
(1962) 02 CAL CK 0034
In the Calcutta High Court

Statesman (Private) Limited

APPELLANT

Vs

Deb (H.R.) and Others

RESPONDENT

Date of Decision : 15-02-1962

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1962) 1 LLJ 733

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

Bench : Single Bench

Judgement

B.N. Banerjee, J.—The petitioner, the Statesman (Private) Ltd. (hereinafter called the company) carries on business as printers and publishers of the well-known daily newspaper, the Statesman.

2. The petitioner-company dismissed Sk. Kallu, one of its workmen, for misconduct. The dispute concerning his dismissal was taken up by the workmen of the company, represented by Statesman employees' union, respondent 2, and was converted into an industrial dispute. That dispute was referred to the second labour court, by the State Government, in exercise of its powers u/s 10 of the Industrial Disputes Act. The labour court awarded reinstatement of Sk. Kallu in service, with half of his wages for the period of unemployment.

3. The propriety of the award is being disputed in this rule at the instance of the company.

4. It is necessary for me to recount the circumstances which led to the dismissal of Sk. Kallu. For sometime prior to December 1966, the workmen of the company's press adopted a go-slow policy, during which, between the dates 20 December and 22 December 1963, Sk. Kallu is said to have committed certain acts of misconduct for which he was served with a charge-sheet, dated 24 December 1956, to the following effect:

That on the evening of Thursday, 20 December 1956 at 7-30 p.m., while you were on 5 p.m. to 12 midnight shift, you left your department without

permission, thereby leaving your work unattended. You went downstairs and entered the job printing department, where you had no business, and approached Mr. H.D. Rozario, a senior supervisor on duty at the time. You warned him that he should not send any workmen from the job printing department to the composing department and that if any workman or workmen came up to the composing department to help with the work, they would be in serious trouble.

That on the evening of Friday, 21 December 1956, while you were on 5 p.m. to 12 midnight shift, you were noted to be deliberately slowing down in your work. Your attention was drawn to this by Mr. Marsh. At 10-15 p.m., Mr. Marsh gave you specific instructions to get on with the 10-inch by 5-inch column techno export advertisement. Although it should have taken you at the most half an hour to fit up this advertisement, you did not, in fact, complete the work until 11-45 p.m., a total of one and a half hours.

That on the morning of Friday, 21 December 1956, you were seen in the composing department when not officially on duty and as such had no business to be there. You were further seen talking to Chandi Charan Nath. It is reported that you intimidated Chandi Charan Nath and gave him instructions that he was not to carry out work on the Sunday classified advertisements as he had been instructed by his supervisor. When Chandi Charan Nath was asked by Mr. Moore and the supervisor why the supervisor's instructions had not been carried out, he complained that you had given contrary instructions and had threatened him that if he did not carry out your instructions, he would be in trouble. When Chandi Charan Nath was brought to my office by Mr. Moore and the supervisor, he confirmed in front of me that you had thus threatened him.

That on the evening of Saturday, 22 December 1956, you were instructed at 6 p.m. by the supervisor to fit up two small shipping advertisements, 4-inch by 2-inch columns each. At 7-05 p.m. the supervisor complained to Mr. Pluck that you had disregarded his instructions and had not done any of this work or any other work. Mr. Pluck immediately came up to you and in front of the supervisor again instructed you to get on with this work. Mr. Pluck then left the composing department and returned at approximately 9-10 p.m. Mr. Pluck then came up to you and found that you had still not started on the job which he had given you to do, and in front of Mr. Moore he again gave you instructions to get on with this work. He asked you why you had done no work for four hours and again instructed you to get on with the job he had given you. In fact, Mr. Pluck stood over you and watched you carry out this work, which you completed in ten minutes. You were (sic), therefore, four hours twenty minutes, completing a job which you yourself proved could be done in ten minutes.

5. The charges were enquired into by a domestic enquiry committee consisting of Mr. D.M. Harris (director and secretary of the company) as chairman, Mr. D.A. Laking (manager, commercial printing) and Mr. B.E. Gomes (administrative officer; as members and Sk. Kallu was found guilty of all the charges. As a result,

he was dismissed. So far as" the first charge against Sk. Kallu was concerned, the labour court held that the company had made a mountain of a molehill in holding him guilty of an act subversive of discipline. Regarding the second charge, the labour court held that the reasons given by Sk. Kallu in explanation should have been convincing to any fair enquiry, but nevertheless he was found guilty of the charge. The labour court further held that the third charge was not proved on the evidence of witness Chandi Charan and it emphasized on certain contradictions between his previous statement and his evidence before the enquiry committee. So far as the fourth charge was concerned, the labour court, although of the opinion that Sk. Kallu was negligent in his work and also made certain false statements in showing cause to the charge, yet then held that the charge of habitual negligence would not be proved by establishing a single instance of negligent conduct. Over and above that, the labour court found two further, faults with the enquiry, which I set out in its own language:

(a) A perusal of the proceedings of enquiry would show that Mr. Harris who took the leading part at the enquiry tried his level best to extort a confession from Sk. Kallu. Such an attitude hardly befits the chairman of an enquiry committee which pretends to be fair. In spite of his utmost attempt, however, Mr. Harris failed to extort any confession from Sk. Kallu. The enquiry committee therefore have depended on the evidence adduced by the company in support of the charges made against Sk. Kallu. Even there Mr. Harris not only put leading questions to witnesses, but has also brought out from some of them some answers which they would not have given, if they were questioned properly.

