

(1973) 09 KL CK 0007
In the High Court Of Kerala

Workmen of Blundell Eomite Paints Ltd. (Cochin Division)	APPELLANT
Vs	
Blundell Eomite Paints Ltd. (Cochin Division) and Others	RESPONDENT

Date of Decision : 07-09-1973

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Citation : (1974) 2 LLJ 23

Hon'ble Judges : V.P. Gopalan Nambiyar, J; George Vadakkal, J

Bench : Division Bench

Judgement

V.P. Gopalan Nambiyar, J.—This appeal is directed against the decision of a learned Judge of this Court in two writ petitions disposed of by a common judgment, namely, O.P. No. 2710 and 3660 of 1970. The writ petitions were directed against the award of the Industrial Tribunal, Calicut. Two industrial disputes were referred for adjudication by the Tribunal, I.D. No. 14 of 1967, and I.D. No. 39 of 1967. I.D. No. 14 of 1967 was in respect of the withholding of increment to one Venkatraman, an employee under the respondent-company, namely, M/s. Blundell Eomite Paints Ltd. I.D. No. 39 of 1967 with which we are intimately concerned in these appeals was in respect of the termination of service by retrenchment of certain workers of the company. In respect of the affair relating to Venkatraman, and of certain demands raised by the union of workers, conciliation proceedings were attempted to be started and the conciliation officer had issued notice to the management on 14 11-1966. On 25-11-1966 the management sent a letter to the Conciliation Officer refer-ring to the demands of the union, and stating that the same would be considered, and requesting not to precipitate matters by starting conciliation proceedings. On 1-12-1966, to which date again the Conciliation Officer adjourned the proceeding, the management prayed for time. Thereafter, on 25-12-1966 it retrenched all except two of its employees in the Cochin Division, with effect from 1-1-1967. It was this retrenchment that was the subject-matter of adjudication in I.D. No. 39 of 1967.

2. The management's case was that as a result of a bona fide re-organisation of the office for business purposes, and in accordance with the exercise of managerial functions, it was necessary to throw out certain employees and, therefore, the retrenchment became inevitable. The workmen, on the other hand, contended that the so-called reorganisation of the office was a mere camouflage for the purpose of effecting the retrenchment, which was mala fide, and that there-organisation of the office was not a bona fide managerial function. The Tribunal found in favour of the workmen that the re-organisation pleaded and the consequent retrenchment were mala fide. It allowed reinstatement with back wages of one of the workmen, namely, one Hussain. In regard to the rest, for reasons, which it is unnecessary to detail, it rejected the claim of the workmen and granted no relief at all to them.

3. Against the denial of relief to the workmen, O.P. No. 2710 of 1970 was filed in this Court ; and against the relief of reinstatement granted to Hussain, the respondent-company filed O.P. No. 3660 of 1970. The learned Judge dismissed O.P. No. 2710, and allowed O.P. 3660 of 1970. Hence this appeal, which is directed against the decision in both the writ petitions.

4. At the hearing, counsel for the workmen submitted that he was not pressing the appeal in so far as it is directed against the decision in O.P. No. 2710 of 1970 [denying relief to the workmen except Hussain. He pressed only the appeal in so far as it was directed against the decision in O.P. No. 3660 of 1970, viz., disallowance of the relief of reinstatement with back wages, ordered by the Tribunal.

5. The conclusion of the Tribunal that there was no bonafide re-organisation of the office and that, therefore, the retrenchment of the workmen concerned was mala fide, was based on the following reasons. First, that no reference at all was made to the actual or proposed re-organisation of the office in the accounts and the annual report of the company for the year 1966-67 (copy of which was filed as Ext. M-10 before the Tribunal). It also commented that if the re-organisation which resulted in the retrenchment was in fact effected the company should have produced the documents in their possession to evidence the same and this had not been done. Secondly, that when the District Labour Officer issued notice to the management, dated 24-10-1966, followed by a reminder dated 14-11-1966, the management replied by its letter dated 25-11-1966 (marked Ext. W.9 before the Tribunal), stating that they were studying union's demands and requesting not to commence conciliation proceedings. By yet another letter (filed as W. 8 before the Tribunal) it requested the Conciliation Officer to fix the date for the conference to some other date. It was thereafter that the retrenchment was effected on 25-12-1966. with effect from 1-1-1967.... In the circumstances, and on these facts, the Tribunal was of the opinion that under the guise of giving the impression, that the demand of the union was being studied and considered, the management had put through the impugned retrenchment. Thirdly, that in the orders of appointment given to the workmen concerned (filed before it as Ex. M 4

