

Associated Cement Co. Ltd.

Vs

The Workmen and Anr

Civil Appeal No. 636 of 1962

(B. N. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

08.05.1963

JUDGMENT

GAJENDRAGADKAR J. –

This appeal arises out of an industrial dispute between the appellant, the Associated Cement Companies Ltd., and the respondents, their workmen. The dispute was in regard to the dismissal of five workmen employed by the appellant at its Bhupendra Cement Works, Surajpur. The said workmen are : (1) Mehnga Ram, Bar Bender, (2) Janak Raj Soni, Store-clerk, (3) Vishwa Nath Bali, Painter, (4) Daulat Singh, Motor Driver and (5) Malak Ram Khanna, Turner. The respondents contended that the dismissal of the said workmen was unjustified, and they demanded that the said dismissed workmen should be reinstated and their wages for the period of enforced unemployment should be paid to them. The Government of Punjab referred this dispute for adjudication to the Industrial Tribunal Punjab, Patiala, under section 10(1)(d) of the Industrial Disputes Act (No. 14 of 1947).

It appears that on May 1, 1952, the appellant's management had arranged a cinema show in the Club grounds at Surajpur for the entertainment of its workmen. At about 8 P.M. when the film was being exhibited, confusion was created in the Hall by some employees and shouts were raised. Amongst the workmen who raised these shouts was Malak Ram. Owing to the rowdyism thus created by the workmen, the cinema show had to be cancelled. It was in respect of the misconduct alleged to have been committed by Malak Ram on May 1, 1952 that a charge-sheet was given to him and an enquiry held against him.

On August 12, 1952, at 7 A. M., Mehnga Ram, Janak Raj and Daulat Singh, it was alleged, had stopped workmen from getting into the factory and starting their work in time after they had punched their cards and taken their tokens. The said three workmen are also alleged to have shouted slogans causing cessation of work in the factory for about half an hour. In respect of this alleged misconduct of the said three workmen, charges were supplied to them and an enquiry was held against them.

On October 14, 1952, at 4 P. M., Mehnga Ram and Janak Raj who were concerned with the incident of August 12, are alleged to have collected some workers in front of the main office building on the way to the grain-shop and in the meeting so organised they instigated their co-workers to go on strike and to resort to violence. In consequence, some of the officers of the appellant were abused and the noise created at the meeting disturbed the office work. This incident also gave rise to charge-sheets against the said two workmen and a subsequent enquiry.

On October 20, 1952, at about 7 A. M., Mehnga Ram, Janak Raj, Vishwa Nath and Daulat Singh are alleged to have stopped workmen at the Factory Gate from entering the factory and to have prevented them from going to their duties for some time. At this time, the said workmen are also alleged to have indulged in shouting hostile slogans. This incident gave rise to charge-sheets and an enquiry.

The record shows that three different Boards of Enquiry were constituted to hold enquiries into the several charge-sheets served on the different workmen in question. The first enquiry was about the incident of 1.5.1952 and it was confined to Malak Ram. The second enquiry was about the incident of August 12, 1952, and it concerned Mehnga Ram, Janak Raj and Daulat Singh; and the last enquiry was in regard to the incidents which took place on October 14, and October 20, 1952 - in regard to the first of these Mehnga Ram and Janak Raj were involved and in regard to the second one Mehnga Ram, Janak Raj, Vishwa Nath and Daulat Singh were concerned. It is thus clear that Malak Ram was concerned with the incident of May 1, 1952 and Vishwa Nath with the incident of October 20, 1952. As a result of the findings recorded at the said enquiries, the appellant dismissed all the five workmen concerned.

Before the Industrial Tribunal, it was urged by the respondents that none of the three enquiries was conducted according to the principles of natural justice, and so, the dismissals of the 5 workmen which were based on the findings recorded at the said enquiries could not be said to be legal or valid. The appellant did not attempt to justify the dismissal by leading evidence before the Tribunal, but it contented itself with producing the evidence of the enquiry proceedings and urged that the enquiries were properly held and that the Tribunal had no jurisdiction to sit in appeal over the findings recorded at the said enquiries and the orders of dismissal passed in consequence of the said findings. The Tribunal has upheld the respondents' case that all the three enquiries were not conducted according to the principles of natural justice, and so, it has upheld that the dismissal of the five workmen were unjustified and accordingly, an award has been made directing the appellant to reinstate the five workmen with continuity of service, coupled with the direction that the said workmen should be paid their full wages from the date of their dismissal to the date of their reinstatement as compensation for wrongful dismissal. It is against this award that the appellant has come to this Court by special leave.

