
(2010) 10 BOM CK 0275

In the Bombay High Court

Case No : O.O.C.J. Appeal No. 547 of 2007 in Writ Petition No. 5 of 2007

Suryabhan Maruti Avhad

APPELLANT

Vs

Mahindra and Mahindra Ltd.

RESPONDENT

Date of Decision : 08-10-2010

Acts Referred:

Citation : (2011) 3 LLJ 339

Hon'ble Judges : R.P. Sondurbaldota, J; D.K. Deshmukh, J

Bench : Division Bench

Advocate : S.M. Avhad, for the Appellant; J.P. Cama, SC and Mahesh Loddha, instructed by Sanjay Udeshi and Co., for the Respondent

Final Decision : Dismissed

Judgement

R.P. Sondurbaldota, J.—This appeal arises out of the judgment and order dated March 5, 2007 of the learned single Judge allowing Writ Petition No. 5/2007 filed by the Respondent-company. By the writ petition, the Respondent challenged the order dated December 21, 2006 passed by the Industrial Court in Revision Application (ULP) No. 204/2006. The Revision Application was directed against the order passed by the Labour Judge, First Labour Court, Mumbai dated August 24, 2006 in Complaint (ULP) No. 602/2003.

2. The brief statement of the facts of the case are as follows:

The Appellant was employed as a driver with the Respondent. In the course of his duty, he was to proceed to Nashik on February 17, 2003 with vehicle bearing No. MH-15-K-5586. At the time the vehicle was handed over to him, it contained 60 litres of diesel in the diesel tank. This diesel according to the Respondent was sufficient for to and fro journey to Nashik. The Appellant returned to Mumbai on the same day i.e. on February 17, 2003 and parked the vehicle at his residence in Dahisar. On February 18, 2003 he entered the Kandivali plant of the Respondent in the morning with the vehicle and went to the fuel pump. At that moment, Mr. Jagtap the fuel attendant was not present, having gone to the

toilet. The Appellant then started filling diesel into the vehicle on his own and that too without any authorization. This was done by him despite the knowledge of the procedure that only fuel pump attendant is authorized to fill the vehicles belonging to the Petitioner and that too after making necessary entry in the material issue card. When Mr. Jagtap returned, he noticed that the Appellant was filling in diesel and asked him not to do so. Thereafter, the Appellant stopped filling of the diesel, removed the dispensing nozzle from the tank of the vehicle and brought the pump meter reading to zero. Thereafter, the attendant personally filled 15 litres of diesel in the fuel tank. Later at about 4.00 p.m. when Mr. Jagtap checked the record he found that there was difference of 24 litres of diesel in the fuel pump reading and the actual consumption record maintained in the material issue card for that day. He then reported the matter to his superior, Mr. N.V. Bhosale. The Respondent thus believed that 24 litres of diesel had been filled in by the Appellant in his vehicle in the absence of Mr. Jagtap. On February 18, 2003 the Appellant approached Mr. Bhosale for settling the expense voucher for his trip to Nashik. The expense voucher included the fuel receipt for ` 718.20p for 30 litres of diesel purchased from Narkala Auto Services, Nashik. Mr. Bhosale brought it to the notice of the Appellant that 60 liters of diesel was filled in the tank of the vehicle on February 16, 2003 which was more than sufficient for to and fro journey to Nashik and there was no need to fill additional 30 litres of diesel at Nashik. The Appellant, however, claimed that he had taken the vehicle at many places in Nashik and therefore was required to fill 30 litres of diesel near Igatpuri. It was later revealed that the Appellant in fact had visited only one place at Nashik and on February 17, 2003 the Appellant had purchased only 5 litres of diesel at Nashik and fraudulently obtained receipt for 30 litres of diesel from the attendant of the said petrol pump and collected the amount of ` 718/- from the Respondent-company by submitting false claim voucher.

3. According to the Respondent, the above acts of the Appellant amounted to misconduct under Clauses 22(d) and 22(i) of the Certified Standing Orders-Therefore, it suspended the Appellant from service by the order dated February 27, 2003. When the order was sought to be served upon the Appellant, he refused to accept the same. Then charge sheet dated March 1, 2003 was served upon him in respect to incidents of misconduct on his part and also lastly for refusing to accept the order of suspension which amounts to misconduct under Clause 22(x) of the Certified Standing Orders.

