
(2010) 05 DEL CK 0317
In the Delhi High Court
Case No : Writ Petition (C) 2221 of 2000

Taj Mahal Hotel

APPELLANT

Vs

Industrial Tribunal-I and Others

RESPONDENT

Date of Decision : 14-05-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 33(2)

Citation : (2010) 4 LLJ 804

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Vinay Bhasin and Amit Bhasin, for the Appellant; Harvinder Singh, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner by this writ petition impugns the order dated 6th March, 2000 of the Industrial Tribunal holding the domestic/departmental inquiry conducted prior to the dismissal of the respondent Nos. 2 to 6 workmen to be legally invalid and vitiated. After holding so, the Industrial Tribunal gave liberty to the petitioner to prove the charges against the workmen before the Industrial Tribunal.

2. The petitioner however, instead of proving the charge of misconduct before the Industrial Tribunal, filed this writ petition, notice whereof was issued to the respondent workmen. Subsequently, vide order dated 7th July, 2000 Rule was issued in the petition and the operation of the order aforesaid impugned in this writ petition was stayed. The said interim order was, on 11th January, 2002, made absolute till the disposal of the writ petition. Resultantly the further proceedings before the Industrial Tribunal on the reference "Whether the dismissal of services of Shri B.S. Rawat, Ramvir, Shankar Lal, Ramphool and Mukesh Shakun, is illegal and/or unjustified and if so, to what relief are they entitled and what directions are necessary in this respect?" remain held up.

3. On 2nd September, 2002 the counsel for the petitioner sought time to check up whether the witnesses necessary to prove the charges against workmen before the Industrial Tribunal were still available to give testimony or not. The counsel for the petitioner on 30th September, 2002 informed the Court that none of the witnesses were so available. The counsels for the parties have been heard.

4. The Industrial Tribunal has held the domestic/departmental inquiry to be invalid and vitiated only on the ground of bias. One Shri Alok Bhasin was appointed by the petitioner as the inquiry officer. The respondent workmen raised an objection to his appointment as the inquiry officer on the ground that he had conducted about 50 inquiries on behalf of the petitioner against the workmen and had given findings in each of them in favour of the petitioner; that he had been appearing in conciliation proceedings before the authorities under the Delhi Shops and Establishments Act and before Labour Courts and Industrial Tribunals on behalf of the petitioner and is a regular consultant and advocate of the petitioner and thus could not be expected to act as an unbiased person and the workmen apprehended that they would not get fair treatment from him. Notwithstanding the said protest by the respondent workmen, the petitioner continued with the inquiry proceedings through the aforesaid Shri Alok Bhasin.

5. The Industrial Tribunal found that Shri Alok Bhasin, appearing as the witnesses before the Industrial Tribunal on behalf of the petitioner admitted in his cross-examination that he had been appearing for the petitioner before authorities under the Delhi Shops and Establishments Act on behalf of the petitioner and in a proceeding against some of the respondent workmen; that he had appeared as the representative of the petitioner in a meeting of Ministers of the Delhi Government; that in a span of 8 to 9 years he had conducted approximately 30 inquiries against the employees of the petitioner and in all these inquiries he had held the workmen guilty of the charges; that the inquiry proceedings were conducted in the Guest House of the petitioner; that the respondent workmen had during the inquiry proceedings also objected to his conducting the enquiry but he had overruled the said objection; that even in the instant case before the Industrial Tribunal he was representing the petitioner and had a signed letter of authority on behalf of the petitioner.

6. The Industrial Tribunal on a consideration of the circumstances found merit in the objections raised by the respondent workmen to the appointment of Shri Alok Bhasin as the inquiry officer. Placing reliance on *Sh. N.K. Sareen v. Punjab National Bank* (1994) LLR 676 laying down that an impartial enquiry is an essential feature, it was held that a case of reasonable apprehension of bias having been made out, the inquiry has to be treated as non-est. Accordingly, it was held that the inquiry was not held/conducted in accordance with the principles of natural justice requiring that such inquiries be conducted by unbiased and impartial persons.

