

(1963) 08 GUJ CK 0010

In the Gujarat High Court

Case No : Special Civil Application No. 183 of 1961

Vikram Mills Company, Ltd.

APPELLANT

Vs

Industrial Court (N.A. Vyas) and Another

RESPONDENT

Date of Decision : 08-08-1963

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33

Citation : (1965) 1 LLJ 49

Hon'ble Judges : P.N. Bhagwati, J; Divan, J

Bench : Division Bench

Judgement

1. The facts giving rise to this petition are as follows. The petitioner-company are employers and carry on business of textile manufacturing. Respondent 2 was working with the petitioner in the bleaching department. An incident is alleged to have taken place in the department on 19 December, 1959, and it was alleged by the management that in the course of that incident respondent 2 had assaulted his superior officer, namely, jobber Ramsahay Isar, during working hour on that day and by this assault he had committed a breach of discipline by his behavior. On 21 December, 1959. respondent 2 was given a preliminary suspension order and a show cause notice and a charge sheet were also served upon him. Respondent 2 gave his written statement in response to the show cause notice and this explanation was given on 29 December, 1959. The explanation of respondent 2 was that one Bajrang, who was also working in the same department, was quarreling with the jobber Ramsahay and that Bajrang had given a toothbite on the back of Ramsahay and respondent 2 separated Ramsahay and Bajrang and had used some force in the process and he did not know if jobber Ramsahay had receive injuries on the head. It was the case of respondent 2 in the explanation that the jobber might have received injuries by reason of a push given by respondent 2 for the purpose of separating Ramsahay from Bajrang. Thereafter an inquiry was held by the management under the standing orders and the inquiry was actually held on 22 and 23 December, 1959. In the course of the inquiry the management recorded the statements of jobber

Ramsahay and several other persons including Bajrang. Respondent 2 was given an opportunity to cross-examine all of these witness but he refused to put any questions to any one of them. Thereafter the statement of respondent 2 was recorded in the inquiry and he also examined one witness, a worker called Naran Chhotu, in support of his contention. After the evidence was completed, a further opportunity was given to respondent 2 of examining any more witnesses and to cross-examine any of the witnesses if he desired, but he declined this offer. After the inquiry, the management terminated the services of respondent 2 by serving him with an order of discharge on 31 December, 1959, because, as the order stated, the management found that it was not desirable to keep respondent 2 in the service of the petitioner-mills. Respondent 2 refused to the accept the discharge order and, therefore, the order was sent to the Textile Labour Association, which was a representative union of the textile workers in Ahmedabad. Thereafter respondent 2 filed an application under S. 79 of the Bombay Industrial Relations Act in the labour court, Ahmedabad, for a declaration that the order of discharge passed against him was illegal and improper and asking for reinstatement with full back wages. In the labour court the petitioner-mills filed a written statement but respondent 2 did not lead any evidence before the labour court and submitted the case for decision on the basis of the papers of inquiry held by the management. The third labour court at Ahmedabad decided the application holding that the inquiry officer was justified in coming to the conclusion that the applicant had committed a misconduct alleged against him and upheld the discharge order.

2. Thereafter respondent 2 filed an appeal to the industrial court against the decision of the labour court. The appeal was heard by the original respondent 1 in these proceedings and by an order dated 27 January 1961, the industrial court allowed the appeal of respondent 2 and directed the petitioner to reinstate respondent 2 with full back-wages. Thereafter the petitioner-mills have come to this Court under Art. 227 of the Constitution challenging the order of the industrial court.

3. The main ground on which Sri Nanavati challenged the order of the industrial court was that the powers conferred by the Bombay Industrial Relations Act (hereinafter referred to as the Act) are those of a court of revision and the labour court and the industrial court are only entitled to consider the propriety or legality of the order passed by the management and it is not open to the Courts functioning under the Act in proceedings of the type with which we are dealing in the instant case, to sit as a Court of appeal and to appreciate the evidence or to find out whether on the evidence before it, the management's order was a correct order or not.