In respect of Mehnga Ram, Janak Raj and Daulat Singh, parties have agreed to take an order by consent. It is agreed that the award passed by the Tribunal in respect of these three workmen should be set aside, and the order of dismissal against them should be treated as an order of discharge simpliciter. Mr. Kolah for the appellant has agreed to pay to each one of the said three workmen Rs. 3500/-, provided the amounts paid to them in pursuance of the order passed by this Court in the present appeal while granting stay are deducted. Mr. Kolah has also agreed that the amount of gratuity and provident fund to which the said workmen may be entitled would be paid to them as well. Mr. Sule for the respondents has agreed to these terms. In view of this agreement between the parties, we direct that the award in regard to these three workmen should be set aside and an order passed in terms of this agreement. That leaves the question of two workmen to be considered; they are Malak Ram and Vishwa Nath.

In the case of Malak Ram, charge-sheet was served on him on May 20, 1952, in which he was told that he was found to be one of the persons who had instigated, and who also took active part in, rowdyism and hooliganism during the cinema show on May 1, 1952, and so, he was asked to see the Manager of the Bhupendra Cement Works on May 22, at 2.30 P.M. with his written explanation as to why disciplinary action should not be taken against him. Malak Ram did not appear before the

Manager on May 22, as required by the said charge-sheet. That is why a further notice was given to him on June 4, 1952 calling upon him to show cause why disciplinary action should not be taken against him, and it was added that his behaviour amounted to misconduct under Standing Order No. 16, sub-clause (1). Thereupon, Malak Ram gave his explanation on June 5, 1952. In this explanation, he denied that he had taken part in hooliganism as alleged in the charge-sheet and urged that he had in fact tried his best to control the disturbance at the cinema show. On the same day, another notice was served on Malak Ram in which the Manager stated "We are not prepared to accept all that you have stated by way of explanation as it is not borne out by all that we actually saw and also all that was seen by other independent witnesses". Malak Ram was accordingly required to meet the Manager at 10. A.M. on June 11, 1952 to enable him to hold the necessary enquiry.

On June, 11, 1952, an enquiry was held by the Manager, the assistant Manager and the Chief Engineer. This enquiry began with the examination of Malak Ram himself. He was elaborately questioned about the allegations made against him and after his examination was over, four other witnesses were examined against him. When these four witnesses gave evidence, Malak Ram was asked whether he wanted to cross-examine any of them. He told the enquiry officers that he did not want to cross-examine them. Then a 5th witness gave evidence and that closed the enquiry. As soon as the 5th witness gave evidence and Malak Ram protested that he had done nothing wrong and urged that the evidence against him was false, the Manager observed that the evidence against him was overwhelming and the three officers made a finding that "from the enquiry we are satisfied that you were one of the ring leaders who instigated and took active part in hooliganism and rowdyism during the cinema show on the night of 1st May".

After this finding was recorded, the Manager served an order on Malak Ram on June, 12 1952. By this letter, Malak Ram was suspended indefinitely from June 13, 1952 pending final action. While suspending him indefinitely, the Manager told Malak Ram in this letter that his explanation was in variance with the evidence against him and also the evidence that the Assistant Manager Mr. Mohan had been maltreated and against what the enquiry officers had actually seen. This order was, in due course, followed by the final order of dismissal.

On these facts, the question which arises for our decision is whether the Tribunal was justified in holding that the enquiry was not conducted in accordance with the principles of natural justice. It is true that domestic enquiries need not be conducted in accordance with the technical requirements of criminal trials, but they must be fairly conducted and in holding them, considerations of fair-play and natural justice must govern the conduct of the enquiry officer. In the present case, the first serious infirmity from which the enquiry suffers proceeds from the fact that the three enquiry officers claimed that they themselves had witnessed the alleged misconduct of Malak Ram. Mr. Kolah contends that if the Manager and the other officers saw Malak Ram committing the act of misconduct, that itself would not disqualify them from holding the domestic enquiry. We are not prepared to accept this argument. If an officer himself sees the misconduct of a workman, it is desirable that the enquiry should be left to be held by some other person who does not claim to be an eye-witness of the impugned incident. As we have repeatedly emphasised, domestic enquiries must be conducted honestly and bona fide with a view to determine whether the charge framed against a particular employee is proved or not, and so, care must be taken to see that these enquiries do not become empty formalities. If an officer claims that he had himself seen the misconduct alleged against an employee, in fairness steps should be taken to see that the task of holding an enquiry is assigned to some other officer. How the knowledge claimed by the enquiry officer can vitiate the entire proceedings of the enquiry is illustrated by the present enquiry itself. We have

