

(2004) 10 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition No. 2630 of 2004

Sanjay Pralhadrao Singalwar

APPELLANT

Vs

Zilla Parishad and Another

RESPONDENT

Date of Decision : 19-10-2004

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30(2)

Citation : (2005) 2 BomCR 71

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : A.M. Ghare, for the Appellant; N.P. Dhote, for the Respondent

Judgement

Dharmadhikari B.P., J.—By this petition filed under Articles 226 and 227 of the Constitution of India the petitioner-employee challenges order dated 26-4-2004 passed by Labour Court, Amravati in U.L.P Complaint No. 74 of 2002 rejecting his prayer for grant of interim relief and Judgment dated 11-6-2004 delivered by Industrial Court in U.L.P Revision No. 30 of 2004.

2. I have heard Advocate A.M. Ghare for the petitioner and Advocate N.P. Dhote for respondent Nos. 1 and 2. As the point involved is very short, the matter is taken up for final disposal.

Rule made returnable forthwith. Heard by consent.

3. Brief facts giving rise for filing of this petition can be summarised as under:

The petitioner is Gram Sevak in the employment of the respondents and on 11-9-2000 he was issued charge-sheet for various misconducts including misappropriation, irregular expenditure, not making Gram Panchayat records available for inspection etc. The employee in reply to the charge-sheet denied all the charges and he also pointed out that there is no irregular expenditure. About record he pointed out that the records have been handed over to Officer Shri M.W. Raut on 8-6-2000 and he has got acknowledgment thereof. It appears that

Departmental Enquiry was then conducted against the petitioner by respondents and the respondents served show cause notice dated 31-8-2002 upon him. In this show cause notice the Disciplinary Authority viz. Chief Executive Officer of respondent No. 1 Zilla Parishad states that charges No. 1-A and B, charge No. 2 are proved against the petitioner and proposed to impose punishment of dismissal and recovery of Rs. 15,95,480/- in one stroke. Enquiry report is served upon petitioner with this show cause notice.

4. Upon receipt of this show cause notice, the petitioner filed U.L.P. Complaint No. 74 of 2002 u/s 28 read with Schedule IV, Item 1 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "M.R.T.U. & P.U.L.P. Act") before the Labour Court, Amravati. The petitioner in his complaint apart from pointing out his innocence in this matter made a grievance that the very purpose of issuing show cause notice to him is being defeated. He also pointed out that in criminal application which reached this Court, this Court made observations that the petitioner alone is not beneficiary of the alleged misdeeds. The petitioner contended that he has been denied opportunity to make effective representation in this respect before the Disciplinary Authority. Alongwith complaint he also moved an application u/s 30(2) of M.R.T.U. & P.U.L.P. Act and sought stay of further proceedings. The learned Labour Court after hearing both the sides held that the petitioner has failed to point out any prejudice caused to him on account of non-supply of enquiry report or defective show cause notice and therefore, refused to grant him any interim relief. However, it granted the petitioner time of fifteen days to file reply to the show cause notice.

5. The petitioner then filed revision u/s 44 of the M.R.T.U. and P.U.L.P. Act which came to be registered as U.L.P. Revision No. 30 of 2004 and in the said revision he pointed out that show cause notice without enquiry report is illegal. He further raised grievance about the observations made by this Court in Criminal Application No. 60 of 2001 decided on 29-1-2001 in which the High Court made prima facie observation that the petitioner is not sole beneficiary and such things cannot happen without connivance of such officers and Members of Gram Panchayat. The learned Member of the Industrial Court after hearing both the sides held that the reasoning given by the Labour Court is just and proper and no interference was called for at interlocutory stage, it therefore, dismissed the revision. It again granted time of fifteen days to the petitioner to file reply to the impugned show cause notice. This order has been challenged in the present petition.

6. Advocate A.M. Ghare appearing for the petitioner invites attention of the Court to the show cause notice dated 31-8-2002 and points out that the Disciplinary Authority has first scrutinised enquiry report and thereafter has recorded findings that the charge Nos. 1-A and 1-B as also Charge No. 2 are completely proved against the petitioner in the said departmental enquiry. He points out that the said show cause notice is therefore, not show cause notice in relation to the

findings recorded by the Enquiry Officer but it is infact the show cause notice about the quantum of punishment. He contends that this is in violation of law laid down by the Hon''ble Apex Court in the case of Union of India and others Vs. Mohd. Ramzan Khan, and Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., .

7. As against this, relying upon the judgment reported at State of U.P. Vs. Harendra Arora and Another, . The learned Counsel Mr. Dhote for the respondent argued that the case as pleaded by the petitioner is not sufficient to grant any interim relief. He argues that mere non supply of enquiry report is not cognizable unless and until it is coupled with proof of prejudice. He also points out that the proceedings before the Labour Court are still pending and are not finally disposed off.

