

(1966) 02 PAT CK 0024
In the Patna High Court
Case No : Misc. Judl. Case No. 946 of 1966

Tata Iron and Steel Co. Ltd.

APPELLANT

Vs

Raj Kishore Prasad and Others

RESPONDENT

Date of Decision : 15-02-1966

Acts Referred:

Industrial Disputes Act, 1947 — Section 15, 26

Citation : AIR 1966 Patna 407 : (1966) 2 LLJ 749

Hon'ble Judges : R.L. Narasimham, C.J;G.N. Prasad, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh and S.B. Sanyal, for the Appellant; B.C. Ghosh and Tara Kumar Das, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham. C.J.

1. This is an application by the employees to quash the order of the Presiding Officer, Central Government Industrial Tribunal, Dhanbad, holding that the order of dismissal of three of its workmen, namely, Basdeo Pashwan, Bhairo Mandal and Upendra Mandal, minors, as unjustified, and ordering consequential reliefs.

2. The three workmen were charged with theft of coal while working inside the petitioner's colliery on the 10th July 1962. A departmental enquiry was held by the Welfare Officer of the petitioner's Company. Some witnesses were examined on behalf of the management and some on behalf of the workmen, the report of the Welfare Officer (Annexure B) shows that the theft was alleged to have been committed while the workmen were cutting coal from a portion somewhere between 15 feet and 25 feet from the working face, and the mining Sardar, Sri G C Roy, who was the principal witness for the management, actually seized one of the workmen while the alleged misconduct was being committed. The defence of the three workmen was that they were cutting bona fide coal from a portion of the working face about 10 feet wide, and hence there could be no question of

their committing theft of coal.

Having thus summarised briefly the evidence adduced by the management and by the workmen the Welfare Officer gave his conclusions as follows:--

"From the evidence on record, I am inclined to feel that the accused have failed to prove their innocence with regard to the charge brought against them. Moreover, in their chargesheet explanations, they have pleaded about some incident which might have taken place in the month of June, while the reported incident took place on the 10th of July. When this was pointed out to the three accused by the undersigned, they just declined to say anything in addition to their chargesheet explanations. The statement of Sri Prasadi Ram also points to their guilt. Sri Ham Gorai's statement could not be taken as he was on leave."

Acting on his report, the employer dismissed the workmen.

3. The learned Tribunal, after quoting the aforesaid passage in the report of the Welfare Officer, held that the Welfare Officer wrongly cast the onus on the workmen to prove their innocence, whereas in respect of a charge of this type brought by the employer against their workmen the primary onus of proving the charge satisfactorily rested with the employer. The Tribunal thought that this wrong approach to the whole question was responsible for the conclusion arrived at by the Welfare Officer. He also observed that the Welfare Officer committed a serious error of record in saying that the statement of Sri Prasadi Ram points to the guilt of the workmen. The Tribunal quoted from the evidence of Prasadi Ram, which was to the effect that the workmen merely picked up coal (and not committed theft) at a distance of 10 to 15 feet from the face.

This evidence of Prasadi Ram would thus support the defence of the workmen and not corroborate the evidence of the Mining Sardar G. C. Roy, on which the case of the management mainly rested. The Tribunal further observed that the enquiry was not held in a fair manner inasmuch as important witnesses and documents were not examined or produced by the management, and the workmen also were not given the opportunity to see the documents which were before the Enquiry Officer His final conclusion was as follows:

"For the reasons given above, I hold that the enquiry was unfair, illegal and irregular and violative of principles of natural justice and further that the finding of the Enquiry Officer is perverse as mentioned above."

4. The main contention of Mr. Balbhadra Prasad Singh for the petitioner employer is that the Tribunal exceeded its jurisdiction in interfering with the finding of guilt arrived at in a domestic enquiry which was based on some evidence. According to him, the charges against the delinquent employees were specific, a regular enquiry was made by the Welfare Officer during which witnesses were examined both on behalf of the management and on behalf of the delinquent workmen, that the latter got an opportunity to cross-examine the witnesses of the prosecution and that, consequently, the rules of natural Justice were observed.

