Calcutta Dock Labour Board

Vs

Jaffar Imam and Others

Civil Appeals Nos. 569 to 571 of 1964

(CJI P. B. Gajendragadkar, K. N. Wanchoo, V. Ramaswami - I JJ)

22.03.1965

JUDGMENT

GAJENDRAGADKAR, C.J.

These three appeals arise out of three writ petitions filed by the three respondents, Jaffar Imam, Brindaban Nayak and Jambu Patra, respectively on the Original Side of the Calcutta High Court against the appellant, the Calcutta Dock Labour Board. Each one of the respondents challenged the validity of the order passed by the appellant, terminating his employment as a registered dock worker with the appellant, on the ground that the said order was illegal and inoperative. The basis on which the impugned orders were challenged was that the enquiry which had been held before passing the said orders had not afforded to the respondents a reasonable opportunity to defend themselves and as such, principles of natural justice had not been followed and even the relevant statutory provision had been contravened. The writ petitions filed by Jaffar Imam and Jambu Patra were heard by Sinha, J., whereas the writ filed by Brindaban Nayak was heard by P. B. Mukherji, J. The learned single Judges who heard these respective writ petition substantially took the same view and rejected the contentions raised by the respondents. In the result, the writ petitions were dismissed.

Against these decisions, the respondents preferred appeals before a Division Bench of the Calcutta High Court. The Division Bench has allowed the appeals and has issued an appropriate writ directing that the impugned orders which the employment of the respondents was terminated by the appellant should be quashed. The appellant then applied for and obtained a certificate from the said High Court and it is with the certificate thus granted to it that it has come to this Court in appeal.

It appears that the three respondents were Dock workers attached to the Port of Calcutta and were registered in the Reserve Pool. On August 12, 1955, the Commissioner of Police, Calcutta passed an order under s. 3(1)(a)(ii) of the Preventive Detention Act, 1950 (No. 4 of 1950) (hereinafter called 'the Act') directing that the respondents should be detained, as he was satisfied that they were guilty of violent and riotous behaviour and had committed assault and as such, it was necessary to detain them with a view to preventing them from acting in any manner prejudicial to the maintenance of public order. The respondents then made representations to the State Government under s. 7 of the Act alleging that the grounds set out in the detention orders passed against them were untrue and that their detention was in fact malafide.

On receipt of these representations, they were forwarded by the State Government to the Advisory Board under s. 9. It is well-known that the Act had made a provision for referring orders of detention to the Advisory Boards constituted under s. 8. When the Advisory Board received the

representation made by the respondents, it took into account the material before it, considered the said representation, and submitted its report within the time specified by s. 10(1). Since the report was against the respondents, their detention was confirmed by the State Government under s. 11 of the Act and in consequences, their detention was continued for about 11 months.

After they were released from detention, they applied for allocation to registered dock employment, but instead of passing orders in favour of such allocation, the appellant commenced disciplinary proceeding against them and notices were served on them to show cause why their services should not be terminated on 14 days' notice in terms of cl. 36(2)(d) of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1951 (hereinafter called "the Scheme"). The principal grounds in these notices was that the respondents had been detained for acts prejudicial to the maintenance of public order and as such, their services were liable to be terminated. Accordingly, the respondents showed cause against the proposed order, but the Deputy Chairman of the appellant was not satisfied with their representation, and so, he terminated their services on December 17, 1956. While doing so, each one of them was given 14 day's wages in lieu of notice for the equivalent period. The respondents challenged this decision by preferring appeals to the chairman of the appellant, but their appeals did not succeed and the orders passed by the Deputy Chairman were confirmed on April 4, 1957. It is against these appellate orders that the respondents filed the three writ petitions which have given rise to the present appeals.

It is plain that both the Deputy Chairman who has passed the impugned orders against the respondents and the Chairman of the appellant who heard the respondents' appeals, have taken the view that the orders of detention passed against the respondents, in substance, amounted to orders of conviction and as such, the appellant was justified in terminating the respondents' employment. Both the original as well as the appellate orders unequivocally state that having regards to the fact that the respondents had been detained, and that their detention was confirmed continued after consultation with the Advisory Board, it is clear that they were guilty of the conduct alleged against them in the orders of detention. In that connection it was pointed out that the Advisory Board consisted of persons of eminent status and undoubted impartiality, and so, the fact that the representation made by the respondents were not accepted by the Advisory Board and that their detention was confirmed by the State Government in consultation with the Advisory Board, was enough to justify the appellant in terminating the employment of the respondents.

The two learned single Judges who heard the respective writ petitions substantially took the same view. Sinha, J. has observed that the respondents had a hearing before a very responsible body and the report that went against them showed that the detaining authority was justified in holding that the respondents were guilty of the charges and had thus committed acts of indiscipline and misconduct within the meaning of the Scheme. In fact, J., felt no hesitation in holding that the appellant would be entitled to take disciplinary action against the respondents upon suspicion, and he held that the appellant's suspicion against the respondents was more than justified by the fact that the detention of the respondents received the approval of the Advisory Board. P. B. Mukherjee, J., also approached the question on the same lines. He held that the appellant was entitled to take into consideration the fact that the respondents had been detained, that the statutory Advisory Board had considered the representations of the respondents and had not accepted them, and that the grounds of detention showed that the detaining authority was satisfied that the respondents were guilty of the conduct which was prejudicial to the maintenance of public order. "In the premises", said the learned Judge, "I am satisfied that the order terminating Brindaban Nayak's services was justified".

