
(1962) 02 CAL CK 0006
In the Calcutta High Court

Saxby and Farmer (India) (Private) Ltd.	APPELLANT
Vs	
Third industrial Tribunal and Others	RESPONDENT

Date of Decision : 15-02-1962

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 38

Citation : (1962) 2 LLJ 52

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

Bench : Single Bench

Judgement

B.N. Banerjee, J.—This rule is directed against an order, made by the third industrial tribunal, refusing to accord approval to an order of dismissal by the petitioner-company of its workman, Sukumar Chowdhury, for misconduct.

2. The following facts are not disputed. The respondent 2, Sukumar Chowdhury, was a fitter employed in the fitting and assembly department of the petitioner-company. He was charged with misconduct by the works manager of the petitioner-company to the following effect:

It has been reported that about 10-45 pm. on 23 November 1960 you went to the office of the machine chop foreman and started an altercation in a very insolent manner with the foreman Sri N. Chatterjee over job rates of V.B. 7, in course of which you also abused him and threatened him. Your alleged actions as referred to above amounted to disorderly behaviour which is a major misdemeanour according to the certified standing orders of the company.

3. Sukumar Chowdhury was directed to submit his written explanation to the charge. He was also suspended pending enquiry into the charge.

4. By a letter, dated 25 November 1960 (en-closure D to the petition), Sukumar Chowdhury denied the charges levelled against him and characterized them as baseless and mala fide. In the aforesaid letter, he stated that his detailed explanation to the charges would follow. It does not, however, appear that any other explanation was submitted by him.

5. One Mr. Dennison is the managing director of the petitioner-company. He directed the labour officer of the company, K.D. Banerjee, to hold the managerial enquiry into the charges. Pursuant to that direction, the said labour officer held a departmental enquiry, with notice to Sukumar Chowdhury. Witnesses were examined in the said enquiry, and it appears from the materials before me, that the said Sukumar Chowdhury fully participated in the enquiry. The enquiring officer reported to Mr. Dennison that the charges were established against the delinquent workman, Sukumar Chowdhury. On the report, Mr. Dennison passed an order of dismissal of Sukumar Chowdhury from service. The order of dismissal was communicated to the workman above named, by a letter, dated 6 December 1960. By the said letter the workman was further informed that, in view of the pendency of an industrial dispute at that time, an application u/s 33(2)(b) of the Industrial Disputes Act would be made before the industrial tribunal for approval of the order of dismissal.

6. The application u/s 33(2)(b) of the Industrial Disputes Act was filed before the industrial tribunal on the very same date, namely, the 6 December 1960.

7. The reasons which weighed with the tribunal in refusing approval to the order of the dismissal are herein below set out:

(a) The concerned workman, Sri Sukumar Chowdhury, has stated in his written statement that he is a permanent workman of the company and has been an office bearer of the Saxby & Farmer Mazdoor Union and the company was duly furnished with a list of office-bearers of the union. So, he being a protected workman, the company cannot dismiss or otherwise punish him without express permission in writing of this tribunal. The company's action against him is a motivated one and is an act of victimization and unfair labour practice.

(b) I find that there is substance in the contention of the workmen and that the present proceeding is not maintainable because the employer's action against the concerned workman, who was the vice-president of the registered trade union, without obtaining "express permission in writing of this tribunal (sic). Admittedly, the company did not obtain permission of this tribunal as required by Section 33(3) of the Industrial Disputes Act before taking action by way of dismissal of Sri Sukumar Chowdhury who has been admittedly an officer of the registered trade union connected with the establishment. Therefore the present application is not maintainable in law.

(c) It transpires in evidence that the works manager of the company (Sri B.K. Bhattacharji) who initiated the proceeding against the workman by drawing up a chargesheet (Ex. 1) on 24 November 1960 placed the workman under suspension by a letter dated 24 November 1960 (Ex. 2) and by another letter dated 28 November 1960 (Ex. 4-a) fixed the time and place of holding the departmental enquiry against the said workman. His direction was that the departmental enquiry into the charges against the workman will be held in his office. It is also in evidence that he remained all along present during the

departmental enquiry held by his subordinate officer and in which his subordinate staffs gave evidence. He himself also gave evidence in support of the charges levelled against the workman as per chargesheet Ex. 1 drawn by him. So not only he initiated the departmental proceedings and conducted the same, but also watched the proceedings till the last moment and he himself gave evidence in support of the charge. This conduct of the works manager who was, so to say, the prosecutor has been seriously commented upon in my view not without justification.

