

Hindustan Brown Boveri, Limited

v.

Their Workmen and Another

(Supreme Court Of India)

HON'BLE JUSTICE J. M. SHELAT HON'BLE JUSTICE V.BHARGAVA  
HON'BLE JUSTICE C. A. VAIDIALINGAM

Civil Appeal No. 1631 Of 1966 | 31-07-1967

Shelat, J.

1. This appeal by special leave is directed against the order of the labour court, Rohtak, in Reference No. 26 of 1965. The labour court held that the domestic inquiry held by the appellant-company against its two workmen, Samunder Lal and Arjan Singh, was a proper inquiry and the findings against the two workmen were valid. But it held that the company's works manager had to power to direct dismissal of the one and demotion of the other as under the standing orders made under the Industrial Employment (Standing Orders) Act 20 of 1946, it was the company and not its works manager who had the authority to pass such orders.

2. Sri Gokhale for the company contended that the labour court's order was erroneous in that:

(i) on a proper construction of standing order 27 the works manager had the authority to pass the orders in question on a proper inquiry having been held and the said workmen having been found guilty;

(ii) that assuming that the company alone had the power, the company includes its principal executive officer by reason of the definition of "employer" in Act 20 of 1946.

3. Besides these two contentions, he argued that the company had executed a power-of-attorney in favour of the works manager delegating thereby some of its powers including that of recruitment and dismissal of workmen that under that power-of-attorney the works manager was competent to pass the said orders, that that power could not be produced before the labour court as the court had not specifically raised the issue as to the competence or otherwise of the works manager and the contention as to the absence of his power was raised for the first time during the arguments before the labour court. He pointed out that the company had filed soon after it filed the special leave petition an application for raising an additional ground and that that application has been fixed for hearing along with this appeal. He urged that he should be allowed to produce the power-of-attorney and rely on it to show that the company has in fact delegated its aforesaid power to the works manager. We will first dispose of the first two contentions and then deal with this additional contention. Standing order 2(a) defines :

"company" or "establishment" as meaning "the Hindustan Electric Company, Ltd., Faridabad, having its head office and registered office at ... Bombay, and factories at Faridabad."

4. Clause (b) defines "board" as the board of directors of the company. Clause (d) defines "general manager" or "manager" as meaning persons for the time being managing the establishment or anyone duly authorized to act on his behalf, and Cl. (e) defines "personnel officer" as the officer of the company in charge of the personnel department. Standing order 2 thus makes a clear distinction between the company, its board of directors and its officers, namely, the general manager or manager and the personnel officer. As the definition of the "company" shows, the company for the purposes of these standing orders means the Hindustan Electric Company, Ltd. (now designated as the Hindustan Brown Boveri, Ltd.), Faridabad, which has its head and registered office at Bombay and factories at Faridabad. In view of the clear distinction drawn in these definitions it is not possible to say that the company includes its officers. Apart from this distinction, it appears from the scheme of the standing orders that wherever a certain duty or power is sought to be entrusted to the company of its officers the standing orders say so in express terms. Thus standing order 3 empowers the manager or the general manager in his discretion to recruit persons in the company's service at Faridabad. Standing order 12(1) authorizes the general manager or the manager or a person authorized by him to grant leave