The Court of Appeal which heard the three appeals filed by the respondents against the respective

orders passed by the two learned single Judges has disagreed with the approach adopted by them in dismissing the respondents' writ petitions. It has held that in acting merely on suspicion based on the fact that the respondents had been detained, the appellant had acted illegally and that made the impugned orders invalid and inoperative. Mr. B. Sen for the appellant contends that the view taken by the Court of Appeal is erroneous in law.

Before dealing with this point, it would be useful to refer to the relevant provisions of the Scheme. The Scheme has been made by the Central Government in exercise of the powers confirmed on it by sub-s. (1) of s. 4 of the Dock Workers (Regulation of Employment) Act, 1948 (IX of 1948). Clause 3(n) defines a "reserve pool" as meaning a pool of registered dock workers who are available for work, and who are not, for the time being, in the employment of a registered employer as a monthly workers. The three respondents belong to this category of workers. Clause 23 of the Scheme guarantees the specified minimum wages to workers on the Reserve Pool Register. Clause 29 prescribes the obligations of registered dock workers, whereas cl. 30 provides for the obligations of registered employers. Clause 31 prescribes restriction on employment, Clause 33 deals with wages, allowances and other condition of service, whereas cl. 34 is concerned with pay in respect of unemployment or underemployment. Clause 36 deals with disciplinary procedure and it is with this clause that we are directly concerned in these appeals. Clause 36(2) provides that a registered dock worker in the Reserve Pool who is available for work and fails to comply with any of the provisions of the Scheme, or commits any act of indiscipline or misconduct may be reported in writing to the Special Officer, who may, after investigating the matter and without prejudice to and in addition to the powers conferred by cl. 35, take any of five steps indicated by sub-cl. (a) to (e) regards that worker. Sub-cl. (e) refers to dismissal of the guilty workman. Clause 36(3) lays down that before any action is taken under sub-cl. (1) or (2), the person concerned shall be given an opportunity to show cause why the proposed action should not be taken against him. Clause 36A provides for the disciplinary powers of the Chairman of the Board. Clause 37 deals with termination of employment. Clauses 38 and 39 provides for appeals. That, in brief, is the nature of the Scheme. This Scheme was substituted by another Scheme in 1956. Clause 45(6) of this new Scheme corresponds to cl. 36(3) of the earlier Scheme. In other words, the relevant clauses under both the schemes require that before any disciplinary action is taken against a worker, an opportunity must be given to him to show cause why the proposed action should be taken against him.

There can be no doubt that when the appellant purports to exercise its authority to terminate the employment of its employees such as the respondents in the present case, it is exercising authority and power of a quasi-judicial character. In cases where a statutory body or authority is empowered to terminate the employment of its employees, the said authority or body cannot be heard to say that it will exercise its powers without due regard to the principles of natural justice. The nature of the character of the proceedings which such a statutory authority or body must adopt in exercising its disciplinary power for the purpose of terminating the employment of its employees, has been recently considered by this Court in several cases, vide the Associated Cement Companies Ltd., v. P. N. Sharma & Another, [[1965] 2 S.C.R. 366] and Lala Shri Bhagwan and Another v. Shri Ram Chand & Anr., [[1965] 3 S.C.R. 218] and it has been held that in ascertaining the nature of such proceedings with a view to decide whether the principles of natural justice ought to be followed or not, the tests laid down by Lord Reid in Ridge v. Baldwin & Others [L.R. [1964] A.C. 40] are relevant. In view of these decisions, Mr. Sen has not disputed this position and we think, rightly.

Therefore, the question which falls to be considered is whether the appellant can successfully contend that it was justified in action upon suspicion against the respondents, the basis for the suspicion being that they were detained by orders passed by the appropriate authorities and that the

said orders were confirmed by the State Government after consultation with the Advisory Board. It is hardly necessary to emphasise that one of the basic postulates of the rule of law as administered in a democratic country governed by a written Constitution, is that no citizen shall lose his liberty without a fair and proper trial according to law; and legal and proper trial according to law inevitably means, inter alia, a trial held in accordance with the relevant statutory provisions or in their absence, consistently with the principles of natural justice. The Act is an exception to this rule and in that sense, it amounts to an encroachment on the liberty of the citizen. But the said Act has been held to be constitutionally valid, and so far as detention of a citizen effected by an order validly passed by the appropriate authorities in exercise of the powers conferred on them is concerned, its validity can be challenged only on grounds permissible in the light of the relevant provisions of the Act or on the ground of malafides. Whenever detenus move the High Courts or the Supreme Court challenging the validity of the orders of detention passed against them, the scope of the enquiry which can be legitimately held in such proceedings is thus circumscribed and limited. In such proceedings, Courts cannot entertain the plea that the loss of liberty suffered by the detenu by his detention is the result of mere suspicions entertained by the detaining authorities, provided the detaining authorities act bona fide; their subjective judgment about the prejudicial character of the activities or conduct of the citizen sought to be detained, is not open to challenge or scrutiny in ordinary course, and in that sense, it may have to be conceded that the loss of liberty has to be suffered by a citizen if he is detained validly under the relevant provisions of the Act. Thus far, there is no dispute.