series) one of the conditions of service was that although they were appointed to the Cochin division, they can be transferred to any other section of the department in any office of the company throughout India on an identical grade; and that the management had not established that retrenchment of the workmen was necessary and inevitable and could not be avoided by taking action under this clause, Fourthly, that one of the workmen, namely, one Moorthy, was transferred as sales-representative to the Madras branch, and in so far as the petitioners were not similarly dealt with, there was discrimination (as the Tribunal put it). It was on a cumulative assessment of these considerations that the Tribunal recorded its finding that retrenchment was mala fide.

6. The learned Judge was of the view that the Tribunal's finding as to mala fides had been entered in a casual and light hearted fashion. The learned Judge summarised his conclusion as follows:

14. The conclusion that emerges from the foregoing discussion is that there was no justification whatever for the Tribunal to hold that the retrenchment effected by the company was not valid or proper, and the Tribunal acted illegally in granting the relief of reinstatement with back wages to P. A. Hussajn. The Tribunal's award will stand set aside to that extent.

In the course of his judgment, the learned Judge referred to the decision in *Bareilly Electricity Supply Company Ltd. v. S. Rajuddin* 1960. I.L.L.J. 556, and to the decision in *Parry and Co. Ltd. Vs. P.C. Pal and Others*, . We shall have occasion to refer to these decisions in due course.

7. We think the learned Judge has exceeded the limits of jurisdiction under Art, 226 to interfere with the award of the Industrial Tribunal. The limits within which, and the grounds on which the Tribunal's award can be interfered with under Article 226 have been settled by judicial decisions. It is enough for our purpose to notice the decision in *Union of India (UOI) Vs. H.C. Goel*, . It was observed:

The learned Attorney-General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view, this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is: Is there any evidence on which a finding can be made against the respondent that charge 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does

the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well-founded, because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that charge 3 is proved against him is based on no evidence.

We may also refer to the decision in *Agnani v. Badri Das and Ors.* 1963 1 L.L.J. 684, which has applied the principle in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, to industrial adjudication. That decision and the decision referred to therein of the *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, sufficiently establish that so long as the impugned decision can be rested on some material, the fact that in arriving at it some other material has not been adverted to or considered is no ground for interference under Article 226. (See also *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, para 9). Applying the principle of these decisions, we find it impossible to hold that the Tribunal's conclusion that the retrenchment effected was mala fide, was based on no evidence at all, or was based on facts and circumstances on which such a conclusion could not possibly be come to, or was otherwise so palpably wrong, as to amount to a perverse finding. The reasons marshalled -by it appear to us to be capable of supporting the finding. The learned Judge dealt with these reasons seriatim, and found that each one of them disclosed faulty reasoning. We think, as we shall endeavour to show, that in doing so, the learned Judge trenched upon the sphere of appreciation of evidence, which was not open in these proceedings. For instance, dealing with the first of the reasons given by the Tribunal, the learned Judge referred to the evidence of M.W. 1 examined for the management, and of W.W. 1 examined on the side of the workmen. The learned Judge was of the opinion that there was no serious cross-examination of M.W. 1, and that W.W. 1, in his cross-examination had made statements practically admitting that there had been a re-organisation of the office. The parties were at variance in the pleadings as to whether there had been a re-organisation of the office, and whether the same was bona fide. Whether the evidence of M.W. 1 is to be preferred to that of W.W. 1, or was to be accepted when there was no serious cross-examination, and whether on an assessment of the evidence the case of re-organisation had been established or not, are entirely matters for the Tribunal. The learned Judge considered whether the non-mention of the re-organisation in Ext. M-10 annual report for 1966-67 was a circumstance to be taken into account against the credibility of the management's case, as done by the Tribunal, and held it was not. We think the Tribunal was entitled to make its own assessment of this circumstance or piece of evidence, and the learned Judge was wrong in interfering with the same. Counsel for the appellant root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view, this Court should not sit in appeal over that decision and seek to decide whether

