

(1987) 11 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 5081 of 1985

Shakti Capacitors

APPELLANT

Vs

Heramb Bhaskar Sahasrabuddhe and another

RESPONDENT

Date of Decision : 13-11-1987

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 341

Citation : (1988) 1 BomCR 123 : (1989) 58 FLR 101 : (1988) 2 LLJ 284

Hon'ble Judges : S.W. Puranik, J;C.S. Dharmadhikari, J

Bench : Division Bench

Judgement

Dharmadhikari, J.—Respondent No. 1 Heramb Bhaskar Sahasrabuddhe was served with a chargesheet dated 1st November 1980 for the role he had played during Gherav on 10th October 1980. The employee denied the charges levelled against him and thereafter an inquiry was conducted. Since the employee did not co-operate, the inquiry was held ex-parte and by an order dated 2nd December 1980 he came to be dismissed from service. Respondent-employee with 20 other working was also prosecuted before the Chief Judicial Magistrate, Sangli for offences u/s 147 and 341 of the Indian Penal Code. The Chief Judicial Magistrate, Sangli by his order dated 30th January 1984 acquitted all the accused the respondent-employee, by giving them a benefit of doubt. On or about 5th Desember 1980 respondent No. 1 employee raised an industrial dispute for reinstatement in service. After failure of the conciliation proceedings the Government of Maharashtra referred the dispute to the Presiding Officer, Labour Court, Kolhapur. The said reference was registered as IDA No. 151 of 1981. It was then transferred to the 2nd Labour Court, Sanli and was registered as Reference No. IDA 20 of 1981. The respondent filed a statement of claim on 8th June 1982 in which he contended that the inquiry held against him was in breach of the principle of natural justice and his removal from service was only meant to victimise him for his legitimate trade union activity. The petitioner-Company by its written statement controverted the case made out by the employee and contended that the domestic inquiry held was perfectly legal and valid. A

contention was also raised before the Labour Court that in view of his acquittal by the competent Criminal Court the inquiry held and the order passed is wholly vitiated. The Labour Court vide order dated 17th Desember 1984 held that the inquiry held was improper and illegal as sufficient opportunity was not given to the employee to put forward his case. By the same order the Labour Court directed that the parties would be given an opportunity to lead evidence on merits of charges.

2. When the matter again came for heating before the Labour Court, the respondent employee insisted that it was necessary for the Court to pass a specific order with regard to the contention raised by him based on the principles of res judicata or issue-estoppel.

3. After hearing the arguments the Labour Court by its order dated 14th March 1985 took the view that since all the relevant witnesses had been examinad in the Criminal Court and their evidence is also thoroughly scrutinized, it would be sufficient that certified copies of the evidence recirded in the Criminal Court are filed in the reference and on that basis the matter could be decided.

4. On 29th of October 1985 the petitioner Company filed an application that an application that it should be given an opprtunity to examine the witnesses in support of the charges levelled against the employee.

5. The Labour Court refuse to grant the permission by taking a view that fresh evidence need not be recorded in the matter. It is these order which are challenged in this writ petition.

6. Shri Shrikrishna, learned Counsel appearing for the petitioner-Company contended before us that the Labour Court committed an error in hilding that no fresh evidence could be led in the matter to establish the charges levelled against the petitioner in view of his acquittal by a competent Criminal Court.

7. Though no reference is made to the decision of this Court in Jeevan Prakash Pandurang Mokashe Vs. State Bank of India and another, , it appears that in view of the said decision the Labour Court came to the conclusion that since the department inquiry itself is not permissible in view of the acquittal of the employee, such evidence is not necessary. It is contended by Shri Shrikrishna that the view taken by the Division Bench of this Court in Jeevan Prakash's case (supra) is not more good law in view of the decision of the Supreme Court in Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, as well as the subsequent decision of the Madras High Court in M.M. Rubber Co. Ltd., Madras Vs. S. Natarajan, The Presiding Officer, Labour Court, Madras, . It is also countended by him that the decision of this Court in Jeevan Prakash's case (supra) is rendered per incurian since the decisions of the Supreme Court in Masud Khan Vs. State of Uttar Pradesh, and Ravinder Singh Vs. State of Haryana, were not noticed by the Division Bench.

8. We had no occasion of hearing any argument on behalf of the respondent,

since he chose to remain absent.

9. With the assistance of the learned Counsel appearing for the petitioner we have gone through the relevant judgments of the Supreme Court as well as the judgment of the Division Bench of this Court in Jeevan Prakash's case (supra). To say the least the controversy now raised before us stands concluded by the latter decision of the Supreme Court in Corporation of Nagpur v. Ramchandra (supra). This is what the Supreme Court has observed in para 6 of the said judgment :

"The other question that remains is if the respondents are acquitted in the criminal case whether or not departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the Criminal Court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges, or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered."

To say the least, in view of this decision, the law laid down by this Court in Jeevanprakash's case (supra) is no more good law. In the present case the respondent employee came to be acquitted by the Criminal Court by giving him a benefit of doubt. Therefore, in our view it cannot be said that no departmental inquiry could have been held in the present case. Therefore if the departmental inquiry could have been held, then it was open to the employer to adduce before the Tribunal relevant evidence in support of the charges levelled against the respondent employee.

10. Even otherwise, it could safely be said that the decision in Jeevan Prakash's case (supra) did not lay down the correct law. Though in Jeevan Prakash's case (supra) a reference is made to the decision of the Supreme Court in Pritam Singh and Another Vs. The State of Punjab, , the Division Bench did notice the latter decision of the Supreme Court in Masud Khan's case (supra), wherein the decision in Pritam Singh's case (supra) was explained. After making a reference to Pritam Singh's case (supra) the Supreme Court in Masud Khan's case (supra) held that issue-estoppel arises only if earlier as well as subsequent proceedings were criminal prosecutions. The principle of issue-estoppel again came to be explained by the Supreme Court in Ravinder Singh's case (supra) and it was held therein that in order to invoke the rule of issue-estoppel not only the parties in two trials must be the same but also the fact in issue proved or not in the earlier trial must be identical with what is sought to be re-agitated in the subsequent trial. These two decisions were not noticed by the Division Bench while deciding Jeevan Prakash's case (supra). When the prosecution is launched by the State and not by the employer and the employer has no control over the prosecution, then it is difficult to hold that the parties to these two proceedings

are the same. Further in view of the decision of the Supreme Court in Corporation of Nagpur's case (supra), there is no bar for holding a departmental inquiry if the acquittal is not honourable and the accused is not completely exonerated of the charge. In the present case merely benefit of doubt was given to the respondent-employer in the criminal trial. We do not feel that it is necessary to further probe in detail this aspect of the matter in view of the authoritative pronouncement of the Supreme Court in Corporation of Nagpur's case (supra). The Madras High Court in M.M. Rubber Company, Madras v. S. Natarajan, (supra), has exhaustively considered the whole law in the field and has rightly come to the conclusion that the law down by this Court in Jeevan Prakash's case (supra) is no mare good law. We respectively agree with the view expressed by the Madras High Court in the said decision and hold that mere acquittal in a criminal trial is no bar for holding a departmental inquiry, though ultimately it must depend upon the facts and circumstances of each case.

11. In the result, therefore, the rule is made absolute. The order passed by the Labour Court, Sangli dated 29th October 1985 is set aside and the Labour Court is directed to permit the petitioner-Company to adduce the evidence in support of the charges levelled by it against respondent No. 1 employee.

12. However, in the circumstances of the case there will be no order as to costs.