But the question which we have to consider in the present appeals is of a different character. A citizen may suffer loss of liberty if he is detained validly under the Act; even so, does it follow that the detention order which deprived the citizen of his liberty should also serve indirectly but effectively the purpose of depriving the said citizen of his livelihood ? If the view taken by the appellant's officers who tried the disciplinary proceedings is accepted, it would follow that if a citizen is detained and his detention is confirmed by the State Government, his services would be terminated merely and solely by reason of such detention. In our opinion, such a position is obviously and demonstrably inconsistent with the elementary concept of the rule of law on which our constitution is founded. When a citizen is detained, he may not succeed in challenging the order of detention passed against him, unless he is able to adduce grounds permissible under the Act. But we are unable to agree with Mr. Sen's argument that after such a citizen is released from detention, an employer, like the appellant, can immediately start disciplinary proceedings against him and tell him in substance that he was detained for the prejudicial activities which amount to misconduct and that the detention order was confirmed by the State Government after consultation with the Advisory Board, and so, he is liable to be dismissed from his employment. It is obvious that Advisory Board does not try the question about the propriety or validity of the citizen's detention as a Court of law would; indeed, its function is limited to consider the relevant material placed before it and the representation received from the detenu, and then submit its report to the State Government within the time specified by s. 10(1) of the Act. It is not disputed that the Advisory Board considers evidence against the detenu which has not been tested in the normal way by cross-examination; its decision is essentially different in character from a judicial or quasi-judicial decision. In some cases, a detenu may be given a hearing; but such a hearing is often, if not always, likely to be ineffective, because the detenu is deprived of an opportunity to cross examine the evidence on which the detaining authorities rely and may not be able to adduce evidence before the Advisory Board to rebut the allegations made against him. Having regard to the nature of the enquiry which the Advisory Board is authorised or permitted to hold before expressing its approved to the detention of a detenu, it would, we think, be entirely erroneous and wholly unsafe to treat the

opinion expressed by the Advisory Board as amounting to a judgment of a criminal court. The main infirmity which has vitiated the impugned orders arises from the fact that the said orders equate detention of a detenu with his conviction by a criminal court. We are, therefore, satisfied that the Court of Appeal was right in taking the view that a departmental enquiry which the appellant held against the respondents it was not open to the appellant to act on suspicion and inasmuch as the appellant's decision is clearly based upon the detention orders and nothing else, there can be little doubt that, in substance, the said conclusion is based on suspicion and nothing more.

Even in regard to its employees who may have been detained under the Act, if after their release the appellant wanted to take disciplinary action against them on the ground that they were guilty of misconduct, it was absolutely essential that the appellant should have held a proper enquiry. At this enquiry reasonable opportunity should have been given to the respondents to show cause and before reaching its conclusion, the appellant was bound to lead evidence against the respondents, give them a reasonable chance to test the said evidence, allow them liberty to lead evidence in defence, and then come to a decision of its own. Such an enquiry is prescribed by the requirements of natural justice and an obligation to hold such an enquiry is also imposed on the appellant by cl. 36(3) of the Scheme of 1951 and cl. 45(6) of the Scheme of 1956. It appears that in the present enquiry, the respondents were not given notice of any specific allegations made against them, and the record clearly shows that no evidence was led in the enquiry at all. It is only the detention orders that were appearently produced and it is on the detention orders alone that the whole proceedings rest and the impugned orders are founded. That being so, we feel no hesitation in holding that the Court of Appeal was perfectly right in setting aside the respective orders passed by the two learned single Judges when they dismissed the three writ petitions filed by the respondents.

Mr. Sen strenuously contended that if we were to insist upon a proper enquiry being held against the respondents before terminating their services, the appellant would find it impossible to take any disciplinary action against them. He urges that the respondents are bullies and they have terrorised their co-workers to such an extent that no one would be willing or prepared to give evidence against them in a departmental enquiry. Even assuming that Mr. Sen is right that the appellant would experience difficulty in bringing home its charges to the respondents, we do not see how much a fear could justify the approach adopted by the enquiry officer in the present case. What would happen if a desperate character who is in the employment of the appellant had not been detained under the Act ? In such a case, before the appellant can validly dismiss such an employee, it will have to hold proper enquiry. The circumstance that the respondents happened to be detained can afford no justification for not complying with the relevant statutory provision and not following the principles of natural justice. Any attempt to short-circuit the procedure based on considerations of natural justice must, we think, be discouraged if the rule of law has to prevail, and in dealing with the question of the liberty and livelihood of a citizen, considerations of expediency which are not permitted by law can have no relevance whatever.

The result is, the appeals fall are dismissed with costs.

Appeals dismissed.

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