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8. The second reason given by the Tribunal was that the management in their letter dated 25-11-1966 to the District Labour Officer stated that they were studying the demands of the union and requested the officer not to start conciliation proceedings. It prayed for time again on 1-12-1966. The Tribunal was of the view that this was only a clever device to conceal the retrenchment proposals for which were well under way, and which was eventually clamped down upon the workers on 25-12-1966. We think the inference made by the Tribunal from this circumstance was legitimate, permissible and reasonable. Slyness and suddenness of the action are not entirely out of place in inferring mala fides. The fact that we, as a Tribunal assessing facts, or as a Court of appeal, might not have drawn the same inference, is not material. The learned Judge stated that there was no obligation on the part of the management to give any advance information to the Conciliation Officer in regard to the proposed re-organisation of the office or the proposed retrenchment. The Tribunal has not stated that this was necessary ; and, as we understand the order of the Tribunal, it drew, from the absence of any mention about reorganisation in the letters to the officer, an inference which it was entitled to draw, that the retrenchment was sought to be put through secretly. The correctness of the inference, and the sufficiency of the material on which it was based, are not open for examination on the limited grounds permissible for judicial review.

9. The third ground relied on by the Tribunal was that it had not been shown by the management that the workmen concerned could not have been absorbed

elsewhere, in accordance with the condition in the orders of appointment, or that the retrenchment was inevitable and necessary. Here again, we are afraid, the learned Judge has gone into the matter as if in an appeal against the order of the Tribunal. The learned Judge was of the view that it had not been established by the union that any other source of employment in the other branches of the respondent-company was available on similar terms and conditions on which the workmen who were ousted from service were employed at the relevant time. May be, that a clause such as what we have noticed in the order of appointment may not import an obligation on the management to find alternative employment, as ruled in *Parry and Co. Ltd. Vs. P.C. Pal and Others*, . But in the light of the clause, the Tribunal was entitled to assess whether the retrenchment effected was mala fide. The difference in approach between the Tribunal and the learned Judge to this aspect pertains to the region of appreciation of evidence.

10. The fourth reason given by the Tribunal was that some sales-representatives had been transferred from the Cochin Division to other places, and one Moorthy, appointed along with the workmen involved in this appeal, was transferred to Madras, whereas the workmen involved herein were not similarly dealt with. The learned Judge dealt with this in paragraphs 9 and 10 of his judgment. We have given these paragraphs our careful attention, and are satisfied that the learned Judge interfered with the finding again, by an appreciation of the evidence.

11. The two decisions referred to by the learned Judge, namely, the *Bareilly Electricity Supply Co. Ltd. v. Sirajuddin* 1960 I L.L.J. 556, and *Parry Co. v. P.C. Pal* 1970-II L.L.J. 429, are both distinguishable on facts. In *Bareilly Electricity Supply Co.*'s case 1960 I L.L.J. 556, the order sought to be challenged was one re transfer ring a coolie from one department where he was in enjoyment of a special cycle allowance, back to the department, where, he had originally worked without this benefit. The order was attacked as mala fide on the ground that it was made purely under oral directions, and that no reasons at all had been given in support of it. The Tribunal on these two grounds was prepared to hold that the order was mala fide. It was pointed out by the Supreme Court in an appeal under Article 136 of the Constitution, that these grounds were wholly insufficient to enter a finding that the order of transfer was mala fide. It was observed:

The failure of the appellant to give specific reason for the retransfer of the respondent appears to be the sole basis on which the conclusion of mala fides is founded. It is hardly necessary to emphasize that the findings of mala fides can be made by Industrial Tribunals only after sufficient reliable evidence is led in support of it. Such a finding should not be made lightheartedly or in a casual manner as has been done by the Tribunal in the present case, Therefore, without deciding the other points raised in the pleadings and confining ourselves to the only ground on which the Tribunal has based its decision, we must hold that the order of reinstatement is patently unreasonable and must be set aside.

We do not understand the decision as ruling that the sufficiency of evidence of mala fides is open to review. It is plain that on the facts and circumstances, on

the analysis made by the Supreme Court, it could be shown with little effort that the conclusion was based on no acceptable evidence at all.