7. Mr. Vinay Bhasin, Senior counsel for the petitioner has at the outset stated that the sole question for adjudication is whether an inquiry conducted by a Legal

Advisor of the employer management can be said to be per se bad. He contends that the case of the petitioner will sink or swim on the said premise only inasmuch as it has already been informed that the petitioner after long lapse of time is not in a position to avail the opportunity given by the Industrial Tribunal to prove the misconduct before the Industrial Tribunal. It is further urged that bias arises from the conduct of the proceedings and not by the identity of the inquiry officer. It is urged that there is no finding that Shri Alok Bhasin, in the conduct of the inquiry, had shown any bias against the respondent workmen or had favoured the petitioner. The senior counsel for the petitioner contends that there is no bar in law to an employer conducting the inquiry himself to ascertain the misconduct of the workmen; in bigger/larger establishments inquiries are nearly always conducted by other employees of the same employer/management. It is contended that the impugned order is thus bad for the reason of finding bias merely for the reason of Shri Alok Bhasin being the advocate and the legal advisor of the petitioner or for the reason of him having conducted inquiries against other workmen of the petitioner. It is contended that the Industrial Tribunal in spite of noticing the following judgments has erred in applying the principles thereof to the case at hand:

(i) Aligarh Muslim University and Others Vs. Mansoor Ali Khan, , wherein the Supreme Court has held that prejudice must be proved and some real prejudice having been caused must be shown by the complainant and there is no such thing as mere technical infringement of natural justice.

(ii) Saran Motors Private Ltd. v. Vishwanath (1964) II LLJ 139 where the Supreme Court rejected the argument that just because a person is sometimes employed by the employer as a lawyer he becomes incompetent to hold a domestic inquiry and reiterated that the requirement only was that the inquiry must be fairly conducted and if not found to have been fairly conducted is liable to be set aside and an inquiry is not bad just because it is conducted by an officer of the employer. It was further held that if the inquiry held by an officer of the employer was not bad, an inquiry by a lawyer of such employer also could not be bad.

(iii) Narendra Pratap v. Jagmohan Bharti 1976 (32) FLR 218 where a Single Judge of this Court in the absence of any proof of personal ill will or of a conspiracy between the management and the inquiry officer, reversed the order of the Tribunal holding the inquiry to be vitiated. It was further held that merely because the inquiry officer was connected with the Law Firm which was the legal advisor to the management could not lead to the conclusion that the inquiry officer has deliberately and willfully held against the workmen. It was further held that bias has to be personal to the inquiry officer and must be clearly proved. I may notice that the same set of Advocates and inquiry officer, as in the present controversy, were involved in that case also.

8. The Senior Counsel for the petitioner himself drew the attention to a recent judgment of Division Bench of this Court in Indian Refrigeration Industries v.

Ram Rattan Sharma 2006 LLR 548 where though holding that there is no absolute bar to an Advocate or an officer of the company being an inquiry officer, it was noticed that in the facts of that case the inquiry officer was also authorized to represent the management in the hearing of the approval application u/s 33(2) (b) as well as in the industrial dispute and a case of clear bias was held to have been made out. It was further held that if the inquiry officer himself appears as an Advocate for the management in the reference against the termination of service based on the inquiry which he had himself held, this obviously shows bias. The said situation was found akin to a Trial Judge who convicts an accused appearing as a counsel for the prosecution in the appeal against the conviction. The Senior Counsel for the petitioner contends that the said judgment of the Division Bench is not good law in view of the earlier judgments of Division Benches of this Court as well as the judgments aforesaid of the Supreme Court. It is further contended that the said judgment contains no reasoning and no ratio and hence ought not to come in the way of the petitioner.

9. The respondent workmen in their counter affidavit have also challenged the maintainability of the present writ petition. It is their contention that no writ lies against the decision on a preliminary issue as in the present case and the challenge, if any, can only be to the final award on an industrial reference. Responding to the said plea, the Senior Counsel for the petitioner contends that in the face of the statement earlier given that the petitioner is now not in a position to adduce evidence of misconduct before the Industrial Tribunal, the order impugned in this writ petition is as good as a final order on the industrial reference inasmuch as only the formality of answering the reference would remain hereinafter. It is contended that in the event of the finding of the Industrial Tribunal of the inquiry being vitiated is upheld, the industrial reference would be answered against the petitioner and in the event of the order of the Industrial Tribunal being set aside, the industrial reference would necessarily be answered in favour of the petitioner. Reliance in this regard is also placed on:

(i) Assistant General Manager, Hyderabad Engineering Industries v. Chairman, Hon'ble Additional Industrial Tribunal 2004 LLR 770 where a Single Judge of the Andhra Pradesh High Court has held that a writ petition on a decision on a preliminary issue with respect to inquiry, as in the present case, is not barred though it is restricted.

