

(1996) 07 KAR CK 0033
In the Karnataka High Court
Case No : Writ Petition No. 41771-72 of 1993

The Management of J.G. Co-operavtive Hospital Ltd.	APPELLANT
Vs	
S.S. Chougula	RESPONDENT

Date of Decision : 05-07-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11 A, 33

Citation : (1998) ILR (Kar) 2238

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : B.C. Prabhakar, for the Appellant; V.S. Naik, for R-1, for the Respondent

Judgement

V.P. Mohan Kumar, J.—The question raised in these Writ petitions is regarding the right of the Management to lead evidence after the industrial Tribunal holds that the domestic enquiry held is not valid and proper. Brief facts of the case are as follows :

On the basis of the finding entered in the domestic enquiry punishment of dismissal was imposed on the worker. He raised an industrial dispute before the Tribunal. The worker had alleged that there was no fair and proper domestic enquiry. Statement of objection was filed by the Management disputing the stand of the worker. It also interalia contended that the claimant before the labour Court is not a worker and that he will not come within the purview of the provisions of the Industrial Disputes Act.

2. The claim statement was filed in November 1982. The counter statement was filed on 2.3.1983. Thereafter it is seen that the dispute was transferred to the Industrial Tribunal on 1.9.1986. The Management submitted an additional written statement on 4.3.1987.

3. Necessary issues were framed. Among them two of the issues were whether the domestic enquiry is fair and proper? and whether the claimant is a workman

under the I.D. Act? The Tribunal considered the preliminary issue with regard to the legality of the domestic enquiry and held that the domestic enquiry held is not fair and proper. This finding was entered on 9.4.1991. The Tribunal on the same day suo motu passed an order calling upon the management to lead evidence to sustain the charges. Subsequent thereto the worker filed I.A. No. 2 on 9.5.1991 seeking to recall the order permitting the management to lead evidence on the ground that there was no prayer as such by them in the written statement seeking permission to lead evidence on the merits if the domestic enquiry was held to be not fair and proper. A counter statement was filed by the Management on 26.6.91 seeking express permission to lead evidence on the merits of the charges. The Management there after also filed I.As. 4 and 5 on 31.3.93 seeking permission to lead evidence to sustain the charges. All the I.As. were disposed of by a common order, Annexure-B; the Tribunal allowed the I.A. filed by the worker and rejected the I.As. filed by the Management. In the said order the Tribunal held that the Management has not sought for permission to lead evidence at the earliest stage when it filed its objections and therefore they cannot be permitted to do so subsequently and has hence held that the Management is not entitled to lead evidence. This writ petition has been filed by the Management impugning the finding of the Tribunal on the domestic enquiry as also on the validity of the order passed whereby the Management has declined permission to lead evidence after the domestic enquiry to sustain the charges.

4. As regards the validity of the Domestic enquiry is concerned, this Court need not examine the same at this stage, because it is always open to the Management to challenge the finding thereon if and when the final adjudication goes against the Management. it is sufficient if that right is reserved.

5. The next question for consideration is whether the Management can be permitted to lead evidence. The law laid down by the Supreme Court in this behalf is reported in the decision in Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another, . It was held therein that the Management can be permitted to lead evidence subsequent to the finding of the Tribunal if a request is made in this behalf before the proceedings are completed. The Supreme Court stated that if no such relief is sought for there is no duty cast on the Court to remind the party of its right. After reviewing various aspects of the matter Their Lordships stated thus :

"....If an application is made by the employer as it is required to be made in the prescribed form all fact are required to be pleaded. If a relief is asked for in the alternative that has to be pleaded. In an application u/s 33 the employer has to plead that a domestic enquiry has been held and it is legal and valid. In the alternative it must plead that if the Labour Court or Industrial Tribunal comes to the conclusion that either there was no enquiry or the one held was defective, the employer would adduce evidence to substantiate the charges of misconduct alleged against the workman. Now, if no such pleading is put forth either at the initial stage or during the pendency of the proceedings there arises no question

of a sort of advisory role of the Labour Court or the Industrial Tribunal, unintended by the Act to advise the employer, a party much better off than the workman, to inform it about its rights, namely, the right to lead additional evidence and then given an opportunity which was never sought. This runs counter to the grain of industrial jurisprudence. Undoubtedly, if such a pleading is raised and an opportunity is sought, it is to be given but if there is no such pleading either in the original application or in the statement of claim or written statement or by way of an application during the pendency of the proceedings there is no duty cast by law or by the rules of justice, reason and fair play that a quasi judicial Tribunal like the Industrial Tribunal or the Labour Court should adopt an advisory role by informing the the employer of its rights, namely, the right to adduce . additional evidence to substantiate the charges when it failed to make good the domestic enquiry and then to give an opportunity to it to adduce additional evidence. This, apart from being unfair to the workman, is against the principles or rules governing the procedure to be adopted by quasi-judicial Tribunal, against the grain of adversary system and against the principles governing decision of a lis between the parties arrayed before a quasijudicial Tribunal."