already noticed that when the Manager rejected the written explanation given by Malak Ram, he told him in terms that the said explanation could not be accepted, because it was contrary to what the Manager, the Assistant Manager and the Chief Engineer had themselves seen. He was also told that his explanation was inconsistent with what other independent witnesses had told the Manager. It is hardly necessary to emphasise that these statements betray complete ignorance as to the requirements of a proper domestic enquiry. In deciding the question as to whether the explanation given by Malak Ram was true or not, the enquiry officer should not have imported his personal knowledge and the knowledge of his colleagues and should not have also relied on the reports received from other witnesses. We are inclined to think that the injustice which is likely to result if a domestic enquiry is held by an officer who has himself witnessed the alleged incident, is very eloquently illustrated by the statements contained in the Manager's letter to Malak Ram. That is why we think it is desirable that the conduct of domestic enquiries should be left to such officers of the employer who are not likely to import their personal knowledge in to the proceedings which they are holding as enquiry officers.

The other infirmity in the present proceedings flows from the fact that the enquiry has commenced with a close examination of Malak Ram himself. Some of the questions put to Malak Ram clearly sound as questions in cross-examination. It is necessary to emphasise that in domestic enquiries, the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings. Therefore, we are satisfied that Mr. Sule is right in contending that the course adopted in the present enquiry proceedings by which Malak Ram was elaborately cross-examined at the outset constitutes another infirmity in this enquiry.

It appears that before the enquiry was actually held on June 11, 1952, notice was not given to Malak Ram telling him about the specific date of the enquiry. It may be that failure to intimate to the workman concerned about the date of the enquiry may, by itself, not constitute an infirmity in the enquiry, but, on the other hand, it is necessary to bear in mind that it would be fair if the workman is told as to when the enquiry is going to be held so that he has an opportunity to prepare himself to make his defence at the said enquiry and to collect such evidence as he may wish to lead in support of his defence. On the whole, it would not be right that the workman should be called on any day without previous intimation and the enquiry should begin straightway. Such a course should ordinarily be avoided in holding domestic enquiries in industrial matters.

There is yet another infirmity in this enquiry and that is furnished by the communication sent by the Manager to Malak Ram on June 12, 1952. In this letter, the Manager told Malak Ram that his version was inconsistent with the evidence that the Asstt. Manager Mr. Mohan had been maltreated and with what the enquiry officers had themselves seen. Mr. Mohan was one of the enquiry officers, so that it is clear that what weighted with the enquiry officers was the fact that Mr. Mohan had been maltreated by Malak Ram and that Malak Ram's misconduct had been seen by the enquiry officers themselves. It is thus obvious that in coming to the conclusion that Malak Ram was guilty of the misconduct, the enquiry officers have plainly relied upon their own knowledge, and that is reasonably calculated to create an impression in the mind of Malak Ram that the present enquiry

was nothing more than a sham or an empty formality. Therefore, we are satisfied that the view taken by the Tribunal that the enquiry held against Malak Ram was not conducted in accordance with the principles of natural justice, cannot be successfully challenged by the appellant. As we have already observed, the appellant did not lead evidence before the Tribunal to justify the dismissal on the merits, and so, the Tribunal had no alternative but to hold that Malak Ram's dismissal was unjustified, and that inevitably led to the order of reinstatement and payment of wages during the period of the employee's enforced unemployment.