12. In *Parry and Co. Ltd. Vs. P.C. Pal and Others*, , the policy decision of the company, which resulted in the retrenchment of the workmen concerned, was sought to be proved by the manager who was examined on the side of the company. The Tribunal took the view that the manager was not competent to give evidence of the policy decision, and that only the directors of the company were competent to do so. It also commented on the fact that there was no record to show the resolution of the company to effect the re-organisation. The Supreme Court, in an appeal against the judgment of the High Court in proceedings under Article 226, taken against the award of the Tribunal, held that this part of the reasoning of the Tribunal was completely opposed to the evidence placed before it. There was no principle or norm of evidence that a policy decision of the company could not be proved by the evidence of the manager, but only through that of the directors of the company. In the very first letter of the union to the Deputy Labour Commissioner, as also during the conciliation proceedings, it was assumed that the company had taken a policy decision for reorganisation, and that consequent retrenchment was apprehended. It was on these grounds that the Supreme Court ruled that the reasoning given by the Tribunal was based on no evidence at all. We have no hesitation to hold that the decision has no application to the facts disclosed here, in so far as they pertain to the reasoning of the Tribunal that the re-organisation of the company had not been proved by the production of any records, and that its non-mention in Ext. M-10 filed before the Tribunal was a circumstance which militated against the acceptability of the management's case. The position here, as we have shown, is fundamentally different. There is nothing like the letter in *Parry & Co.*'s case, to the Conciliation Officer ; and the Tribunal was entitled to comment on the absence of any record to prove re-organisation.

13. Before us, counsel for the management cited the decision of the Supreme Court in *Syndicate Bank Ltd. v. Their Workmen* 28 F.J.R. 275. The contention there urged was that the transfer of one Veeranna made in the year 1963 was mala fide. The Tribunal had found it to be so, on four different reasons, each one of which, on easy examination, was found to be baseless. The position stood thus. The first reason was that the transfer was made as an act of victimisation, as certain charges had been framed against Veeranna by the Bank in the year 1962. It was found that these charges had resulted in an enquiry, in which they were found proved, but that, thereafter, the Bank itself had pardoned Veeranna before the impugned transfer was made. The second ground was that the transfer was ordered because Veeranna was an office-bearer of the union which was opposed to the Bank. There was evidence on record that he became the treasurer of the union only subsequent to the impugned transfer order. The third ground was that Veeranna's transfer could have been avoided by transferring some other specified person to that place; It was clearly disclosed that the transfer of such other person would have resulted in extra expense and was,

therefore, not advisable. The fourth reason given was that Veeranna's transfer was designed to deprive him of a certain allowance, of which he was in enjoyment at the place from which he was transferred. This was directly opposed to the terms of the order of transfer, which itself stated that he was to retain all the benefits which were being enjoyed by him at the place from which he was transferred. Thus, on easy criminal ion without entering it the region of appreciation of evident, it Could be found that the reasons given by the Tribunal were baseless, and, therefore, its conclusion that the transfer was mala fide was based on no evidence at all. Such is nut the position here.

14. Attention was also called to the decision in *Ananda Bazar Patrika Private, Ltd. v. Their Employees* 26 F.I.R. 168. There, in support of its finding that the impugned discharge of Sri Sarkar, a journalist of the Ananda Bazaar Patrika, was mala fide, the Labour Court gave three reasons. First, that the request of the aggrieved person to examine witnesses at the domestic enquiry was disallowed. The fact was, as pointed out by the Supreme Court on appeal, that only one witness was sought to be examined, and he could not give any material evidence. The Tribunal had thus made a sweeping mis-statement of the position. The second reason was that questions sought to be put in the course of the domestic enquiry by Sri Sarkar were disallowed. The Supreme Court found that the questions disallowed were irrelevant and unfair, and were rightly disallowed. The third ground was that before imposing the punishment of discharge, which the Labour Court found to be too severe, the management should have consulted the chief editor. The Supreme Court expressed surprise at this reason, and held there was no obligation to do so. Thus there was no material at all to support the finding of mala fides ; and it was not a case where material was available, and the question was whether the conclusion come to on the material was correct and proper. It was in this context that the Supreme Court reaffirmed the proposition that a finding as to mala fides should not be entered in a casual or light-hearted manner.

15. We are satisfied that without entering into the region of appreciation of evidence, it is not possible to hold that the conclusion arrived at by the Tribunal in the, instant case that the retrenchment was mala fides, was illegal or perverse or based on no evidence. The learned Judge, therefore, over-stepped the limits of his jurisdiction in interfering with the award. Being so, we allow the appeal, set aside the order of the learned Judge in O.P. No. 3660 of 1970, and direct that the said writ petition will stand dismissed. There will be no order as to costs.