

(2006) 11 DEL CK 0012
In the Delhi High Court
Case No : WP (C) No. 4238 of 1998

Vijay Pal Singh

APPELLANT

Vs

D.P. Arora and Another

RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:

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

Citation : (2006) 11 DEL CK 0012

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Mahesh Srivastava, for the Appellant; Harvinder Singh, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of order dated 20.5.1996 whereby the Industrial Tribunal held that the enquiry conducted against the petitioner was valid and proper and in accordance of principles of natural justice. There was no perversity in the findings and allowed the application u/s 33(2)(b) of the Industrial Disputes Act filed by the petitioner.

2. The petitioner has challenged the validity of the order on the ground that the Tribunal did not consider that the petitioner was not afforded an opportunity of defense assistant despite the fact that Enquiry Officer, appointed by the respondent was an Advocate, well versed in law. The co-workers of the petitioner, working in the respondent's organization, were not ready to act as defense assistant, out of fear of victimization. The petitioner wanted that he should be provided one Mr. K.K. Shukla as defense assistant, but request was declined by the Enquiry Officer. Mr. K.K. Shukla was the General Secretary of the Union to which the petitioner belonged. The enquiry was, Therefore, vitiated and not conducted in accordance with the principles of natural justice.

3. The enquiry against the petitioner was initiated for misconduct of violence, threatening, intimidation etc for which a charge sheet was served upon the petitioner. When the notice of the enquiry was sent to the petitioner, the petitioner wrote a letter to the Enquiry Officer that he be provided Mr. K.K. Shukla as the defense assistance. The Enquiry Officer replied him that his services were governed by Certified Standing Orders and as per the Certified Standing Orders, he had a right to take any co-worker as his defense assistant. He cannot demand any outsider as the defense assistant. Since Mr. K.K. Shukla was an outsider he could not be allowed as defense assistant. After this intimation, the petitioner stopped appearing in the enquiry and did not participate in the enquiry. The enquiry was conducted and witnesses were recorded. The Enquiry Officer, gave his findings, holding the petitioner guilty of the charges.

4. It is submitted by Learned Counsel for the petitioner that the non participation of the petitioner in the enquiry was justified. The petitioner was not allowed the assistance of Mr. K.K. Shukla, which itself shows that the Enquiry officer was biased and no purpose would have been served if the petitioner had appeared before the Enquiry Officer. The Enquiry Officer was an advocate, well versed in law, he should not have denied the assistance of Mr. K.K. Shukla. It is also submitted that no other co-worker of the petitioner was willing to act as defense assistance. Counsel for the respondent argued that the respondent was having hundreds of employees, it being a big organization, and there were many unions of the respondent's employees and many workers of the respondent organization used to participate in the union activities. There could have been no question of unwillingness of any of the co-worker to act as defense assistant neither the petitioner gave name of any of the co-worker who refused to act as his defense assistant. The petitioner insisted that he should be given Mr. K.K. Shukla as defense assistant, which was contrary to the Certified Standing Orders, Therefore, the petitioner's plea had to be turned down. The petitioner did not appear in the enquiry and, Therefore, he was not entitled for any relief.

5. I have gone through the record and considered the arguments advanced. The main emphasis of Learned Counsel for the petitioner was that the petitioner was not given Mr. K.K. Shukla as defense assistant, Therefore, the petitioner was justified in not appearing before the Enquiry Officer. I consider that this argument must fail. The petitioner was at liberty to take any of the co-worker as defense assistant. The respondent's organization was not a small organization but it was a big organization having hundreds of workers. The petitioner also did not specify as to which of the coworkers had refused him to act as his defense assistant. The refusal to give Mr. K.K. Shukla as defense assistant was in accordance with the Certified Standing Orders, which were binding on the petitioner.

6. In 1961 II LLJ 417 Brook Bond India (Pvt.) Ltd. v. Subba Raman(S) and Anr., the Supreme Court observed as under :

This first employee concerned is Subba Raman. It appears that on the date of inquiry he appeared before the inquiry officer with counsel and insisted that he should be allowed to be represented by counsel in the inquiry and that his counsel would cross examine the witnesses and present his case. The inquiry officer refused this and there upon Subba Raman withdrew from the inquiry. The inquiry officer then carried on the inquiry ex parte, examined a large number of witnesses and found the charges proved, with the result that it was decided to dismiss Subba Raman and ask for permission from the Commissioner of Labour.

In the case of other employee, Seetharamiah, what happened was that he appeared at the enquiry with an outsider and insisted that that outsider should be permitted to present his case and to cross examine the witnesses. He was told that no outsider would be allowed to do so. He Therefore withdrew from the inquiry. Thereafter the inquiry officer carried on the inquiry ex parte and examined a large number of witnesses and found the charges proved against him. It was then decided to dismiss Seetharamiah and ask for permission to do so u/s 33.

The commissioner of Labour has held that the refusal of the inquiry officer to permit counsel in one case and an outsider in the other was unjustified and Therefore there was no full and fair inquiry into the charges against the two employees. He Therefore refused to give the permission as prayed.

The matter is now concluded by the decision of this Court in *Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd.*, . In that case it was held that -

A workman against whom an inquiry is being held by the management, has no right to be represented at such enquiry by a representative of his union, though the employer, in his discretion, can and may allow him to be so represented... and it cannot be said that in any enquiry against a workman natural justice demands that he should be represented by a representative of his union.

In the present case the two employees even went further; one of them wanted to be represented through counsel while the other wanted to be represented through an outsider. Neither of them apparently wanted to be represented by somebody from the union. In view Therefore of the decision in *Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd.*, we cannot agree as a counsel for an outsider was not allowed to appear on behalf of the employees there was no fair or full inquiry in the case. The inquiry proceedings show that after the workmen withdrew from the inquiry the inquiry officer carried on the inquiry ex parte as he could not do otherwise and examined a large number of witnesses. Thereafter he recorded his conclusions and held that charges proved. In the circumstances there was nothing more that the inquiry officer could do and the conclusion of the Commissioner of Labour that the inquiry in thee two cases was not full and fair must fail. In the circumstances, this is a proper case in which the permission asked for should have been granted. We Therefore allow the appeal, set aside the order of the Commissioner of Labour and grant the permission to

the appellant u/s 33 of the Industrial Disputes Act to dismiss the two respondents. In the circumstances we pass no order as to costs.

7. The facts shows adamant and hostile attitude of the petitioner and not the failure of on the part of management in following the principles of natural justice. The petitioner was at liberty to take assistance of any of other co-worker. Instead of participating in the enquiry and contesting the charges, he chose to stay away from the enquiry. He could not claim superior rights. He was bound by the Certified Standing Orders. Not allowing him an outsider as defense assistant, did not amount to violation of principles of natural justice.

8. In view of my above discussion, I find no reasons to allow this writ petition. The writ petition is hereby dismissed. No orders as to costs.