That takes us to the case of Vishwa Nath. A charge-sheet was served on Vishwa Nath on October 21, 1952. This charge-sheet alleged that on October 20, 1952, at about 7 A. M., Vishwa Nath had stopped workmen entering the Works at the Factory Gate and prevented them from going on their respective duties for some time. He was also charged with having indulged in disorderly behaviour by shouting hostile slogans. The allegation was that this conduct amounted to misconduct under Standing Order No. 16, sub-clause (ix). On receiving this charge-sheet, Vishwa Nath gave his explanation on October 25, 1952, and stated that on October 20, 1952, he was not present at 7 A.M. and had not shouted any hostile slogans and had not prevented anybody from going to duty. Thereupon, an enquiry was held on the same day. This enquiry was conducted by the Manager and the Asstt. Manager. At this enquiry also, Vishwa Nath was first examined and then five witnesses gave evidence in support of the charge. After the enquiry was over, the enquiry officers recorded their conclusions that the misconduct alleged against Vishwa Nath under Standing Order No. 16 (ix) was proved.

It appears that Vishwa Nath later moved the enquiry officers for leave to cite witnesses in his favour and permission was given to him to examine those witnesses. Accordingly, Vishwa Nath examined four witnesses and after this evidence was recorded, the enquiry officers noted their conclusions on November 25, 1952. In recording these conclusions, the enquiry officers have given reasons why they were not prepared to believe the evidence given by the witnesses examined by Vishwa Nath. The first reason is that in the original list of 43 witnesses cited by Vishwa Nath, some were absent from duty on October 20, 1952 and the enquiry officers thought that that clearly showed that the person charge-sheeted manouvered to produce false witnesses. The other reason given for disbelieving the said evidence was that out of the four witnesses examined by Vishwa Nath, Bakhtawar Singh was present on duty on October 20, at 3 P.M., whereas he mentioned in cross-examination that he came to duty between 6.45 A.M. and 7.0 A.M. There is yet another reason which was given for disbelieving the said evidence and this reason was that whereas Vishwa Nath's witnesses denied that there was any gathering at 7 A.M. on October 20, at the Factory Gate, the witnesses who were produced in defence by Daulat Singh against whom a separate enquiry was held, clearly admitted that there was a gathering at the gate and that Daulat Singh did address the gathering.

It would be noticed that each one of the three reasons set out in the report in support of the conclusion that the version of Vishwa Nath's witnesses could not be believed, introduces a serious infirmity in the enquiry and the report. The first reason refers to the fact that some of the witnesses cited by Vishwa Nath were absent from duty on October 20, 1952. Now, it is plain that this fact had been ascertained by the officers from the attendance register and Vishwa Nath was not given an opportunity to give his explanation and a chance to produce the said witnesses to say what they had to say on the point. Besides, it is not unlikely that even if the witnesses may not have attended duty, they may have been able to depose to what happened near the gate on October 20, at 7 A.M. Therefore, the first reason on which the enquiry officers relied is based on information received by them from a register without notice to Vishwa Nath.

The second reason is also open to serious challenge. When Bakhtawar Singh was examined, he was not asked why he was shown as on duty at 3 P.M. when in fact he claimed that he came to duty between 6.45 A.M. and 7 A.M. The rule that a witness should not be disbelieved on the ground of an inconsistency between his statement and another document unless he is given a chance to explain the said document, cannot be treated as a technical rule of evidence. The principle on which the said rule is based is one of natural justice, and so, it seems, that in disbelieving Bakhtawar Singh on a ground not put to him, the enquiry officers acted unfairly against Vishwa Nath.

The third reason given in the report for disbelieving Vishwa Nath's witnesses is based on the evidence recorded by the enquiry officers in the enquiry held against Daulat Singh. If one enquiry had been held against Daulat Singh and Vishwa Nath, it would have been another matter; but if two separate enquiries were held against the two workmen, it would, we think, be very unfair to rely upon the evidence in the enquiry against Daulat Singh when the officers were dealing with the case of Vishwa Nath. The evidence given in Daulat Singh's enquiry was not recorded in Vishwa Nath's presence and Vishwa Nath had no opportunity to test the said evidence by cross-examination. Therefore, it is plain that the final conclusion of the enquiry officers is based on grounds which have introduced an element of unfairness in the whole enquiry. We are, therefore, satisfied that the Tribunal was right in holding that the report made by the enquiry officers against Vishwa Nath cannot be accepted as a report made after holding a proper enquiry in accordance with the principles of natural justice. That being our view, we must confirm the order passed by the Tribunal in respect of Vishwa Nath.

The result is, the award is set aside in respect of the three workmen, Mehnga Ram, Janak Raj and Daulat Singh in terms of compromise arrived at between the parties before the Court, and the award made in respect of Malak Ram and Vishwa Nath is confirmed. There would be no order as to costs.

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