(Underlining for emphasis)

It may be noted that the said decision was followed in a subsequent decision of the Supreme Court reported in Shambhu Nath Goyal Vs. Bank of Baroda and Others, . It was stated by Justice Desai in the concurring judgment under as follows:

"....It was further observed that "if such a pleading is raised and an opportunity is sought, it is to be given, but if there is no such pleading either in the original application or in the statement of claim or written statement or by way of an application during the pendency of the proceedings, there is no duty cast in law or by the rules of justice, reason and fair play that a quasijudicial Tribunal like the Industrial Tribunal or the Labour Court should adopt an advisory role by informing the employer of its rights. The statement that if an application is made during the pendency of the proceedings does not mean that some independent right to make an application at any time is conferred on the employer. Ordinarily, where a party claims reliefs, it must plead for the same. The pleading can be incorporated in a statement of claim or a written statement of defence. It was not for a moment suggested that an application at any stage of the proceedings without explaining why the relief was not claimed in the original pleading his to granted. If a separate application is made, it would be open to the Labour Court/ Industrial Tribunal to examine the question whether it should be granted or not depending upon the stage when it is made, the omission to claim the relief in the initial pleading, the delay and the motivation for such delayed action? Without being specific, it can be said that such an application has to be examined as if it is an application for amendment of original pleadings keeping in view all the aforementioned considerations and if it does not appear to be bona fide or has

been made after a long unexplained delay or the explanation for the omission of claiming the relief in the initial pleading is unconvincing, the Labour Court/Industrial Tribunal would be perfectly justified in rejecting the same. The observation was not made to lay down a proposition of law that as and when it suits the convenience of the employer at any stage of the proceedings; it may make an application seeking such opportunity and the Labour Court/Industrial Tribunal was obliged to grant the same."

It contemplates a situation where permission was being sought by the Management to lead evidence at a later stage of the proceedings in the event when it fails to prove that the domestic enquiry held is proper and fair. Such application if made subsequently but before the closing of the proceedings may be treated as an application to amend the written statement. It obviously relates to a situation where the Management had not made such a specific request in the original written statement filed but had made an application subsequently and apparently after the Labour Court had entered a finding that the domestic enquiry held is not fair. The decision reported in *Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another*, formed the basis for the decision rendered in *Shambhu Nath Goyal Vs. Bank of Baroda and Others*, . In other words the above passage indicates that an application could be filed by the employer for permission to lead evidence to sustain the charges and such an application has to be dealt with independently and if sufficient cause is shown for the delay in making the said application it may be treated as an amendment application to amend the written statement. But in the leading judgment, in the same decision Justice Varadarajan after referring to the very same *Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another*, extracted above, has observed as follows :

"....The management is made aware of the workman's contention regarding the defect in the domestic enquiry by the written statement of defence filed by him in the application filed by the management u/s 33 of the Act. Then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay. But when the question arises in a reference u/s 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after reference had been received and the management has the opportunity to look in to that statement before it filed its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do.'"

There is an apparent conflict between the view expressed by Justice Desai and Justice Varadarajan. Since both rely on the principles laid down in *Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another*, the epilogue of Justice Desai referred to *supra* be treated as the statement of law on this aspect and what Justice Varadarajan observed is with respect to the particular facts of that case. Hence where the applicant is able to explain the reason for not making a request for leading the evidence to sustain the charges against the worker in the original written statement itself, then the Management may be permitted to make a separate application subsequently. And as contemplated in the observation made by Justice D.A. Desai, in a given situation the said application can be allowed. No doubt, in *K.S.R.T.C Vs. Basangoudar*, this Court has observed as follows :

"5. the our view the law that is applicable to the facts before us is laid down in the Judgment of the Supreme Court in *SHAMBHU NATH GOYAL v. BANK OF BARODA*. That was a case where the Court, in paragraph 16, specifically considered the question as it arose in a reference u/s 10 of the Industrial Disputes Act after the workman had been punished pursuant to a finding of guilt recorded against him in a domestic enquiry. It was held that in such a case there was no question of the employer filing any application for permission to lead further evidence in support of the charge framed against the workman for the defect in the domestic enquiry was pointed out by the workman in his written statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the employer had an opportunity to look into that statement before it filed its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity to lead further evidence in respect of the charge in the written statement itself. "If it does not choose to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay,..."