4. In order to follow this reasoning it is necessary to point out that under S. 78(1) (a)(i) of the Act, labour Court has power to decide disputes regarding the propriety or legality of an order passed by an employer acting or purporting to act under the standing orders. This very provision of law came up for

consideration before a Division Bench of the Bombay High Court in Special Civil Application Nos. 3321 and 3322 of 1958 decided on 6 January 1959, and in that case Patel, J., delivering the judgment of the Division Bench stated that the wording of S. 78(1)A(a)(i) is such that it leaves on room for doubt that the powers with regard to this clause are limited to a great extent and are not co-extensive with those with regard to disputes mentioned in the other clauses of the section. The Division Bench in that case further held that the orders of dismissal were passed under the standing orders by virtue of the discretion vested in the management and if the powers under the Act are limited to revisional powers then it was not open to the tribunal to substitute their own discretion for that of the management. These Divisional Bench also held that it is possible in a given case that if the management had not applied its mind to all the circumstances as also to the factors required to be attended to under the standing orders, or if mala fide is proved, it would then be open to the tribunal to review the decision given by the management and to decide the dispute with regard to the order of dismissal passed under the standing order.

5. There is no dispute before us that so far as the instant case is concerned, an order of discharge on the ground of misconduct under the standing orders can be passed by the management after the inquiry contemplated by the standing order of Shri Nanavati for the petitioners has not disputed before us that if the action of the management is found by the tribunals under the Act to be mala fide, then the order is discharge passed by the management on the ground of misconduct can be set aside.

6. In the course of the arguments in the instant matter, our attention was drawn to three decisions of the Supreme Court. It may be pointed out that all these decisions were under the Industrial Disputes Act and the provisions of S. 33 of the Industrial Disputes Act are different from the provisions of S. 78(1)A(a)(i) with which we are concerned in the instant case. But these decisions do throw some light on the scope of the inquiry when a tribunal either under the Industrial Disputes Act or under the Bombay Industrial Relations Act is considering an order of discharge or dismissal passed by the management.

7. The first of these decisions is the decision in the case of Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, In that case the Supreme Court was considering the provisions of S. 10 of the Industrial Disputes Act and at p. 270 the Supreme Court pointed out that in cases of dismissal on misconduct, the tribunal does not, however, act as a Court of appeal and substitute its own judgment for that of the management. It will interfere.

(i) when there is want of good faith,

(ii) when there is victimization or unfair labour practice,

(iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and

(iv) when one the materials the finding is completely baseless of perverse.

8. In *Mckenzie and Co. Ltd. Vs. Its Workmen and Others*, , the Supreme Court dealt with S. 33 of the Industrial Disputes Act. In that case of the observations in the case of *Indian Iron and Steel Company Ltd., and another v. Their workmen*, just now cited by us were cited and followed.

9. It is clear that though the provisions of different sections of the Industrial Disputes Act and the relevant provisions of the Bombay Industrial Relations Act are not in exactly the same language, the principles laid down by the Supreme Court in considering the cases *mala fides* on the part of management in passing an order of discharge would be assistance in cases under the Industrial Relations Act also. We do not wish in the instants case to lay down of the exact limits or scope of the powers of the Labour court and of the Industrial court under the Bombay Industrial Relations Act in dealing with questions under S. 78(1)A(a)(i), but one thing is certain that both under the Industrial Relations Act and under the Industrial Disputes Act, the tribunal concerned is empowered to set aside the order of discharge passed by the management if the tribunal comes to the conclusion that the action of the management in passing the order of discharge was *mala fide*.

