

(1987) 09 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 2922 and 2923 of 1980

Sidram Yellappa Jadhav

APPELLANT

Vs

Narsinggirji Mills and Others

RESPONDENT

Date of Decision : 02-09-1987

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78, 79

Citation : (1995) 3 LLJ 352

Hon'ble Judges : Vaze, J;Sawant, J

Bench : Division Bench

Advocate : R.S. Kulkarni and Abhay Kulkarni, for the Appellant; B.N. Srikrishna, Snr. Advocate and Meena H. Doshi, Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

Sawant, J.—These are two writ petitions challenging the orders passed by the Industrial Court in two different appeals under the Bombay Industrial Relations Act, 1946. Since the question of law as well as of facts involved in both the petitions are common, by consent they are being disposed of by this common Judgment.

2. The Petitioner in Writ Petition No. 2922 of 1980 was employed with the 1st Respondent Mill as an unskilled worker for about 12 years till he was dismissed on 5th Sept., 1976. The dismissal was effected as a consequence of a departmental inquiry instituted on a charge which was vague as it could be. The charge states that "the management had a grave suspicion that the Petitioner had so in the mill-premises counterfeit canteen coupons on a large scale and thus put the company to a financial loss. The selling of counterfeit coupons in the premises of the mill for cash without the permission of the management was illegal and hence the Petitioner had committed an offence of creating industrial unrest by his ill-disciplined behaviour. In the inquiry, the management examined its witnesses which included the departmental head one Pradhan, the Sizing Supervisor Yellappa and the Sizing Jobber Ananta Ramchandra. These witnesses

were cross-examined by the Petitioner. The Petitioner, statement was also recorded by the Inquiry Officer. Even during the course of the inquiry, it was not suggested to the Petitioner that he had sold the so called counterfeit coupons to any particular person or persons nor were the purchasers of. such coupons examined. It is also interesting to note that when the Petitioner himself was examined the only thing which he had admitted was that he had sold the coupons but had denied that they were counterfeit. This is relevant because admittedly the workers get coupons from the 1st Respondent Mills on credit and the value thereof is subsequently deducted from their salaries. It is not unknown that the workers who have such coupons either loan or sell them to those workers who do not have them. It is at no stage suggested that the Petitioner had sold the tickets at profit. Admittedly, further, the coupons sold by the Petitioner were never seized nor produced in the inquiry nor. was it proved otherwise that they were counterfeit. This was in keeping with the vagueness of the charge which did not mention either the date, the time and the place of the sale of the coupons or the person to whom they were sold. What is more interesting is the finding recorded by the Inquiry Officer which was solemnly accepted by the Mill Authorities. We will do no better than reproduce the same which speaks for itself:

"My findings in the matter of above said Enquiry are as under:

(I) The charge of selling the coupons in the premises of the mill has been accepted by the delinquent when he questioned Shri Ananta Ramchandra the Sizing Jobber, that he was selling the coupons, but how Ananta could know whether these coupons were genuine or otherwise? And also when I questioned him about such sale he has stated that he was selling it since long. Further to his reply to my queries he has also accepted that such sale amounts to misconduct. This can be seen at page No. 8 and 9. I, therefore, feel no hesitation in holding Shri Sidram Yallappa guilty of misconduct selling the canteen coupons in the premises of the mill and thereby collecting the money in the premises of the mill.

(2) Regarding the charge of selling the counterfeit canteen coupons, I hold Shri Sidram Yallappa guilty of the said misconduct on the following reasons :-

(i) He has admitted that he was getting hardly the amount of Rs. 150/-or so monthly as a take home salary. It is beyond anybody's imagination that a person will be able to manage his household expenses of family of six members particularly in the present costly way of life.

(ii) Also the record shows that he was allotted canteen coupons valued at Rs. 21/- only for a period of one month. Even after assuming that he was selling the entire coupons was not supposed to get more than Rs. 21/- and with this addition of Rs. 21/- too, to his meagre take-home salary, it is impossible to meet out day to day needs of family.