But subsequently the Supreme Court has spoken on the subject in *BHARATH FORGE COMPANY LIMITED v. A.B. ZODGE AND ANOTHER* ILR 1996 KAR 385. adopting the principles stated by Justice Desai in the decision reported in *Shambhu Nath Goyal Vs. Bank of Baroda and Others*, . It is stated as hereunder :

"..... In *Sankar Chakraborty's* case (*supra*), the contention that in every case of disciplinary action coming before the Tribunal, the Tribunal as a matter of law must frame preliminary issue and proceed to see the validity or otherwise of the enquiry and then serve a fresh notice on the employer by calling him to adduce further evidence to sustain the charges, if the employer chooses to do so, by relying on the decision of this Court in the case of *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, , has not been accepted the view expressed in *Delhi Cloth Mill's* case (*supra*) that before the proceedings are closed, an opportunity to adduce evidence would be given if a suitable request for such opportunity is made by the employer to the Tribunal has been reiterated in *Sankar Chakraborty* case after observing that on the question as to the stage as

to when leave to adduce further evidence is sought for the decision of this Court in Cooper Engineering Ltd., has not overruled the decision of this Court in Delhi Cloth Mills" case. There is no dispute in the present case that before the closure of the proceedings before the Tribunal, prayer was made by the employer to lead evidence in support of the impugned order of dismissal. Hence denial of the opportunity to the employer to lead evidence before the Tribunal in support of the order of dismissal cannot be justified,"

6. Hence we can proceed that the law as it now stands as declared by the Supreme Court is that the Management may seek by a separate application for permission to lead evidence to sustain the charges after the domestic enquiry is found against and such a request can be granted provided it shows sufficient cause.

7. The worker in this case was dismissed on 19.9.1981. The domestic enquiry has found against on 9.4.1991. The Tribunal itself granted permission to the Management to lead evidence. Earlier the Management had not sought permission to lead evidence. When the worker sought to review the order passed by the Tribunal granted permission to lead evidence, the Management made specific prayer in the counter statement to permit them to lead evidence. This was made on 26.6.1991 by way of objection to the review application. They also filed separate I.As. on 31.3.1993 containing the request. Though there was some delay it is seen that a request had been made on 26.9.1991. In the circumstances permission cannot be refused to the Management to lead evidence to sustain the charges.

8. That apart while examining the quantum of punishment imposed, perhaps, the Management may be entitled to lead evidence to sustain the punishment. This is what is seen from the decision reported in The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, . It is stated therein that the materials on record referred to in proviso to Section 11-A of the I.D. Act to decide the quantum of punishment includes:

"...The expression "materials on record" occurring in the Proviso, in our opinion, cannot be confined only to the materials which were available at the domestic enquiry. On the other hand, the "materials on record" in the Proviso must be held to refer to materials on record before the Tribunal. They take in (1) the evidence taken by the management at the enquiry and the proceedings of the enquiry, or

(2) the above evidence and in addition, any further evidence led before the Tribunal, or

(3) evidence placed before the Tribunal

Tribunal for the first time in support of the action taken by an employer as well as evidence adduced by workmen contra. The above items by and large should be considered to be the "materials on record" as specified in the proviso."

Under category 2 referred to supra, the judgment contemplates, the consideration of fresh evidence being tendered by the employer to sustain the punishment. If the management can be permitted to lead evidence to sustain the punishment, one fails to see why an opportunity be denied to them to lead evidence to sustain the charges itself. His Lordship Justice Vardarajan has laid stress on the delay that would be caused to the proceedings if such permission is granted to the employer later. Impliedly there can be no harm, if otherwise no further delay would be caused to the trial of the dispute by granting the permission. These further circumstances may also be kept in mind always while dealing with such request at a later stage. In the case, assuming that prayer had been made by the management in written statement itself for permission to lead evidence to sustain the charge, then the stage would have arisen only after 9-4-1991, when the tribunal entered its finding on the validity of the domestic enquiry. In this case the very same day, the tribunal passed an order calling upon the management to lead evidence. Hence as the stage to lead evidence arose only after 9-4-1991 no prejudice would have been caused to the worker by permitting the management to lead evidence. It would not have caused any further undue delay.

9. In these circumstances, permission could be granted to the management to lead evidence to sustain the charges. But this permission cannot be unconditional. The permission granted is subject to the following conditions:

(i) The evidence to sustain the charges and the consequential proceedings should be completed on or before 31-10-1996;

(ii) The management should pay to the worker by way of cost a sum of Rs. 15,000/- on or before 31-7-1996 which will be irrespective of the result of the case. On failure to make the payment on or before the said date the writ petition shall stand dismissed with costs;

(iii) As the worker has already superannuated any delay in the proceeding affects prejudicially to the worker. But the proceedings are being delayed only due to the omission on the part of the management, hence the worker shall not be made to suffer due to the delay. Therefore the management shall pay to the worker before 31st of each month an amount equivalent to the salary drawn by the worker on the date of his dismissal. Such a payment shall commence from July, 1996 and shall be continued till the completion of the adducing of the evidence in support of the charges framed by the management. The amount thus paid shall also be irrespective of the result of the case.

10. The management had contended that the tribunal should decide first the question whether the 1st respondent is the worker and whether the dispute will come within the ambit of industrial dispute. As this preliminary issue was not raised at the earliest and was introduced by way of the additional written statement filed in 1987 the tribunal may decide this issue along with the other issues in the case.

11. With the above modifications the impugned order, Annexure-B, is set aside. The writ petitions are partly allowed.