(ii) St. Thomas Mission Hospital v. State of Kerala 2007 LLR 610 where a Division Bench of the Kerala High Court held that in appropriate case where the Labour Court for totally misconceived reason invalidates an inquiry, the management cannot be directed to wait till the final award is passed to challenge the preliminary order also and the High Court should interfere at the first stage itself without relegating the management to the circuitous process.

10. Per contra, the counsel for the respondent workmen contends that the statement of the petitioner before this Court that it does not want to adduce evidence to prove misconduct before the Labour Court would not make this writ

petition maintainable inasmuch as the award still remains to be passed by the Industrial Tribunal and the order impugned remains an interlocutory order. He further contends that in the present case, the respondent workmen had raised an objection to the inquiry officer at the very threshold. It is contended that the judgments of the Supreme Court relied upon by the petitioner only hold that merely because the inquiry officer is an Advocate of the employer, the same does not amount to bias. It is contended that in the present case, specific bias is shown by the inquiry officer appearing against the respondent workmen not only in the proceedings under the Delhi Shops and Establishments Act as well as in the proceedings (from which this petition has arisen) before the Industrial Tribunal. It is contended that the said appearance of the inquiry officer before the Industrial Court is not as an Advocate but under a letter of authority from the petitioner and as an office bearer of the petitioner. It is contended that thus a commonality of interests is spelled out between the inquiry officer and the petitioner; it is not as if the inquiry officer was appearing in other cases of the petitioner; here the inquiry officer was representing the petitioner in disputes with the respondent workmen themselves. It is further contended that the finding of the Industrial Tribunal of bias is a finding of fact and a possible finding in the facts and circumstances aforesaid and this Court in the exercise of writ jurisdiction ought not to interfere with the same. It is urged that it is a basic principle of natural justice that a person should not be a judge in his own cause and that justice should not only be done but also be seen to be done and that bias is to be seen from the point of view of the respondent workmen, and seen in that perspective, a case of bias is made out. It is further urged that the petitioner by preferring this misconceived writ petition has held up the disposal of the industrial reference for the last 10 years and the respondent workmen are entitled to be compensated for the same. Reliance is placed on *Luxco Electronics (Paper Cone) v. Presiding Officer* 2004 All L.J. 1669 where a Single Judge of the Allahabad High Court on the basis of the inquiry officer being the authorized representative of the employee in several cases and also the son of the inquiry officer being the representative of the management in the same case, held a case of bias to have been made out. On the maintainability of the writ petition, attention is invited to *The Cooper Engineering Limited Vs. Shri P.P. Mundhe, D.P. Maheshwari v. Delhi Administration* 1983 Lab IC 1629 (SC) and *National Council for Cement and Building Materials Vs. State of Haryana and Others*, is also invited to *Ashok Kumar Monga v. UCO Bank* 1999 LLR 1171 where a Single Judge of this Court held that the test of personal bias is not whether there was actual prejudice and that the courts would interfere if the facts tend to establish that there was a real likelihood of bias or reasonable suspicion of bias and in deciding the question of bias, one has to take into consideration human probabilities and ordinary course of human conduct.

11. The counsel for the respondent workmen also contends that the present proceedings are in fact infructuous. It is contended that owing to the pendency of an industrial dispute, the petitioner had sought approval of its action of dismissal

of the respondent workmen from service by filing an application u/s 33(2)(b) of the I.D. Act. It is stated that the inquiry officer was the authorized representative of the petitioner in the said approval application also. It is contended that the said approval application has since been withdrawn. Relying on *Jaipur Zila Sahakari Bhumi Vikas Ltd. v. Ram Gopal Sharma* 2002 Lab IC 513 (SC), it is contended that on withdrawal by the petitioner of the approval application, it has to be deemed that there is no order of dismissal of the respondent workmen and hence no need for the adjudication of the industrial dispute.

12. The Senior Counsel for the petitioner, in rejoinder, though admitting that the inquiry officer had appeared against the respondent workmen in proceedings under the Delhi Shops and Establishments Act contends that the said appearance was much after the conduct of the inquiry and hence not material. It is further explained that since the appearance of the Advocates is prohibited before the Industrial Tribunal/Labour Courts, the Advocates appear as authorized representatives by forming a society but the same does not mean that they have any other/personal interest in the lis than while appearing before a Civil Court. It is urged that objections to the inquiry officer are routine and always made by the workmen to delay the inquiry and in the absence of any personal enmity as has not been shown between the inquiry officer and the respondent workmen, no case for bias is made out.

