the Part 1 Award but also on fresh consideration envisaged by section 11-A of the I.D. Act the misconduct of gherao is proved against each of the four workmen.

2. Do the workmen prove that the terminations were by way of victimisation or otherwise malafide irrespective of the alleged misconduct ?

Ans. The terminations were by way of victimisation and also malafide but not totally irrespective the of the misconduct proved against the workmen.

3. Do the workmen prove that the charge-sheets and the termination orders were both invalid having been signed and passed by a person not competent to do so ?

No.

4. Do the workmen show that the punishment was disproportionate to the misconduct if the same is the assumed to be proved ?

Yes.

5. Does the Company prove that the workmen were gainfully employed since the date of their terminations till today or for any other period ?

Ans. Yes, but see end of para 39 at page 22.

6. Does company show that for the above reason or otherwise the workmen are not entitled to full back wages ?

Ans. Yes, for the above reason and also by way of punishment.

7. What reliefs in the facts and circumstances of the case ?

As per award below :"

When it came to the grant of relief, upon careful consideration of all the material on record and the detailed facts and circumstances of the cases, the Labour Court came to the conclusion that all the workmen deserved to be reinstated in service with continuity. Since each of them was found to be guilty of, at least, the misconduct of Gherao and as the four petitioner-workmen were found to have had some alternative employment during the interregnum, the Labour Court decided to deprive them of part of their back wages. Consequently, on the facts of the cases before it, the Labour Court granted petitioner Dhamdhere only 45 per cent, while the other three workmen were granted 60 per cent of their back wages. I am informed at the Bar that the two writ petitions filed by the first Respondent Employer impugning the award in question were summarily rejected at the stage of admission.

8. Mr. Cama, learned counsel for the petitioners, attacked the award of the second Respondent Labour Court mainly on the following grounds :

(1) That the enquiries against the concerned workmen were held in English; that each of the concerned workmen did not understand English and was handicapped in instructing his representative for effective cross-examination and hence there was breach of the principles of natural justice.

(2) That it is established by the judgment of the Apex Court that, where the Enquiry Officer makes a report containing his findings with regard to the allegations against a delinquent workman, natural justice requires that an opportunity to make a representation against such a report should be afforded to the delinquent workman before the disciplinary Authority accepts such a report. In the instant case, failure to do so has resulted in violation of the principles of natural justice and therefore the enquiry was vitiated.

(3) That the first Respondent-Employer was actuated by the malafide motive of

victimising the petitioner-workmen; the Labour Court erred in not granting full back wages to the concerned workmen.

(4) That having absolved the petitioner-workmen of all charges barring the charge of the Gherao, there was no reason to sustain any punishment against them which was not imposed on a large number of other workmen.

9. A few general observations are called for before the embarking upon the task of addressing myself to the arguments on behalf of the petitioners. It is trite law that the principles of natural justice are elastic and must be moulded to the facts and circumstances of each case. They can not be elevated to the status of rigid statutory rules, though all actions, judicial, quasi-judicial or administrative, must be informed by the principles of natural justice.

10. The first grievance is that the enquiry was held and recorded in English despite a request made by the Petitioners that it be held and recorded in Marathi. This, in the submission of the learned counsel for the petitioners, is a blatant violation of the principles of natural justice. In the first place, no material has been placed on record from which it is possible to hold that the enquiry was held in English, though the material on record does indicate that the record of the enquiry was made in English. In fact, during the cross-examination of Siddhanti, witness for the first Respondent, a pointed suggestion was made to him on behalf of the petitioners that he had not acceded to the suggestion to maintain the record of the enquiry in Marathi and admitted by the said witness. Though Mr. Cama showed me certain portions of the Award Part-I and tried to persuade me that the legitimate inference therefrom would be that the enquiry itself was held in English. I am unable to accede to this submission. In any event, it is admitted that the petitioner were represented by the office bearer of a registered Trade Union to which the petitioners belonged and that the said office bearer was fully conversant with English language. It is also admitted that the cross-examination was conducted by the said office bearer. I am unable to appreciate the grievance voiced on behalf of the petitioner. Even assuming that the enquiry itself was held in English, the office-bearer representing the petitioner was fully conversant with the English language and could have therefore obtained necessary instructions from the petitioners by making them to understand what had been deposed by the particular witness. In my view, therefore, the Labour Court was perfectly justified in rejecting this argument and holding that there was no breach of the principles of natural justice on this count. The first contention of Mr. Cama is, therefore, liable to be rejected.