(d) ...P.W. 1 Sri K.D. Banerjee who was the enquiring officer admits that the concerned workman asked for a copy of the proceedings but it was not furnished to him and no reason has been assigned to him for the non-compliance P.W. 1 has also admitted that at the time of the enquiry some representatives of the union questioned his fairness and impartiality in conducting the enquiry.

8. For the reasons quoted above, the industrial tribunal refused to accord approval to the order of dismissal.

9. The propriety of the order is being disputed in this rule at the instance of the petitioner company.

10. It was on tended on behalf of the petitioner-company that the tribunal was wholly wrong in presuming that Sukumar chowdhury was a protected workman and as such could not be dismissed from service eave with the express permission in writing of the industrial tribunal. This contention, I find, is a correct contention. Sub-sections (3) and (4) of Section 33 of the industrial Disputes Act deal with "protected workman," which I set out below:

(3) Notwithstanding anything contained in Sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.--For the purposes of this sub-section a protected workman, in relation to an establishment, means a workman who, being an officer of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognized as protected workmen for the purposes of Sub-section (3) shall be one per cent of the total number of workmen, employed therein subject to a minimum number of

five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognized as protected workmen.

11. Under the powers conferred in the explanation to Sub-section (3) of Section 33 read with Section 38 of the industrial Disputes Act, 1947, certain rules have been framed regarding the protected workmen and Rule 71 of the Rules is material for the present purpose. Rule 71 is set out below:

71. Protected workmen.--(1) Every registered trade union connected with an industrial establishment to which the Act applies, shall communicate to the employer, before 30 September every year, the names and addresses of such of the officers of the union who are employed in that establishment and who, in the opinion of the union, should be recognized as "protected workmen." Any change in the incumbency of any such officer shall be communicated to the employer by the union within fifteen days of such change.

(2) The employer shall, subject to Section 33, Sub-section (4), recognize such workmen to be "protected workmen for the purposes of Sub-section (3) of the said section and communicate to the union in writing within fifteen days of the receipt of the names and addresses under Sub-rule (1), the list of workmen recognized as "protected workmen."

(3) Copies of communications under Sub-rules (1) and (2) shall also be sent to the Labour Commissioner and the conciliation officer concerned.

(4) Where the total number of names received by the employer under Sub-rule (1) exceeds the maximum number of the protected workmen, admissible for the establishment, u/s 33, Sub-section (4), the employer shall recognize as protected workmen only such maximum number of workmen:

Provided that where there is more than one registered trade union in the establishment, the maximum number shall be so distributed by the employer among the unions that the numbers of recognized protected workmen in individual Unions bear roughly the same proportion to one another as the membership figures of the unions. The employer shall in that case intimate in writing to the president or the secretary of the union the number of protected workmen allotted to it. A copy of this letter shall also be sent to the Labour Commissioner:

Provided further that where the number of protected workmen allotted to a union under this sub-rule, falls short of the number of officers of the union seeking protection, the union shall be entitled to select the officers to be recognized as protected workmen. Such selection shall be made by the union and communicated to the employer within five days of the receipt of one employer's letter.

(5) When a dispute arises between an employer and any registered trade union whether a particular workman should be recognized as a "protected workman" or not, the dispute shall be referred to the Labour Commissioner whose decision thereon shall be final.

12. The law relating to protected workmen being as stated above, I have to see whether Sukumar Chowdhury, the dismissed workman, was at all a protected workman. It is not disputed that he is the vice-president of the trade union of the workmen of the petitioner-company. It further appears from a letter, dated 6 April 1960 (annexure I to the petition), that the names of the office-bearers elected at the annual general meeting of the union, held on 2 April 1960, were forwarded to the petitioner-company. But although that is so, the union never expressed the opinion that all the office bearers, elected at the annual general meeting, should be recognized as protected workmen.

13. Mr. Pritimoy Dutt learned advocate for the respondents, made somewhat desperate effort to read in the letter, annexure I, an expression of an opinion that all the office-bearers should be recognized as protected workmen. He further contended that because the number of the office-bearers did not exceed one per cent of the total number of workmen employed in the petitioner-company, the conclusion was inevitable that all the office bearers were intended for recognition as protected workmen. Mr. Dutt is wholly in error in this connexion. The letter, annexure I, does not imply the expression of any opinion that all the office-bearers were to be treated or recognized as protected workmen. In Para. 6 of the affidavit-in-opposition, filed by the respondent Sukumar Chowdhury, there is no doubt a bald statement to the following effect:

I have further to add that the total number of office-bearers including the president and vice-president of the said union constituting its executive agreed to less than and/or not more than one percent of the said total number of workmen working in the establishment and/or factory and/or company of the petitioners situate at 17, Convent Road, Entally.