to a workman depending on the exigencies of work. The procedure for such leave is by way of an application to the general manager or manager or the person authorized by him. Standing order 13 deals with causal leave and requires previous permission of the head of the department before such leave can be granted. Standing order 16, on the other hand, deals with leave for protracted illness. Clause (a) thereof provides that ordinarily a maximum period of three months' leave on account of protracted illness without pay is admissible provided the workman obtains leave from time to time from the company. Clause (b) lays down that if a workman is found to be suffering from a serious disease or is for any other reason otherwise considered by the company physically unfit for factory work, service of such a workman is liable to be terminated immediately but such a workman will be entitled to retrenchment compensation, etc., in accordance with the Industrial Disputes Act. Standing order 17 deals with reallocation of workmen returning from leave and inter alia provides that such workmen may be transferred to any piece-rate or hourly rated or daily rate or fixed to any operation irrespective of on what basis he may have been originally recruited provided the wage of the new job is not lower except in the event of his becoming extra or due for retrenchment or any other similar reason when he may either be retrenched or offered a lower-rated job at the discretion of the company. Standing order 18 provides that a workman found absent from his place of working during working hours without permission shall be presumed to be guilty of absenteeism and at the discretion of the company is liable to be treated as absent for the whole day. Such workmen, apart from being punished otherwise, will be liable to receive no wages for the period of absence. Clause (g) provides that a workman who absents himself without leave for seven consecutive days or more will be deemed to have left service but if within four days thereafter he offers an explanation to the satisfaction of the manager, his absence may be converted into leave without pay though he would be liable to be posted on similar or other inferior job carrying lower wages. Standing order 19 confers discretion on the company to promote workmen when suitable vacancies occur. Standing order 20 empowers the company at its discretion to effect transfers of workmen from one department to another or from one factory to another factory in the same State or from one operation to another operation or from an hourly fixed to piece-rate or weekly fixed and vice versa and further authorizes the company to effect transfer from one State to another State though such transfers are to be avoided and to be made with the consent of the workmen concerned. Standing order 22 defines minor offences and standing order 23 provides penalties therefor. Standing order 23 in express terms provides that the company reserves the right to inflict penalties therein set out besides those otherwise provided for. One such punishment is demotion.

Standing order 25 sets out major offences which include habitual negligence or neglect of work or production of rejection in excess of permissible percentage. Standing order 26 lays down procedure for dealing with cases of major offences and provides for a preliminary as well as a final inquiry and affording of a reasonable opportunity of being heard to the workmen. Standing order 27 with which we are immediately concerned in this appeal provides by Cl. (a) that ordinarily a workman shall be liable to be summarily dismissed if he has been found guilty of a major offence. Clause (b) runs as follows : "The company may at its discretion, after taking into consideration all relevant circumstances after proper enquiry after giving the workman opportunity to defend himself, give the workman the following punishment in lieu of dismissal."

5. Though Cl. (a) of standing order 27 does not expressly set out as to who is to pass the order of dismissal, Cl. (b) which is a sort of a proviso to it authorizes the company to impose any of the three penalties set out therein in lieu of dismissal. It is clear from Cl. (b) that the company would pass an order for any of the three aforesaid penalties in lieu of dismissal not as the appellate or revisional or reviewing authority after an order of dismissal is passed under Cl. (a), but by virtue of its original authority of awarding a lesser penalty under Cl. (b) instead of the normal punishment of summary dismissal under Cl. (a). It follows that the powers to pass an order of dismissal and of the lesser punishment in lieu of dismissal are both vested in the company and not in any of its other authorities. Broadly stated, the scheme of the standing orders seems to be that matters of day-to-day routine are entrusted to the manager or the general manager or a person authorized by him, in the present case to the works managers, in the absence of any officer designated as manager or general manager, while matters such as those involving change in the conditions of work which are likely to raise industrial disputes have been retained with the company. The company of course acts through its officers where it empowers any of them to do so. But in the absence of any such delegation it is the company and not its works manager who can exercise the power of punishment either under standing order 23 or standing order 27. The contention that the expression "company" in standing order 2(a) includes the works manager and therefore the works manager was competent to pass the aforesaid orders is not tenable. The Industrial Employment (Standing Orders) Act was passed for requiring employers in industrial establishments to define conditions of employment under them. Section 3 of the Act requires the employers to submit to the certifying officer draft standing orders proposed by him in his establishment. Section 5 provides that the certifying officer should forward a