4. One Nitin Paranjpe was appointed as Enquiry Officer in the domestic enquiry against the Appellant. The enquiry commenced on March 7, 2003 and concluded on December 13, 2003. In the enquiry, both the Appellant and the Respondent were given opportunity to examine witnesses, produce documents and make their submissions. At the conclusion of the enquiry, the Enquiry Officer submitted his report holding the Appellant guilty of the charges of misconduct. Thereafter, an opportunity was given to the Appellant to submit his explanation with regard to the findings. After considering the report and the explanation given by the Appellant, the Respondent on September 27, 2004 imposed the punishment of

termination/ removal from service upon the Appellant.

5. The Appellant then filed Complaint (ULP) No. 602/2003 in the Labour Court, Mumbai alleging that the disciplinary action taken against him and the enquiry proceedings were not fair and proper. He also challenged his termination from service. On completion of pleadings and hearing of the parties, the First Labour Court by its judgment and order dated August 24, 2006 held that the enquiry conducted by the Respondent was not fair and proper and its findings were perverse. The Respondent was then granted liberty to justify its action in Court. The matter was then carried in revision by the Respondent. The Revisional Court partly allowed the Revision Application to expunge the remarks and observations of the learned labour Judge. It however maintained the part of the order directing the Respondent to lead evidence and justify it's action of termination of the Appellant.

6. Being aggrieved by both the orders the Respondent approached this Court by way of a writ petition. It contended that the impugned orders are perverse and totally unsustainable in law. According to it, the first Labour Court has exceeded its jurisdiction inasmuch as it acted like an appellate authority sitting in appeal over the conclusions drawn by the Enquiry Officer. The Labour Court has to peruse the record before the Enquiry Officer and interfere with the enquiry only if satisfied that the enquiry is vitiated on account of flagrant breach of principles of natural justice and has resulted into serious prejudice. Strict rules of evidence and Evidence Act is not applicable in Departmental Enquiry. In any case, there was no substance in the grievances of the Appellant as almost all the basic facts are undisputed. The only dispute raised was with regard to the quantum of diesel filled at Nashik. According to the Appellant for the evidence of Sanjay Kanore, petrol pump attendant at Nashik was essential. The learned single Judge in his exhaustive judgment quoting extensively from the report of the Enquiry Officer and the order of the First Labour Court accepted the contentions of the Respondent and allowed the petition.

7. In the present appeal also, the main grievance of the Appellant is with regard to the non-examination of Sanjay Kanore. Grounds (j) to (bb) and (ff) to (11) are devoted to this objection. Additionally, the Appellant contends that the learned single Judge ought not to have entertained the Writ Petition at the interim stage since both the parties were entitled to challenge the validity of the final order passed by the Labour Court on all grounds.

8. Since it was the contention of the Respondent in the writ petition that the First Labour Court had exceeded its jurisdiction and acted like an appellate authority, it would be appropriate and convenient at this stage to note the settled position in law in respect of the jurisdiction of the Labour Court in deciding the complaint arising from the domestic enquiry. The learned single Judge has at paragraph 28 of the impugned judgment and order, rightly placed reliance upon the decision of the Apex Court in the case of Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, . The same reads as follows at p. 1077 of LLJ:

9. This Court in the case of State of Haryana and Another Vs. Rattan Singh, which is also a case arising out of non-issuance of ticket by a conductor held thus:

In a domestic enquiry all the strict and sophisticated rules of Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic Tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny by Court, while absence of any evidence in support of the finding is an error of law apparent on the record and the Court can interfere with the finding. In the present case, evidence of the inspector is some evidence which has relevance to the charge and the Courts below had misdirected themselves in insisting on the evidence of ticketless passengers. Also merely because the statements were not recorded, the order for termination cannot be invalid. In fact, the inspector tried to get their statements but the passengers declined. Further, it was not for the Court but the Tribunal to assess the evidence of the co-conductor.

10. From the above it is clear once a domestic Tribunal based on evidence comes to a particular conclusion normally it is not open to the appellate Tribunals and Courts to substitute their subjective opinion in the place of the one arrived at by the domestic Tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the Respondent. The domestic Tribunal accepted that evidence and found the Respondent guilty. But the Courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of State of Haryana and Anr. v. Rattan Singh (supra) is not a condition precedent. We may herein note that the judgment of this Court in State of Haryana and Anr. v. Rattan Singh (supra) has since been followed by this Court in Devendra Swamy Vs. Karnataka State Road Transport Corpn., .