(iii) In his reply to my query he has said that to meet out his needs of money, he was selling the coupons. This goes to show that he must be having counterfeit

coupons arid by selling them he must be earning money to meet out his routine family expenses.

(iv) He has also accepted during the course of his enquiry that he was arrested by Police. This arrest was in connection with the complaint lodged by the management to the police about the printing of counterfeit coupons and selling them in the mills.

All these four reasons cited above in this connection clearly show that Shri Sidram Yallappa, Sizing Department T.No.22 is guilty of selling the counterfeit coupons in the mills, beyond any doubt.

In conclusion, I hold that the charges levelled against Shri Sidram Yallappa, Sizing Department T.No.22 in the snow cause notice dated 26.8.76 has been amply proved beyond doubt. I, therefore, recommend suitable measure of punishment against him as per the rules and standing orders of the mills."

3. Both the findings and the recommendations for punishment were accepted by the Chief Executive Officer of the Mills and the Chief Executive Officer by his order dated the 5th Sept., 1986, dismissed the Petitioner.

4. Against this finding, the Petitioner approached the Labour Court and the Labour Court by its order of 25th Oct., 1978, held that the domestic inquiry was not proper because the charge was vague, and set it aside. Unfortunately, thereafter, instead of either asking the management to frame a proper charge and hold a fresh inquiry or to frame the charge itself, the Labour Court, at the request of the management, proceeded to record the evidence on the basis of the same charge and thereafter by its order of Nov. 6, 1979 held that the charge could not be amended in the Court and since the charge was framed only suspicion, the managements witnesses could not be believed to support its case that the Petitioner was actually dealing in counterfeit coupons. The Labour Court accordingly allowed the Petitioner's application and granted him reinstatement with full back wages.

5. This order was challenged by the Mills in appeal before the Industrial Court. The Industrial Court by its impugned order of March 10, 1980, firstly, held that the Labour Court had erred in quashing the domestic inquiry on the ground that the charge was vague. Since the workman had never made a grievance before the Inquiry Officer that the charge was vague, the contention based on vagueness was riot acceptable; The Industrial Court further held that there was nothing vague in the charge and that before the charge is proved there is always a suspicion. The particulars of the charge are not necessary to be given and since the point was being urged for the first time in the Appellate Court it was untenable. The Court thereafter went on to record its findings on merits of the charge and considered both the evidence recorded in the inquiry as well as before the Labour Court and held that it was "positively" established that the Petitioner had sold counterfeit coupons. The result was that the Court allowed the appeal, set aside the order of the Labour Court and confirmed the dismissal

of the Petitioner.

6. According to us, once the Labour Court had held that the domestic inquiry was vitiated because of the vagueness of the charge, only two courses were left open to it, viz., either to quash the inquiry and set aside the order of dismissal with liberty to the employer to hold a fresh inquiry, or to permit the management to submit a proper charge-sheet before it and take the evidence itself on such properly-framed charge. The Labour Court unfortunately even after holding that the charge was vague gave an opportunity to the management to lead evidence on the same charge which was not open for it to do. Therefore, we will have to ignore the evidence which was recorded before the Labour Court and find out whether the findings recorded by the Labour Court and the Industrial Court on the basis of the domestic inquiry were proper. Secondly, the Industrial Court in appeal was wrong in considering both the evidences recorded in the domestic inquiry as well as that recorded before the Labour Court once it had come to the conclusion that the domestic inquiry was proper. If the domestic inquiry was proper then it was not open to the Industrial Court to look into the evidence which was recorded afresh before the Labour Court. On the other hand, if the evidence recorded before the Labour Court was to be looked into, then that which was recorded in the domestic inquiry had to be shut out unless it was brought on record by confronting the witnesses concerned with what they had stated before the Inquiry Officer. The Industrial Court has unfortunately recorded its findings after taking into consideration at the same time both the evidences recorded before the Labour Court as well as in the domestic inquiry. Hence its finding also stands vitiated. This Court is therefore compelled to go into the record of the case and record its findings on merits. Otherwise the matter which is pending for the last more than 10 years will take another 10 years before it is finally disposed of.