14. The above-quoted statement in the affidavit-in-opposition of Sukumar Chowdhury is so devoid of particulars that I am not inclined to place any reliance on the same and this is particularly so because the affidavit does not disclose the total number of workmen employed by the petitioner-company. Assuming for the sake of argument that the number of office-bearers elected accidentally happened to be less than one per cent of the total number of workmen employed by the petitioner-company, that would not automatically follow that all of them, in the opinion of the union, were intended for recognition as "protected workmen." I, therefore, hold that the tribunal was wholly wrong in thinking that the application u/s 33(2)(b) of the Industrial Disputes Act was not maintainable because of the reason that Sukumar Chowdhury was a "protected workman."

15. Then, again, the tribunal appears to have made a much too free invocation to the principles of natural justice. The principle of natural justice, in its journey

through the centuries, has shed much of its glories and is now crystallized into four principles of justice, namely

- (1) opportunity for both the contesting parties to be heard
- (2) hearing before an impartial tribunal so that no man can be a judge of his own cause;
- (3) decision made in good faith; and
- (4) an orderly course of procedure.

Apart from this, no other principle of natural justice is known in modern jurisprudence. The criticisms made by the learned judge of the industrial tribunal, if they can be fitted in with any of the aforementioned principles of natural justice, may come under the heading "impartial tribunal." I have, therefore, to examine whether the person who enquired into the charge of misconduct against Sukumar Chowdhury was or remained an impartial tribunal throughout.

16. It appears from the affidavit of Mr. Dennison, the managing director of the petitioner-company, that the labour officer, K.D. Banerjee, acted as the enquiring officer under his direct direction. There is nothing to show that the works manager, B.K. Bhattacharjee, was an officer superior in rank to the labour officer. The physical presence of B.K. Bhattacharji at the enquiry and the fact that he also gave evidence before the labour officer do not appear to have, in any way, affected the impartiality of the enquiring officer and do not also appear to have embarrassed him. The industrial tribunal presumed too much in coming to the conclusion that the enquiry was conducted by an officer subordinate to B.K. Bhattacharjee and that the physical presence of Mr. Bhattacharjee affected the enquiry.

17. I further find that the criticism that the enquiry was vitiated because a copy of the proceedings was not supplied to the trade union, is wholly misconceived. Sukumar Chowdhury or the trade union, of which he was the member, did not ask for any document or copy of the proceedings at any time before the enquiry was completed. It was only after the order of punishment was issued that the union asked for a copy of the proceedings at the enquiry. There is, of course, an allegation to the effect that even prior to that verbal requests had been made for supply of such a copy. The allegation, however, is denied and I am not inclined to place any reliance on the story of verbal demand for copy. In my opinion, the request for a copy of the proceedings after the order of punishment had been issued and the failure of the petitioner-company to supply the copy did not affect the enquiry. The trade union was possibly asking for such a copy so as to collect materials for the conversion of the individual dispute concerning the dismissal of Sukumar Chowdhury into an industrial dispute. The criticism based on the failure on the part of the petitioner-company to supply a copy of the proceedings to the trade union is, in the circumstances aforesaid, irrelevant and I attach no

importance to it. The last criticism made by the industrial tribunal, that K.D. Banerjee had himself admitted that during the enquiry some representatives of the union questioned his fairness and impartiality in conducting the enquiry, is factually wrong and inconsequential in effect. I have been taken through the evidence of K.D. Banerjee and I do not find any admission to the above effect. Then, again, even if anybody had questioned his impartiality during the enquiry, that would not ipso facto prove partiality on his part. In my opinion, the charge of partiality has not been established in this case. For the reasons aforesaid, I hold that the tribunal was wrong in refusing approval to the order of dismissal of the workman Sukumar Chowdhury. Nothing has been shown or proved that in dismissing the workman the managerial enquiry acted in a mala fide manner or attempted to victimize the workman. On the evidence recorded before the managerial enquiry, the charge appears to have been established. At least that was the view of the managerial enquiry. The tribunal does not find that on the evidence the charge was not established or that the finding was perverse on the materials. Since it is not necessary for the purpose of obtaining approval to prove the charges "to the hilt," the tribunal should have, on the materials before it, accorded the approval asked for. In the view I take, I quash the award of the tribunal. Let a writ of certiorari accordingly issue. There will be no order as to costs.