It is thus seen that the scope of scrutiny of the domestic enquiry is limited. It is limited to overseeing (i) whether there is some evidence to support the finding, (ii) whether the evidence is such that a prudent and reasonable man would accept, (iii) whether the approach of the Enquiry Officer is judicious and (iv) whether the rules of natural justice have been followed. If these tests are satisfied, there can be no interference with the subjective opinion of the Enquiry

Officer at the hands of the Labour Court.

9. As already mentioned above, most of the facts constituting the three charges against the Appellant are undisputed. The only dispute raised was with regard to the quantum of diesel filled by the Appellant at Nasik. According to the Respondent, the diesel filled at Nasik was only 5 litres, whereas, the bill produced by the Appellant for reimbursement was for 30 litres. Sanjay Kanore, the fuel attendant at the petrol pump at Nasik has not been examined in the enquiry. However, his statements one at Exhibit 5 collectively filed by the Respondent and the other at Exhibit 19 filed by the Appellant, was considered by the enquiry officer. The representatives of the Respondent, one Ms. Bhosale and Mr. Raje, who had been examined as witnesses during the domestic enquiry, had visited Nasik petrol pump for making enquiries in connection with the charges against the Appellant. Thus, the statement at Exhibit 5 was recorded by them at that time. The Appellant had two objections to this statement. His first objection was that the statement at Exhibit 5 was obtained under duress. According to him, both Mr. Bhosale and Mr. Raje had posed as CBI officers and obtained the statement from Sanjay Kanore. However, the suggestion in this regard given to the two officers during their cross-examination in the enquiry proceedings had been denied by them. According to the Appellant on March 4, 2003 i.e. about 15 days after his first statement, Kanore made another statement (Exhibit 19) to the Police complaining that he had been threatened by Mr. Bhosale and Mr. Raje. As per Exhibit 19 the date of issuance of threat by Mr. Bhosale and Mr. Raje was February 21, 2003, whereas, even as per the Appellant the date of investigation by the two officers and the date of recording of the statement at Exhibit 5 was February 20, 2003. The cross-examination of Mr. Bhosale revealed that after the complaint to police vide Exhibit 19, he was neither called to the police station for making any enquiry into the complaint nor any other step taken by the police. This would mean that apparently the police did not find any substance in the complaint made. It was the opinion of the Enquiry Officer that even if the Respondent did not examine Kanore as its witness in the domestic enquiry, it was always open for the Appellant to examine him as his own witness. Though the Appellant had cited Mr. Kanore as one of the witnesses to be examined by him, according to the Enquiry report no application had been filed by the Appellant for summoning Kanore. The other objection taken by the Appellant to the statement at Exhibit 5 is that the same had been tampered with by the Enquiry Officer and the representative of the Respondent. It is alleged that both had torn off the lower portion of the statement at Exhibit 5, which portion contained signature of one Mr. U.K. Bhide. The Enquiry Officer did not find any substance in this allegation as the statement at Exhibit 5 has been admittedly signed by Sanjay Kanore.

10. This objection did not find favour with the first Labour Court also, which held that non-examination of Sanjay Kanore by the Respondent cannot be a ground to hold that the enquiry conducted against the Appellant was not fair and proper. The first Labour Court took note of a third statement made by Sanjay Kanore,

which is in the form of his affidavit dated April 13, 2003 that forms part of the record and observed that considering the three different statements made by Sanjay Kanore, the Respondent obviously did not choose to examine him as its witness. It was also of the opinion that it was for the Respondent to decide upon the witnesses to be examined by it in the enquiry. Besides, the Appellant had stated before the Enquiry Officer that he wanted to examine Sanjay Kanore as his witness. As regards tampering of the document, the first Labour Court rejected the objection placing reliance upon the depositions of the parties in the domestic enquiry. It held that merely because in one of the copies of the statement of Sanjay Kanore, the portion of signature of Mr. Bhide does not appear or is torn off, the statement cannot be discarded because there is no change in the contents of the statement. Further, Sanjay Kanore has undisputedly signed the statement. We find neither any irregularity nor any illegality in the specific finding on the question relating to the evidence of Sanjay Kanore. The learned single Judge found that each objection of the Appellant to the enquiry had been turned down and rejected by the first Labour Court. The Appellant had complained that he was not permitted to engage an advocate. The first Labour Court held that the objection does not require consideration because the request for engaging an advocate was never made prior to November 18, 2003. It was also complained that the Appellant was not furnished with the list of documents and witnesses along with the charge sheet concerned. The first Labour Court held that the Appellant had never demanded the list of witnesses and was unable to establish that any prejudice was caused to him by non furnishing of the list of witnesses. It also observed that the Appellant was given sufficient time as per his request to prepare for cross-examination and all opportunities were granted to cross-examine the witnesses examined by the Respondent.