11. In support of the next contention, which was strenuously urged by the learned counsel, my attention has been invited to a number of authorities, some of the Supreme Court and some of our own Court, to which I shall advert presently.

12. On the strength of the decision of the Supreme Court in *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, , Mr. Cama

strenuously urged that the requirement of a hearing or at least an opportunity to make a representation against the report of the Enquiry Officer, has been held to be an inviolable principle of natural justice. Having anxiously perused the said judgment, and the judgments of our own High Court which have interpreted the said judgment, I am unable to accept the contention of the learned counsel.

13. Ratna's case (supra) arose out of the provisions of the Chartered Accountants Act. The procedure prescribed thereunder is not the same as that under the Standing Orders applicable to the industrial establishment of the first Respondent. Under the scheme of the Chartered Accountants Act, as analysed by the Supreme Court in the said judgment, disciplinary action could be taken against a member of the Institute of the Chartered Accountants only by a body known as the Council of the Institute by following certain procedure. The procedure is that where the Council is prima facie of the view that there exist circumstances to indicate that one of its members is guilty of professional misconduct, it may "refer" such a case to another Statutory Body known as the Disciplinary Committee. The Disciplinary Committee is required to hold an enquiry in such manner as prescribed under the regulations framed under the said statute. After making its enquiry, the Disciplinary Committee makes a report to the Council. Upon perusal of such report, if the Council "finds" that the concerned member of the Institute is guilty of any professional or other misconduct, it is required to record its "finding" accordingly and shall proceed to take action in the manner laid down in the relevant section. The distinction is at one apparent. The duty of recording a finding of guilt or otherwise of the member charged with the professional misconduct has been vested only in the Council. In doing so, it may take the assistance of the report of the Disciplinary Committee, but in any event the "finding", as to the existence or otherwise of the professional or other misconduct of a member, has to be recorded by the Council itself. In these peculiar circumstances, arising out of the special procedure prescribed under the scheme of the statute, the Supreme Court read into the scheme of the statute, an obligation to hear, or at least make available the report of the Disciplinary Committee and allow representation thereagainst, as a requirement of natural justice. This situation has no parallel under the certified standing orders applicable to the first Respondent-Employer. The relevant standing Order (Standing Order 23), only requires that a workman against whom any action is proposed to be taken for misconduct shall be given a charge-sheet clearly setting forth the circumstances appearing against him and requiring explanation and shall be given an opportunity to answer the charge and permitted to be defended by a workman working in the same Department. It also requires that the workman shall be permitted to produce witnesses in his defence and cross-examine any witnesses on whose evidence the charge rests and that a concise summary of the evidence led on either side and the workman's plea shall be recorded. There is no such obligation cast upon the Punishing Authority under the Standing Orders to record its "finding" as to the guilt of the workman. For obvious reasons, the procedure prescribed under the Standings Orders is

neither the formal nor elaborate and leaves it to the sense of fair play and justice of the Competent Authority to ensure that all relevant material is collected by following the principles of natural justice. I am afraid that this is a far cry from the elaborate machinery prescribed under the Chartered Accountants Act which had been dealt with by the Supreme Court in Ratna's case (supra). I am, therefore, unable to accept the submission that the requirement of furnishing a copy of the Enquiry Officer's report and affording an opportunity of hearing/representation thereagainst, before the making the findings, has been held to be a general principle of natural justice applicable to all domestic enquiries conducted against industrial workman. It is not possible to find any such proposition of law emanating from the decision of Supreme Court in Ratna's case (supra). Ratna's case was referred to, and distinguished on more or less similar lines, by two judgments of our High Court, one in the case of Manipur Vasantkumar Kini v. Union Bank of India and Anr. (Writ Petition No. 1667 of 1981 decided on June 16, 1989 by Bharucha, J.) and the other in the case of Mr. Mulraj Jamnadas Ashar v. Bank of India (Writ Petition No. 3258 of 1989 decided on February 1, 1990 by Pendse, J.).

14. In Praful Durlabhji Ved v. Co-operative Bank of Ahmedabad Ltd. & Ors. (Writ Petition No. 1113 of 1991 decided on January 16, 1992, by Sukumaran and Saraf J.J.), a Division Bench of this Court before which Ratna's case (supra) was cited for the same purpose had no difficulty in rejecting the submission. The Division Bench pointed out that there was no such obligation under the concerned service Regulations/Rules for furnishing a copy of the enquiry report and no grievance had been made about the non-availability of the enquiry report. Says the Division Bench :

"When the staff regulations and service rules do not insist upon supply of the enquiry report and when the petitioner himself did not nurse any grievance about it, the petitioner cannot assail the ultimate order on the ground that a copy of such a report was not furnished to him."