13. I have recently in *Glaxo Smithkline Consumer Healthcare Limited Vs. Presiding Officer Labour Court-IX and Another*, dealt with the maintainability of a writ petition by an employer against the preliminary findings of the Industrial Tribunal. It was held that such challenge which holds up the decision on the reference by the Industrial Adjudicator is not maintainable. The statement of the petitioner before this Court that it gives up the right to prove the misconduct before the Industrial Tribunal will not change the said position. The fact remains that by preferring the petition at this preliminary stage, the petitioner has succeeded in preventing the decision of the reference for over 10 years. The petitioner could have before the Industrial Tribunal also informed that it was not in a position to establish misconduct before the Industrial Tribunal. On such statement of the petitioner, the reference would have been necessarily decided against the petitioner. If the petitioner had come to the Court then, the provisions of Section 17B would have been available to the respondent workmen. The purpose of Section 17B of the I.D. Act is to provide relief to the workmen on account of delays occasioned by judicial review of awards of Industrial Adjudicators. However, the petitioner by pre-empting the award against it, has deprived the respondent workmen from the benefit of Section 17B. Considering that the order u/s 17B is to be made at the rate of minimum wages and considering the minimum wages in Delhi, the petitioner may have then become liable to pay in excess of Rs. 3 lakhs to each of the six respondent workmen. I may notice that the respondent workmen during the pendency of this petition filed applications in this regard which were contested by the petitioner. There does not appear to be any precedent of Section 17B having been made

applicable in such circumstances. In any case now that the writ petition is for final disposal. The respondent workmen, for the delay caused by the petitioner, can only be compensated with costs.

14. I had in Glaxo Smithkline Consumer Healthcare Ltd. (supra) refrained from deciding the writ petition on merits apprehending that such a decision might lead to further proceedings thereby further delaying the decision of the industrial reference. However, since the decision of the industrial reference, in view of the statement of the petitioner is but a mere formality, it is deemed expedient to deal with the challenge by the petitioner to the order of the Tribunal holding the enquiry to be vitiated.

15. The judgment of the Division Bench of this Court in Indian Refrigeration Industries (supra) cannot be viewed as bad law as has been contended by the senior counsel for the petitioner. I do not find the said judgment to be contrary to the grain of the judgments of the Supreme Court or of the earlier judgments of this Court. The Division Bench has held that though by the mere status of the inquiry officer as the Advocate for the management/employer, the inquiry would not be vitiated but held the inquiry to be vitiated for two reasons. Firstly, for the reason of the inquiry officer also representing the management in the approval application and secondly for the reason of the inquiry officer representing the management in the industrial dispute. Both the said reasons exist in the present case also. The inquiry officer Shri Alok Bhasin in his cross-examination admitted the authorization on behalf of the petitioner filed by him in the industrial dispute. The Senior Counsel for the petitioner has also not controverted the argument, of the inquiry officer also being the authorized representative of the petitioner in the approval proceedings u/s 33(2)(b) which were subsequently withdrawn. The facts of the present case are therefore squarely covered by the judgment aforesaid of the Division Bench and this Court is bound by the same. The judgment of the Division Bench also cannot be said to be per incuriam as it notices the judgments on the basis whereof the Senior Counsel for the petitioner urges the judgment of the Division Bench to be not good law. Once a larger bench of this Court, after considering the relevant judgments on the issue of the Supreme Court, has taken a particular view for the reasons set out therein and the same reasons are found to exist in the present case also, the said judgment cannot be ignored.

16. I am even otherwise unable to accept the contention of the petitioner that bias is required to be established as a fact. It is almost impossible to so establish bias. It is sufficient if there is a real likelihood of bias or bona fide suspicion of bias or substantial possibility of bias. The likelihood of bias is to be looked into in the mind of the party and not in the mind of the inquiry officer. Even if the inquiry officer is impartial but if a right minded person would think, in the circumstances of the case, there was real likelihood of bias on his part, then the inquiry officer could not function as such and if he functions and renders the decision, that decision gets invalidated on the ground of bias. The Court will not

inquire whether the inquiry officer, in fact, favoured one side unfairly. Suffice if a reasonable person would think that he did. The Supreme Court in *Indrani Bai (Smt) Vs. Union of India (UOI) and Others*, has held that when a representation against the impartiality of the inquiry officer is made at the earliest requesting a change in the inquiry officer, the authority should have acceded to the request and appointed an inquiry officer other than the one whose objectivity is doubted. That having not been done, the Supreme Court held the inquiry to be vitiated, reiterating that justice should not only be done but also be seen to be done.