11. After rejecting each and every objection of the Appellant to the enquiry specifically with proper reasons, the first Labour Court strangely and surprisingly reconsiders each objection, this time without reference to the report of the Enquiry Officer. It brushes aside and ignores its own earlier observations to hold as follows:

69. In my opinion, if the objections raised by the complainant are considered and decided separately and independently, the enquiry cannot be vitiated but while deciding the fairness of the enquiry officer at all the facts are required to be taken into consideration. I said so because all the facts if taken into consideration, it may appear that the enquiry was not really enquiry but is a mere formality or requirement of law to be completed after taking decision.

12. The first Labour Court then gets into conjectures and surmises and put it's personal views about the manner in which the Appellant has been held guilty. This gets demonstrated by the following observations at paragraph 72 of its order.

72...Infact, if there were doubtful circumstances, it was desirable to watch his activities for some time. In the present case, though it was not required to fill the

diesel at outside the petrol pump be claimed, he filled diesel is the only doubtful circumstance appearing against him. There can be reason for the same as according to him the pointer indicating quantity of diesel in the motor was showing less quantity. It can be a mistake while looking at the meter, or he may not have paid proper attention to the meter or the meter may show faulty reading if the vehicle is not on plane road i.e. on ascending or descending road. But it was not desirable to presume that he committed misconduct and to prepare record to hold him guilty. It has been done as it can be seen from above facts that it was mere formality or farce of enquiry to find out reason to hold him guilty, instead of holding him guilty on sufficient and acceptable evidence.

In doing so, the first Labour Court clearly transgressed its limits of enquiry into the decision of the domestic Tribunal. The learned single Judge therefore correctly held that the first Labour Court has committed grave error apparent on the face of the record while holding that although the enquiry cannot be said to be vitiated considering the objections independently, yet, from the totality of the facts taken into consideration, it may appear that the enquiry was a mere formality.

13. The Industrial Court, without even so much as touching upon the contradictory and inconsistent views expressed by the first Labour Court, by its short and cryptic order merely expunged the adverse observations and comments of the Labour Court against the Respondent. It neither specified the adverse comments nor stated reasons therefore setting them aside. At paragraph 13 of its order, the Industrial Court simply states as follows:

13. Therefore, after considering this factual aspects and peculiar circumstances appearing in the case though one may not agree with the observations of the learned Trial Judge and some comments against the Company which are unwarranted, but at the same time there is a need for the Petitioner Company to justify its action by way of leading the evidence before the trial Court. In that respect, directions of the trial Court, thereof does not call for any interference. But the observations of Trial Court about perverse findings of the enquiry officer and unwarranted comments against the Company need to be expunged.

In the circumstances the learned single Judge held that once the Industrial Court was satisfied that the adverse remarks were wholly unjustified, it ought to have allowed the Revision Application. By not doing so, it failed in its duty as Revisional Court. We are entirely in agreement with the view expressed by the learned single Judge.

14. Another ground of challenge to the impugned judgment and order is that the learned single Judge ought to have refused to entertain the writ petition at the interim stage since both the parties were entitled to challenge the validity of the final order passed by the Labour Court on all grounds. In answer to this ground, we need to only quote the observations of the learned single Judge at paragraph 72 with which we entirely agree.

72...Normally, this Court is reluctant to interfere at a preliminary stage. However, when illegality and perversity of the above nature is noticed and seen, when the Courts below do not perform their duty in accordance with law, so also, when exercise of powers vested in them results in miscarriage of justice, then it is the duty of this Court to interfere in the writ jurisdiction."

15. In all the above circumstances, the Appeal fails and it is dismissed. In the facts and circumstances of the case, no order as to costs.