(b) So those answers cannot be depended upon as being voluntary. If the proceedings of enquiry be read with the correspondences which passed between Mr. Harris and the union on the eve of the issue of the charge-sheet against Sk. Kallu, there is no escape from the inference that Mr. Harris was labouring under an impression that the union was out to do a mischief to the company and was using Sk. Kallu as a tool. So it is clear that Mr. Harris was biased against Sk. Kallu from the very beginning. As Mr. Harris was the most influential member of the enquiry committee and as the other two members gave only dittos to what he did and said, I must hold that the enquiry was not fair. Even on the evidence, which Mr. Harris could manage to extort from the witnesses at the enquiry, the finding of the enquiry committee cannot be supported.

6. In the view taken, the labour court awarded reinstatement of Sk. Kallu, with half the wages for the period of unemployment, as already stated.

7. Sri Sankar Banerjee, learned Advocate for the company, made a fourfold contention in support of the rule. He argued, in the first place, that in reversing the findings of the managerial enquiry, the labour court really erred in appeal and substituted its own findings on evidence to those of the managerial enquiry, which it was not entitled to do. He contended, in the next place, that the criticism of extortion levelled against Mr. Harris, the chairman of the enquiry committee, was imaginary. He also contended that the Evidence Act did not

apply to a domestic enquiry and, therefore, the labour court merely exhibited hyper-criticism in finding fault with the questions put in the enquiry as being leading questions in nature. He, lastly, contended that the labour court was in error in presuming a bias in Mr. Harris against Sk. Kallu and also in holding that he dominated over the other two members of the enquiry committee.

8. Sri Banerjee is right in his contention that an industrial court should not usurp the functions of an appellate court, when dealing with dismissal of a workman by the management. It can interfere with an order of dismissal--

(i) when there is want of good faith;

(ii) when there is victimization and unfair labour practice;

(iii) when the management has been guilty of basic error or violation of the principles of natural justice; and

(iv) when, on the materials, the finding is completely baseless or perverse.

9. Reference in support of the proposition may be made to the decisions of the Supreme Court in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, , *Titaghur Paper Mills v. Ram Naresh* 1961 I L.L.J. 511; *Management of Balipara Tea Estate Vs. Its workmen*, ; *Doom Dooma Tea Estate v. Assam Chah Karmachari Sangha* 1960 II L.L.J. 56 and to two decisions of this Court in *All India Spring Manufacturing Co., Ltd. v. First Labour Court* 1962 I L.L.J. 324 and *National Tobacco Co. of India Ltd. and Others Vs. Fourth Industrial Tribunal and Others*, , Therefore, in dealing with the charges, in so far as the labour court based its conclusions on the sufficiency or insufficiency or credibility of the evidence before the managerial enquiry, it was clearly wrong and overstepped its jurisdiction.

10. Sri Phanindra Kumar Sanyal, learned Advocate for respondent 2, made a desperate attempt to read into the questions put to Mr. Marsh (pp. 34-35 of the petition) Mr. Moore (pp. 35-36 of the petition), Mr. Subodh Bose (p. 37 of the petition), Sk. Kallu (pp. 40 and 46 of the petition) and Mr. S. Dey (pp. 42-43 and 46 of the petition) some sort of overbearing conduct on the part of the members of the enquiry authorities, particularly of Mr. Harris. I have gone through the questions, but I do not find any indication of overbearing conduct on the part of persons putting the questions.

11. So far as allegation of bias is concerned, Sri Sanyal did not allege any other bias of Mr. Harris against Sk. Kallu, excepting the bias that he imagined in Mr. Harris on account of his conduct during the enquiry. It is difficult to appreciate this branch of the argument of Sri Sanyal. The examination of some of the witnesses was, no doubt, somewhat detailed or persistent in certain respects but I do not find any prejudice against Sk. Kallu in the conduct of the persons enquiring into his misconduct. They had to arrive at certain conclusions on the charges. That they tried to do to the best of their abilities but possibly did so somewhat clumsily. Nevertheless, from what they did, bias cannot be spelled

out. I, therefore, overrule the contention that the enquiry was conducted by biased persons, particularly by Mr, Harris.

12. The criticism of extortion of confession from Sk. Kallu, as made by the labour court, is also based on the nature of the questions put to him, and is a wholly misconceived criticism. Sk. Kallu was not put to fear by the questions. He exhibited the ability to give fencing answers throughout and the nature of the questions was also not such as would intimidate anybody.

13. Also I find no substance in the other two criticisms of the departmental enquiry, as made by the labour court. It is well known that the Evidence Act does not apply to a departmental enquiry. The labour court was, therefore, wrong in importing the technicalities of the rules of evidence and in condemning some of the questions as leading questions. The labour court was also wrong in holding that the other two members of the enquiry committee "gave only dittos to what he (Mr. Harris) did and said." It does not appear that the official position of Mr. Harris in the company in any way weighed with the other two members of the enquiry committee and if they agreed with him, it was only because they found no reason to differ from him.

14. For the reasons aforesaid, I hold that the criticisms made by the labour court of the conduct of the managerial enquiry were all wrong. I hold further that there was a full and fair managerial enquiry and that there was no basic error, mala fide action, victimization and unfair labour practice. The evidence before the enquiry committee, if believed, justified the conclusions. The labour court should not have usurped the role of an appellate Court and upset those conclusions.

15. I, therefore, quash the award by the labour court.

16. Let a writ in the nature of certiorari accordingly issue.

17. This rule is made absolute, but I make no order as to costs.