10. As to what is the meaning of the phrase *mala fide* in connexion with such matters has been explained by the Supreme Court in the case of *The Management of the Bangalore Woollen Cotton and Silk Mills Co. Ltd. Vs. B. Dasappa, M. T. represented by the Binny Mills Labour Association*, , the Supreme Court there held as follows (at p. 41) :

"The settled position in law therefore is that permission under S. 33 of the Industrial Disputes Act, 1947, should be refused if the tribunal is settled that the management's action is not *bona fide* or that the principles of natural justice have been violated or that the materials on the basis of which the management came to a certain conclusion could not justify any reasonable person in coming to such a conclusion. In most cases it will happen where the materials are such that no reasonable person could have come to the conclusion as regards the workmen's misconduct that the management has not acted *bona fide*. A finding that the management has acted *bona fide* will ordinarily not be reached if the materials are such that a reasonable man could not have come to the conclusion which the management has reached. In every case, therefore, it would be proper for the tribunal to address itself to the question, after ascertaining that the principles of natural justice have not been violated, whether on the materials on which the management has reached a conclusion adverse to the workmen, a reasonable person could reach such a conclusion."

11. In the same case the Supreme Court further held :

"In such a case the Industrial tribunal is not called upon to decide whether in its opinion the evidence given by the witness was true but only whether when the enquiring office (domestic enquiry) stated that he considered such evidence

credible he had acted like a reasonable man. The Industrial tribunal could not examine the evidence on record to come to a better view, regarding the guilt of the concerned workman nor it examine the evidence to decide as to whether the evidence on record conclusively proved the guilt of the concerned workmen."

12. In the light of this judgment of the Supreme Court in *The Management of the Bangalore Woollen Cotton and Silk Mills Co. Ltd. Vs. B. Dasappa, M. T. represented by the Binny Mills Labour Association*, it is clear that in order to establish want of good faith on the part of management, the workman concerned has to satisfy the tribunal concerned that the conclusion arrived at by the management as a result of the domestic inquiry was such that no reasonable person could arrive at that particular conclusion. If the tribunal concerned is satisfied after looking at the evidence that no reasonable person could have arrived at that conclusion, then that finding of the tribunal amounts to saying that the order of discharge or dismissal passed by the management was mala fide and not bona fide and, therefore, the tribunal can set aside the order of discharge or dismissal, at the case may be.

13. In the instant case the Industrial court in its judgment dated 27 January, 1961, found after examine the evidence that the decision of the management was not merely unreasonable but capricious and unsupported by evidence. It further found that the action of the management was mala fide and was wholly unreasonable and capricious. It is true that in trying to come to the conclusion about the unreasonable nature of the conclusion arrived at by the management the industrial court had to look and did look into the evidence on record. But a perusal of the judgment of the industrial court shows that the industrial court's approach was correct, namely, to find out whether the findings of the domestic inquiry were such as any reasonable person could have arrived at and after looking into all the materials on record the industrial court came to the conclusion that the decision of the management was unreasonable, capricious and mala fide. It is not necessary for us in the course of this judgment to set out in detail the process of reasoning by which the industrial court arrived at its conclusions. But after going carefully through the entire judgment of the industrial court we find that the learned member of the industrial court who decided the matter had fully kept before himself the principles governing the scope of the inquiry before him and in the light of those principles he had come to the conclusion that the decision of the management was unreasonable, capricious and mala fide. The various decisions of the Supreme Court to which we have been referred and which we have mentioned earlier, do indicate that for the purpose of finding out whether the decision of the management was such as no reasonable person could arrive at, the tribunal concerned has to go through the evidence and examine the evidence; otherwise it is impossible for it to say whether the decision of the management was unreasonable and therefore, showed want of bona fides. Paragraph 5 of the judgment of the industrial court in the instant cases sets out the process of reasoning adopted by the member of the industrial court and in our opinion it cannot be said that the process followed

by him was of appreciation of evidence instead of trying to find out whether the management's order was proper or legal. Under these circumstances, in our opinion, the industrial court was acting within the powers conferred upon it by the Bombay Industrial Relations Act it held that the order passed by the management was untenable and mala fide and set aside the order of discharge and directed that respondent 2 should be reinstated in his original post with full back-wages.

14. Under the circumstances the special civil application falls and is dismissed and the rule is discharged with costs.