17. The established facts in the present case are that the lawyers firm, of which the inquiry officer forms a member of "the core-team" (as described in the website of the law firm) is the Legal Advisor of the petitioner. The authorization in the industrial dispute wherefrom the present petition has arisen, was filed on behalf of the petitioner on a standard form bearing the name of the inquiry officer as well as Mr. S.K. Bhasin, Advocate who conducted the cross-examination and urged arguments before the Industrial Tribunal. The present writ petition on behalf of the petitioner is filed by the same firm of advocates, the printed Vakalatnama in whose favour also bears the name of the inquiry officer. In the normal course of business, the petitioner which is a large professionally managed company would not have taken the decision of suspending the respondent workmen and charge sheeting them without consulting their Legal Advisors and of whom the inquiry officer formed a part. It can thus safely be assumed that the inquiry officer was first a part of the decision making process which resulted in the respondent workmen being suspended and charge sheeted and after giving the report in favour of the petitioner and against the respondent workmen has been supporting his report, first before the Industrial Tribunal and thereafter before this Court. From the said admitted facts, a case of bias is made out.

18. The Supreme Court in *State of Uttaranchal and Others Vs. Kharak Singh*, has held that domestic inquiries must be conducted bona fide and care must be taken to see that the inquiries do not become empty formalities. It was held that if an officer is a witness to any of the incidents or if the inquiry was initiated on a report of an officer, then in all fairness he should not be the inquiry officer and the task of holding an inquiry should be assigned to some other. Recently, in *Biecco Lawrie Ltd. and Another Vs. State of West Bengal and Another*, the said question was again up for consideration. The inquiry officer in this case also was the company lawyer. The Supreme Court laid down the test of *nemo iudex in re sua* (a man may not be a judge in his own cause) and though upholding the inquiry by the company lawyer, the Supreme Court held that bias arises when the functions of a judge and the prosecutor are combined and it was further held that departmental fraternity and loyalty militates against the concept of fair hearing; conversely where the function of initiation of enquiry and decision of the enquiry were discharged by two separate persons, even though affiliated, it was held that no bias is made out.

19. Applying the said test and in view of the admitted facts, I find that the

inquiry officer as part of the team initiating the disciplinary proceedings against the respondent workmen had disqualified himself from being the judge (inquiry officer). The inquiry officer in discharge of his duties as a Legal Advisor having advised the successful dismissal of the respondent workmen from service, cannot be seen as impartial in the inquiry proceedings. In the ordinary course of the human behaviour, an Advocate/legal advisor would not allow the legal advice rendered by him to be proved wrong and which would have been the case had the charge not been established against the respondent workmen. Thus not only is the inquiry officer found interested in establishing the charge against the respondent workmen but has thereafter also been found to be consistently supporting the same.

20. Any discussion on "bias" would be incomplete without reference to *Ranjit Thakur Vs. Union of India (UOI) and Others*, The test of likelihood of bias was held to be the reasonableness of the apprehension in that regard in the mind of the party. The Supreme Court quoted with approval, a passage from the judgment of the Queen's Bench to the effect that the question is not, whether in fact he was or was not biased - The court cannot inquire into that; public policy requires that in order that there should be no doubt about the purity of administration, any person who is to take part in it should not be in such a position that he might be suspected of being biased.

21. Applying the said ratio, a lawyer advising the employer on ways, means and procedure for terminating the services of an employee has to make a choice. Either he can remain such advisor and assist the client in successfully dismissing/punishing the employee or he has to let that function be performed by another and in which case he is entitled to act as an inquiry officer. He cannot be both. Unfortunately in the present case the lawyer/legal advisor of the petitioner has chosen to be both. The objection of the respondent/workmen of bias taken at the very first instance, was thus justified. However, the lawyer acting as the inquiry officer even then persisted with the inquiry. This Court now has no option but to declare the same a nullity or coram non judice.

22. Resultantly, Rule is discharged and the petition is dismissed. The parties are directed to appear before the concerned Industrial Tribunal on 13th July, 2010. The Industrial Tribunal is directed to decide the reference after giving opportunity to the parties of being heard within 45 days thereof. Further, the petition having been found to have been not maintainable at this stage and the respondent workmen having been found to have been thereby deprived of the benefits, if any, due u/s 17B of the ID Act, the petitioner to also pay costs of this petition of Rs. 40,000/- to each of the respondents 2 to 6 workmen on or before 13th July, 2010 and as a condition to further participation in the proceedings.