In the case of the present petitioners also these observations ring true. As a matter of fact, no such grievance was voiced at any time before the arguments commenced. It was not in the pleadings before the Labour Court, nor, for that matter, was such a contention taken up in the writ petitioner itself. For this reason also I decline to accede to the submissions made by the learned counsel.

15. The learned counsel then relied upon a judgment of the Supreme Court in Union of India (UOI) and Ors Vs. E. Bashyan, as laying down the general proposition of law canvassed by him. A careful reading of this judgment does not indicate that the proposition of law, though voiced by the Bench of the Supreme Court, was laid down as law. On the other hand, having voiced the proposition of law, considering its far reaching implications, the Division Bench was of the view that the propriety demanded that the matter be considered by a larger Bench in view of the apparent conflict with the other Division Bench pronouncements. Consequently, the SLP was referred to a larger Bench. Fortunately for us, the

decision of the larger Bench is also available in the year 1991.

16. In *Union of India and others Vs. Mohd. Ramzan Khan*, a three Judge Bench of the Supreme Court considered the proposition of law which was referred to it by the earlier two-Judge Bench. I must at once hasten to point out that the S.C. in *Mohd. Ramzan's* case was considering the situation arising under Article 311 of the Constitution of India and, therefore, one must necessarily read the proposition of law as having application to cases arising under Article 311 of the Constitution of India and the safeguards contained therein. In fact, the Division Bench of this Court, in *Praful Ved's* case (*supra*), has so read the judgment in *Mohd. Ramzan's* case and observed :

"Counsel referred to the decision in *Beama Manufacturers (P) Ltd. Vs. Regional Director, ESI Corporation*, , to contend that supply of such a report is an integral fact of the basic requirements of natural justice. The decision dealt with a case covered by Article 311 of the Constitution. The observations contained in the judgment have to be understood in that background."

To similar effect are the observations of another Division Bench in the judgment rendered in *Nabisha Hussein Shaikh v. K. K. Uppal & Anr.* 1992 I C.L.R. 148. As a matter of fact, this judgment of the Division Bench also had an occasion to consider *Ratna's* case as well as *Mohd. Ramzan's* case and took the view that both the decisions were rendered in the peculiar facts and circumstances of those cases. I am, therefore, unable to accept the wide contention of the learned counsel for the petitioners that the proposition of law laid down in *Mohd. Ramzan's* case would apply to domestic enquiries held against industrial workmen under the provisions of their Service Rules, Regulations or Standing Orders. For a moment, even if it were possible to accept the submission of the learned counsel, it is at once apparent from the decision in *Mohd. Ramzan's* case, that, perhaps being aware of the far reaching consequences flowing from the judgment and the Pandora's box that would be opened up, the Supreme Court itself very cautiously and guardedly laid down that the proposition of law, "shall have prospective application and no punishment imposed shall be open to challenge on this ground". Thus, even if *Mohd. Ramzan's* case could be said to have laid down the proposition of law as to natural justice, as contended by Mr. Cama, as the judgment of the Supreme Court itself indicates, the proposition has been laid down prospectively i.e. with effect from November 20, 1990, and, therefore, the present orders of punishment, which were imposed much prior to the said date, cannot be affected by the general principle, if any, laid down in *Mohd. Ramzan's* case.

17. Mr. Cama, then relied upon the judgment of the Supreme Court in *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, , as supporting his contention. The learned counsel has taken me through the relevant passages of this lengthy judgment. Despite anxious reading of those passages, I find nothing therein which supports this contention of the learned counsel. All that can be gathered from the said passages is that in a case

of mass action by workmen, action cannot be taken in an indiscriminate manner, unless circumstances indicate that any one of them is guilty, and if so, how he is guilty. In my view, the observations of the Supreme Court are in no way helpful in advancing the contention canvassed. The learned counsel also relied upon another judgment of the Supreme Court in *Sengara Singh and Others Vs. State of Punjab and Others*, . The proposition of law laid down by the Supreme Court in this judgment is more or less to the same effect, namely, that where a large number of persons are found guilty of the same misconduct, in the absence of any special justifying reason, it is not permissible to pick and choose a few for imposing punishment.