copy thereof to the trade union, if any, or in its absence to the workmen in such manner as may be prescribed, together with a notice requiring objections if any to such draft. The section further provides that the certifying officer should decide after an opportunity of being heard is given to the employer and the trade union or such other representatives of the workmen as may be prescribed whether or not any modification of or addition to the draft is necessary and thereafter certify the standing orders with or without modification as the case may be. Under S. 13 if an employer acts in contravention of such certified standing orders, he is liable to a fine and in case of continuing offence with a higher fine. These provisions show that the purpose of the Act is to have for each industrial establishment standing orders laying down conditions of work for the employees therein and ensuring security of employment. Section 2(d) defines as "employer" as meaning the owner of an industrial establishment and includes in a factory any person named as manager and in any other industrial establishment any person responsible to the owner for supervision and control of such establishment. The definition is expressed in comprehensive terms to enforce the object of the Act, that is, to require all industrial establishments to submit and have certified standing orders defining the conditions of work. But the definition can be availed of for the purposes of the Act and in respect of questions arising thereunder or if it is otherwise made applicable. Where the standing orders themselves define a "company" for the purpose of distribution of duties and powers, it is that definition which is relevant when a question arises as to who is to exercise those powers and perform those duties. There can be no manner of doubt that the company as defined by standing order 2(a) is the company with reference to its activities at Faridabad but which has its need and registered office at Bombay. Therefore, as provided by standing orders 23 and 27, it is that company which is given the power to pass order of punishment in respect of both minor and major offences. The next question is whether we should permit Sri Gokhale to take the additional ground, viz., of the company having assigned its power of dismissal to the works manager. The application is in substance one for leading additional evidence to establish the power-of-attorney said to have been executed by the company in favour of its works manager though it is in the guise of raising an additional ground. We must therefore be guided by those well-settled principles under which only additional evidence is allowed to be adduced at the stage of the hearing of an appeal.

6. In view of the decision in *Jabalpur Electric Supply Company* [1962 - II L.L.J. 216] the company to doubt could delegate its disciplinary powers unless such delegation is debarred by its articles of association which regulate the conduct

of its business. Therefore, where such delegation is properly made, the delegate can validly discharge the duty and exercise the power delegated to him.

However, it is undisputed that the company failed to produce the power-of-attorney and allowed the labour court as also the respondents to remain in ignorance of it. That is somewhat strange, for the reference was in very wide terms. It referred two questions for adjudication:

"(i) Whether the demotion of Arjan Singh is justified and in order ? If not, to what relief he is entitled ?

(ii) Whether the termination of service of Samunder Lal and Asa Singh is justified and in order ? If not, to what relief they are entitled" ?

7. The company should have known that the words "in order" would include the competence of the works manager to pass the orders in question. These words should have put the company on guard. Even if the reference did not do so, the statement of claim filed by the respondent-workmen clearly raised the question whether "the person awarding the punishment had no jurisdiction to do so." Unfortunately, the labour court while framing the issues did not specifically raise the issue as to the works manager's authority. The workmen also did not apply for raising such a separate issue. Nevertheless the question was expressly raised by the workmen at the stage of arguments and it is clear that it was on the basis of those arguments that the labour court held that the company and not the works manager had the power to pass the said orders. The company at that stage could have applied to the labour court either to disallow the workmen from raising the contention in view of there being no issue or to raise an additional issue in view of the wide terms of the reference and allow it to produce the power-of-attorney or to give some time for its production if it felt that the contention raised by the workmen had taken it by surprise. The company adopted none of these courses and allowed the matter to proceed on the record as it then was before the labour court. It did not even inform the labour court of the existence of the power-of-attorney. Even when the company filed its special leave petition it failed to urge therein that company had executed a power-of-attorney. As already stated, the point as to the existence of the power-of-attorney was raised for the first time in the application for leave to raise an additional plea filed after the special leave petition was lodged. Even at that stage it failed to annex along with that application the power-of-attorney and

contented itself with producing some extracts from it. Now, the principles on which the appellate Court permits additional evidence are well-known. It is quite clear that this is not a case where the company can avail itself of any of those principles. There is no manner of doubt that the company was negligent in not producing the document. This is therefore, not a case where the company not produce this additional evidence or was prevented from doing so, or that it has now discovered a fresh piece of evidence.

8. In these circumstances, we would not be justified in granting at this late stage leave to produce additional evidence. In the absence of such evidence the company obviously must be held to have failed to establish delegation of power of dismissal to the works manager.

9. The appeal consequently is dismissed with costs.