5. The grounds on which a Labour Court or Tribunal can Interfere with the finding or a domestic tribunal have been well settled by innumerable decisions of their Lordships of the Supreme Court, and it is unnecessary to refer to them in detail. I need only refer to the latest decision in *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, where their Lordships observed that the findings arrived at in a domestic tribunal should not be interfered with by industrial adjudication, unless the said findings are either perverse, or not supported by any evidence, or some other valid reason of that character. The Tribunal was fully conscious of its limitations in this case. It interfered with the finding of the domestic tribunal, namely, the Welfare Officer, solely because that officer cast the burden on the workmen to prove their innocence. He also attached due weight to the fact that the domestic tribunal committed a serious error of record in holding that the evidence of Prasadi Ram points to the guilt of the workmen, whereas his evidence was corroborative of the plea taken by the workmen and not of the evidence of the Mining Sardar Sri G. C. Roy.

In my opinion, for these two reasons the Tribunal was entitled to hold that the findings of the domestic enquiry were perverse. Moreover, the Tribunal observed that during the domestic enquiry the Welfare Officer took into consideration Munshi's report (Ext. M21), though a copy of that report was not made available to the workmen and they were not given an opportunity to rebut the same. Then again, the Mining Sardar's inspection book (Ext. W17), which was a very important piece of evidence on the question of guilt or innocence of the workmen, was not produced during the domestic enquiry. It was open to the Industrial Tribunal to hold that the withholding of a very important piece of evidence which did not contain any contemporaneous record made by the Mining Sardar about the alleged theft, and the withholding of the Munshi's report from the workmen though it was looked into by the domestic tribunal, were sufficient to show that the principles of natural justice were violated in the domestic enquiry.

6. It was, therefore, open to the Industrial Tribunal to re-assess the entire evidence adduced before that Tribunal with a view to ascertain whether the dismissal of the workmen from service was justified: *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, . The Tribunal made such an assessment and came to the conclusion in favour of the workmen. It cannot be said that he exceeded his jurisdiction.

7. The second contention of Mr. Balbhadra Prasad Singh is that the Tribunal failed to consider the initial question as to whether the dispute was an "industrial dispute" or an individual dispute. The order of the Tribunal does not show that this point was pressed before him. It is true that during the course of the enquiry before the Tribunal the petitioner employer filed a petition on the 14th June, 1963, through his Chief Mining Engineer, asking the Tribunal to call for certain records, including a register of the Union showing the list or members of the Union. Apparently this document was called for with a view to show that the three workmen were not members of the Union. But the actual order passed by

the Tribunal on this petition is not known. A certified copy of the same was not filed, and the judgment of the Tribunal shows that the defence of the management was that the workmen were guilty of the charges and that their dismissal was justified. The jurisdiction of the Tribunal to hear the dispute on the ground that the dispute was not an industrial dispute was not specifically pressed before the learned Tribunal. Even in the petition under Article 226 filed in this Court it was not asserted that this question was actually pressed before the Tribunal by the employer's representative.

8. The circumstances under which an individual dispute becomes an industrial dispute are well known. As pointed out by their Lordships of the Supreme Court in *Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi)*, , an individual dispute becomes an industrial dispute if it is supported by the Union of the workmen to which the dismissed employee belongs, or by a group of his co-employees. Here the very fact that the Union took up the cause of these workmen, both before the Conciliation Officer and before the Industrial Tribunal would, in the absence of any rebutting evidence, indicate that the said Union which represented a large number of workmen had taken up the cause. It cannot also be held that there is satisfactory evidence to show that these workmen are not members of the Union. The necessary averment of facts, which are the basis for holding that the dispute remained as an individual dispute, were not made by the employer during the course of the enquiry before the Tribunal. I must, therefore, hold that this question does not arise in view of the nature of the controversy between the parties as placed before the Tribunal at the time of final hearing.

9. For these reasons I see no reason to interfere with the order of the Tribunal. The petition is dismissed with costs. Hearing fee Rs. 100/-, payable jointly to the workmen, namely, respondents 2, 3 and 4, and the Tata Colliery Workers Union, respondent No. 5.

G.N. Prasad, J.

10. I agree.