18. The third contention canvasses on behalf of the petitioners is that the misconduct was the occasion to victimize as found by the Labour Court, and therefore, the Labour Court was bound to give full give full relief to the workmen as prayed for. It is somewhat difficult to comprehend the exact import of this contention. It is true that, upon a careful appreciation of the evidence on record, the Labour Court did find that the only misconduct which could be said to have been proved against the said petitioner-workmen was the misconduct of Gherao. Considering the circumstances of the cases before it, the Labour Court was of the view that the misconducts proved against the workman need not have been visited with the extreme penalty of dismissal and therefore the said act itself was evidence of victimization. It is in this context that the Labour Court observed that though the misconduct was committed, the misconduct was utilised as an occasion to victimize the workmen by imposing the extreme penalty of dismissal. It is important to note that, apart from this inferential reading of the situation, there was no cogent material as to the victimization placed on record. Even the learned Judge of the Labour Court was constrained to castigate the evidence of the solitary witness examined by the petitioner-workmen, Gokarn, as "inadequate" and "cryptic". In my view, it was only because of the grossly disproportionate nature of the punishment that the Labour Court could record a finding of victimization. Because there was a finding of victimization, there was ground for interference with the punishment of dismissal. The argument canvassed by the learned counsel does not carry the matter further, as unless there was a finding of victimization, there would have been no occasion to interfere with the orders of dismissal passed against the petitioner-workmen. I am, therefore, unable to accept the contention of the learned counsel in this behalf.

19. The last contention urged by the petitioner is that the facts on record showed that about 300 and odd workmen had Gheraoed the Officers including the Works Manager. Since the Labour Court acquitted the petitioner of the additional charges of instigation of illegal strike, incitement, leading the Morcha and using violent abusive language or addressing the meeting the at the time of Gherao, the only charge held proved by the Labour Court itself was the charge of Gherao. All the workmen who had participated in the Gherao, numbering about 300, could be said to be equally guilty and, since no action has been taken against

about 296 workmen, there was no reason for the Labour Court to impose any punishment on even the four petitioner-workmen. The contention is convoluted and does not appeal, even otherwise, on the basis of the facts found on record. On the material on record, it is not possible to discern or decipher the fate of the other 296 workmen. Even if it is assumed that the Employer did not take action against them, it might make out the case of hostile discrimination, giving rise to an inference of victimization, which has been already found by the Labour Court. The situation is not one of deciding whether the Employer was justified in punishing the workmen. On the contrary, the only question which the Labour Court had to address itself to, was whether and to what extent relief could be granted in exercise of its powers u/s 11-A of the Act. This, in my view, the Labour Court has done admirably, and in a commendable manner. It has sifted the entire evidence on record, culled out therefrom the salient facts, and recorded the finding that the petitioner-workmen were the leaders who had not only participated in the Gherao, but were instrumental for bringing about the Gherao through their leadership, though without any violent incident. Says the Labour Court :

"Whatever may be the attendant circumstances, the gherao has its own implications and the workmen responsible for the same must be punished suitably."

20. I find the criticism levelled against the Labour Court's reasoning, wholly in warranted and unacceptable. The Labour Court, shorn of the verbiage, has found that the misconduct of the Gherao had been proved, but that the extreme penalty of dismissal was actuated by motive of the victimization. Consequently, the Labour Court interfered and set aside the dismissals. As to the relief, it rightly held that each of the petitioners was entitled to be reinstated in service. When it came to the back wages, the Labour Court decided that the workmen were not entitled to the full back wages for two reasons. First, that each of them had some alternative earning during the relevant period and second, that each one of them deserved to be deprived of some back wages as punishment for the proved misconduct. The details of appreciation of evidence and the determination of the exact proportion of back wages to be deprived, under the each head, is a matter exclusively within the province of the Labour Court which is invested with the judicial discretion u/s 11-A of the Act. In my judgment, this discretion has been properly exercised and there is no case made out for interference therewith. I find nothing arbitrary or improper in the exercise of wide jurisdiction which the Labour Court possesses u/s 11-A. The learned counsel, despite elaborate attempts, has not been able to persuade me to the contrary. In my view, the award had been rendered after carefully considering the material on record and judiciously exercising discretion vested u/s 11-A of the Act. I, therefore, find no circumstances warranting interference with the award impugned in the present petition.

21. There is no merit in the two writ petitions. Adequate justice has been

rendered to the petitioners by the impugned award, which calls for no interference. The petitions are, therefore, dismissed and the rules granted thereupon discharged.

22. However, under the circumstances of the case, there will be no order as to costs.