7. As has been pointed out above, although the charge against the Petitioner was that it was "gravely suspected" that he had sold counterfeit coupons on a large scale to the "workmen, neither the coupons were produced before the Inquiry Officer nor the workmen who had purchased them were examined to substantiate the charge. All that was put to the Petitioner was that he had sold "coupons" in the mill premises and had thus collected money in breach of the standing order which prohibited collection of money without the permission of the management. This was admittedly not the charge that the Petitioner was called upon to face. On the other hand he was charged with selling counterfeit coupons and collecting money from such sale. The two charges are different and have different connotations. Further, there is no evidence on record to show that when the Petitioner sold the coupons (which are not proved to be counterfeit) he was guilty of making any profit out of the said sale. In fact, that is not even remotely alleged in the charge. It is common knowledge that some workmen who have surplus coupons with them give them to the needy workmen. Such sale of coupon even if it is called sale technically, being not done for profit cannot come within the mischief of the standing order in question which prohibits

collection of money for different purpose. Be that as it may. What is astounding is the finding recorded by the Inquiry Officer himself which is reproduced above. The finding shows that it was difficult for him to prove that the Petitioner was guilty of selling counterfeit coupons and therefore he had to come to his conclusions by resorting to a reasoning which is prima facie illegal. The sum and substance of his reasoning is that since the Petitioner was getting a meagre salary and he had a large family to maintain, and since further the Petitioner had accepted that during the course of the inquiry, he was arrested by the police, it should be held that he was selling "counterfeit" coupons. Admittedly, nothing further was done by the police after they had once taken him to the police station for interrogation. There is no evidence to show that he was ever prosecuted for any offence. The admission of the workman is that he had sold coupons. He has not only not admitted that they were counterfeit but has asserted that they were genuine. Nothing has been done by the management to prove that they were counterfeit. In fact none of them has been produced in the inquiry. Hence not only the charge is vague but the finding of the Inquiry Officer is also patently a surmise. It is unfortunate that a responsible authority like the 1st Respondent Mill should have found it necessary to accept such a finding and to dismiss the workman on its basis.

8. Similar are the facts in Writ Petition No.2923 of 1980. There is absolutely no difference either in the language of the charge, in the evidence recorded as well as in the finding given by the same Inquiry Officer which is in the same language. The Labour Court and the Industrial court have also passed similar orders in the same matter.

9. We have therefore no hesitation in setting aside the orders of the Industrial Court in both the cases. The Industrial Court has not applied its mind to the charge, to the evidence on record and to the finding given by the Inquiry Officer. Even when the Court read both the evidence's before the Inquiry Officer and the Labour Court together to come to its conclusion, it has drawn illegal inferences from the said evidence. The Court is also wrong in holding that the workman had not raised the plea of the vagueness of the charge till Appellate stage. In the statement filed before the Labour Court itself, the said plea is taken. What is further, in the domestic inquiry the workman was not represented by anybody. It was, therefore necessary for the Court to be more circumspect and peruse the inquiry proceedings carefully. This was more so because the Labour Court had, after quashing the inquiry, not recorded its findings on merits and the Industrial Court had chosen to rely on the inquiry proceedings and to decide the matter on merits and to ; decide it as the first judicial forum.

10. The result, therefore, is that we allow both the petitions, set aside the impugned orders and direct that the workmen be reinstated in service forthwith. As regards the back wages, the evidence on record shows that both the Petitioners were unskilled workmen getting wages which were no more than Rs. 100/- to Rs. 150/- per month. There is no evidence to show that they were

employed anywhere. We must also bear in mind that the value of money has gone down considerably since 1976. It will therefore be just to order full back wages to the workmen with all consequential benefits.