8. Advocate Ghare for the petitioner relies upon the judgment of the Hon''ble Apex Court reported at Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others, , and states that in the appropriate cases complaint u/s 28 of the M.R.T.U. & P.U.L.P Act can be filed to prevent even apprehended unfair labour practice. He contends that the action to be taken by the employer after receipt of enquiry report is well settled and in the facts and circumstances of the case, serious injury was being caused to him and therefore, in order to avoid that injury and cure defects in the departmental enquiry the petitioner filed U.L.P. complaint. He relies upon the observations made in paragraph No. 44 of this judgment to support his contention, which reads as under:

"Mr. Pai, learned Senior Counsel for the appellant, also argued that Item I of Schedule II refers to the threat given by the employer to discharge or dismiss the employees if they join the union. Thus, even a threat is considered to be an unfair labour practice as per this Item. While, the unfair labour practice mentioned in Item I of Schedule IV does not cover any threat but actual order of discharge or dismissal. It is not possible to agree. The reason is obvious. A mere threat to discharge or dismiss an employee if he joins a union by itself may be an unfair labour practise as per Item I(a) of Schedule II though the threat might not have been translated into any attempt in the direction of discharge or dismissal. Still such a threat would constitute unfair labour practice, which can be prevented by filing appropriate complaint before the Industrial Court u/s 5 read with Section 28(1). But if the employer takes a concrete step towards discharging or dismissing an employee on any of the grounds contemplated by Item I of Schedule IV then it would not be in the realm of mere threat but would be translated into an actual action of taking a calculated step towards such alleged contemplated unfair labour practice by serving charge-sheet and starting departmental enquiry and/or putting employee under suspension with the ultimate object in view. At that stage the alleged unfair labour practice of engaging in discharging of dismissing the employee on the grounds contemplated in Item I of Schedule IV can be said to have taken place. It is obvious that if an employer merely threatens the employee to discharge him by way of

victimisation etc. and such a threat is not followed by any attempt by way of starting departmental enquiry or taking any other concrete step as aforesaid. Such a simpliciter threat would not get covered by Item I of Schedule IV. It would also not be covered by Item I(a) of Schedule II as it is not a threat to discharge or dismiss an employee if he joins a union for the purpose of attracting Item I of Schedule IV apart from mere threat, some concrete step like starting departmental enquiry has to be taken by the employer before such an action can be brought in challenge by the concerned employee on any of the grounds mentioned in Item I of Schedule IV. Consequently, merely because the legislature has not repeated the terminology of mere threat which enacting Item of Schedule IV it would not mean that before the final order of discharge or dismissal is passed on any of the grounds contemplated by Item I of Schedule IV, and only first step is taken in that direction, the unfair labour practice to discharge or dismiss such employee on any of these grounds mentioned in Item I of Schedule IV cannot be said to have taken place or on that basis the complaint would be premature, as submitted by Shri Pai, learned Senior Counsel for the appellant."

The said observation of the Hon"ble Apex Court supports the case of petitioner and it cannot be accepted that the petitioner could not have challenged the said show cause notice by filing complaint u/s 28 of the M.R.T.U. & P.U.L.P. Act. The petitioner is well within his right in filing such complaint and in seeking interim relief.

9. Advocate Ghare relies upon the judgment reported at Union of India and others Vs. Mohd. Ramzan Khan, , states that service of enquiry report is must. He relies upon paragraph No. 15 of this judgment which reads thus :

"Deletion of the second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd amendment. We, therefore, come to the conclusion that supply of a coy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the

delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position."

He contends that in the instant case the Disciplinary Authority formed its opinion about the report of the Enquiry Officer before hand and therefore, show cause notice as required by this judgment is not issued to him.

10. He also relies upon Constitutional Bench judgment of Hon"ble Apex Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . He points out law laid down by the Hon"ble Apex Court in paragraphs No. 7 of this judgment. The said ruling shows that right to represent against the findings recorded in Enquiry Officer is part of reasonable opportunity available during first stage of enquiry and right to show cause against the penalty proposed belongs to second stage after the Disciplinary Authority has considered the findings in the report when the said Authority comes to the conclusion that it is necessary to award punishment on the basis of its conclusion. It is also held that the statutory rules if any which deny the report to the employee are against the principles of natural justice and therefore, invalid. The employee is entitled to copy of enquiry report even if the statutory rules do not permit furnishing of report or are silent on the subject. The Hon"ble Apex Court has laid down that failure of employee to ask for copy of enquiry report cannot be constituted as waiver of his right to get it. It has been held that the right to make representation to the Disciplinary Authority against the findings recorded in the enquiry report is an integral part of opportunity of defence against the charges and to deny the said right is breach of principles of natural justice. All employees in all establishments whether Government or non-Government, public or private are held eligible for such copy of enquiry report. The Hon"ble Apex Court has further held that the effect of order of punishment passed without supplying copy of enquiry report is relative aspect to be considered in the light of punishment awarded. The Hon"ble Apex Court also held that if non furnishing of report has prejudiced the employee in some cases while it may have made no difference in other cases. Therefore, question of prejudice has to be considered in the facts and circumstances of each case. The Apex Court has further qualified that if Enquiry Officer's report is not furnished to the delinquent employee the courts and Tribunals should cause copy of report to be furnished to the aggrieved employee and give such employee an opportunity to show how his or her case was prejudiced because of non-supply of report. If after hearing the parties Court or Tribunal comes to conclusion that non-supply of report would have made no difference to the ultimate findings and the punishment given, Court or Tribunal should not interfere with the order of the Tribunal. Thus, observations of the Apex Court therefore, clearly show that question of prejudice arises only if the order of punishment is passed without supply copy of enquiry report to the employee.

11. In this background the ruling cited by the learned Counsel for respondent reported at State of U.P. Vs. Harendra Arora and Another, , needs to be looked into. In this judgment in paragraphs No. 8 the Hon"ble Apex Court has

considered the effect of non-furnishing copy of enquiry report on the order of punishment in the light of the above referred 1994 Supreme Court judgment. Perusal of paragraph 23 of the said judgment reveals that the punishment of dismissal was already imposed by the Disciplinary Authority. Here in the case of petitioner, as yet order of punishment has not been passed. Therefore, the question of prejudice was totally irrelevant. The petitioner employee was only seeking opportunity to make representation against the findings recorded by the Enquiry Officer before the Disciplinary Authority reached any opinion about the correctness or otherwise of such findings of the Enquiry Officer.

12. In the facts of the present case it is apparent that both the court below have refused to exercise jurisdiction available to them. The Counsel for the petitioner pointed out that in departmental enquiry only statements of two witnesses have been recorded by the Enquiry Officer and none of these two officers were working with petitioner during the period mentioned in the charge-sheet. It is stated that these two officers have joined the post recently and they had no factual knowledge of the controversy. It is further pointed out by the learned Counsel that the petitioner has submitted his reply and he also points out that in Criminal Application No. 60 of 2001 decided on 29-1-2001 this Court prima facie felt that the petitioner is not the sole beneficiary and such misdeed could not have taken place without in connivance of other officers and members of Gram Panchayat and the contractors who were entrusted with the works. He therefore, pointed out that he had valid defence to be made before the Disciplinary Authority. According to him there is no evidence on record to reach findings against petitioner and hence, opportunity to show cause against such findings should have been extended to him but the Disciplinary Authority.

13. The learned Counsel for the petitioner argues that the Authority issuing show cause notice on 31-8-2002 (Chief Executive Officer) is now holding charge and there is other Chief Executive Officer. He argues that such opportunity therefore, can be extended to him even now as the person presently holding the post has not formed opinion that charges are proved.

14. Having heard both the Advocates and after considering the law on the point it appears that the petitioner wanted to show to the Disciplinary Authority as to how findings reached by the Enquiry Officer are perverse. Such opportunity is admittedly not given to him and infact, the principles of natural justice have been violated because the Disciplinary Authority reached the finding that charges are proved even without giving any show cause notice to the petitioner for that purpose. The show cause notice dated 31-8-2002 is only in relation to the quantum of punishment. It does not extend opportunity to the petitioner to show cause as to why the report of the Enquiry Officer should not be accepted. As the Disciplinary Authority is already charged, the said Disciplinary Authority can issue appropriate show cause notice to the petitioner calling upon him as to why the report of enquiry should not be accept. After taking into consideration the reply submitted by the petitioner to such show cause notice the Disciplinary Authority

can make up its mind about correctness of the said findings and proceed further in accordance with law. The argument of Advocate Dhote about prejudice on account of nonsupply of copy of show cause notice cannot be accepted as the Disciplinary Authority has yet not imposed the punishment upon the petitioner. If the grievance about the departmental enquiry and examination of witnesses recorded therein by the Enquiry Officer made by the petitioner is found to be correct by the Disciplinary Authority, it can very well hold in favour of the petitioner. However, this is the angle to be considered by the Disciplinary Authority and in my opinion by extending such opportunity to the petitioner has definitely caused serious prejudice to him.

15. Hence, in this view of the matter the impugned show cause notice dated 31-8-2002 is hereby quashed and set aside. The Disciplinary Authority is directed to issue fresh show cause notice in accordance with law and to call upon him to show cause as to why findings reached by the Enquiry Officer should not be accepted. Such show cause notice to be issued within the period of two weeks from the date of receipt of this order by the respondents and the petitioner to file his reply to the said show cause notice within further period of two weeks thereafter. The Disciplinary Authority shall then proceed further to take appropriate decision in the matter in accordance with law and final action in this respect shall be completed within further period of four weeks thereafter.

Rule made absolute in the above terms with no order as to costs.