

Delhi Cloth and General Mills Co., Ltd.

Vs

Thejvir Singh

Civil Appeal No. 985 of 1967

(Vaidialingam, J.)

11.01.1972

JUDGMENT

VAIDIALINGAM, J.

1. This appeal, by special leave, is against the order dated March 16, 1967, of the Delhi Administration, Special Industrial Tribunal, dismissing an application filed by the appellant under Section 33(1)(b) of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) and declining the grant for permission to dismiss the respondent workman.
2. The appellant is a public limited company owning textile mills called Delhi Cloth Mills (D.C.M.) situated in Bara Hindu Rao, Delhi and Swatantra Bharat Mills (S.B.M.) situated at Najafgarh Road, New Delhi. The respondent, at the material time, was working in the Delhi Cloth Mills. As there was a dispute between the management and the workmen regarding the payment of bonus for the year 1964-65, the Union served notice of a proposed strike and actually the workmen went on strike on February 1, 1966. According to the appellant, the strike was illegal for the reason that the Textile Industries have been declared to be industries of public utility service by the Chief Commissioner, Delhi and conciliation proceedings had already been commenced when the strike notice was received by the appellant. In addition to this circumstance, according to the appellant, there were also binding Conciliation Board Settlement, dated December 29, 1964 prohibiting the strike. The respondent workman, according to the management, participated in the illegal strike and he also incited and instigated other workmen to join the illegal strike. The appellant issued a charge-sheet, dated February 7, 1966 to the respondent in respect of his participation in the illegal strike on February 1, 1966 and to his having incited and instigated the other workmen to join the said illegal strike. According to the appellant, the allegations constitute misconduct under the Company's Standing Order No. 27(b). The workman was required to furnish his explanation within two days of the receipt of the charge-sheet.
3. Immediately on receipt of the charge-sheet, the workman sent a reply, dated February 12, 1966 denying the allegations made therein. He denied that there was any conciliation proceedings and that there was any settlement as alleged in the charge-sheet. Further, on merits he pleaded that he neither took part in any illegal strike, nor incited other workman to go on strike. According to him, when he went for duty on the date in question, he was informed that the mill was not working as there was a strike and he returned home. He further pointed out in his reply that as the time given to him for furnishing the explanation was very short he was sending only a very brief explanation.
4. Not satisfied with the reply sent by the workmen, the management issued a notice, dated February 18, 1966 stating that Sri S. K. Gulahti will make an enquiry against the workman at 8 a.m., the next

day, i.e. February 19, 1966. The workman was directed to be present with his witnesses, if any, to face the enquiry. The enquiry proceedings commenced, on February 19, 1966. As soon as the enquiry commenced, the respondent submitted before the Enquiry Officer a written request for grant of time to get ready with his defence. In this application he had stated that he received, on February 18, 1966 notice regarding the enquiry to be held at 8 a.m., on February 19, 1966 and as such he had barely less than 24 hours to contact his representative and also to get ready his witnesses. As the time was very short, he prayed for adjournment for two or three days. He further made a request for being furnished with copies of statements made by the persons, who are to figure as witnesses on the side of the management.

5. The Enquiry Officer as seen from his proceedings, declined to grant the request of the workman on the ground that he had already by the notice of February 18, been given one day's time to bring his representative and his witnesses and that it was the duty of the workman to get ready when the enquiry was to start.

5-A. In this view the Enquiry Officer refused to grant adjournment and proceeded with the enquiry. Pausing here, the Enquiry Officer has stated in his report that the representative of the workman is one Babu Ram Mishra Kunta working in the third shift and that he could have been easily brought. There is no reference to the name of the representative in the application filed by the workman. As to how the Enquiry Officer got this information, is not on record. That only shows that the Enquiry Officer has proceeded on his own assumptions which had no reality to facts. In the enquiry, on February 19, 1966, three witnesses were examined on the side of the management and several documents were filed through those witnesses. Those documents related to the Gazette notification declaring the textile industry as an essential service and the notice served by the Union as well as certain conciliation proceedings.

6. The workman, quite naturally, in view of the nature of the evidence adduced by the management, was not in a position to cross-examine effectively those three witnesses. After the close of the evidence on the side of the management, the Enquiry Officer directed the workman to produce his witnesses. The workman prayed again for time to produce witnesses. Again the Enquiry Officer informed him that as he had already sufficient time to produce his witnesses, nevertheless, by way of indulgence the workman will be given an hour's time to produce his witnesses. Again when the proceedings were commenced on the same day, after an hour's interval, he got one witness, who was examined and he had given evidence to the effect that the workman concerned was only mentioning to the people with folded hands that the day in question was a strike day. The Enquiry Officer in his report, after referring to the evidence adduced on the side of the management as well as the documents filed through those witnesses has found that the respondent had incited the workmen to join the strike and that he had also actually participated in the illegal strike.

7. Accepting the report of the Enquiry Officer, the General Manager of them Mills passed an order, dated April 9, 1966 informing the workman that it has been decided to dismiss him from service for misconduct and that the necessary application for permission was being made to the Industrial Tribunal. The workman was also informed that in the meanwhile he was suspended without wages pending the receipt of permission from the Industrial Tribunal.

8. As the dispute regarding the bonus was already pending adjudication before the Tribunal, the appellant, on April 9, 1966, filed Application No. 17 of 1966 under Section 33(1)(b) of the Act,

requesting permission for dismissing the respondent from service for misconduct. The application refers to various conciliation settlements as well as the textile industry being declared a public utility service, the report of the Enquiry Officer and the findings recorded therein.

9. The workman filed his reply statement, on May 1, 1966. Apart from denying the allegations of misconduct levelled against him, he had specifically pleaded that he never participated in any illegal strike and that he had also not incited or instigated any workman to go on strike. With reference to the enquiry he specifically pleaded that it had been held in violation of all principles of natural justice and that he was given not opportunity to prepare his defence. He referred to the application filed by him for grant of adjournment and the arbitrary refusal of that request by the Enquiry Officer. He has referred to various irregularities in the conduct of the said enquiry.

10. It is seen that on March 15, 1967, the appellant filed an application before the Tribunal for an opportunity being given to adduce evidence before the Tribunal in case it held that the enquiry conducted by the management was defective. It is seen, before the Tribunal the appellant almost exclusively relied on the enquiry proceedings conducted by it to support the order of dismissal proposed to be passed against the workman. The Tribunal after a consideration of the nature of the enquiry conducted by the Enquiry Officer has held in its order, dated March 16, 1967 that the enquiry was not properly conducted and that the workman was not given a reasonable opportunity to defend himself. In this view the Tribunal held that the enquiry was most unfair and improper and prejudicial to the workman.

11. Regarding the application filed by the appellant for permission to adduce evidence, the Tribunal is of the view that if the employer is allowed to examine witnesses, it will give an opportunity to the appellant to re-coach their witnesses to enable them to give improved statements. In this view the request of the management to adduce evidence was rejected by the same order. Ultimately, the application filed by the management No. 17 of 1966 was dismissed, and the permission asked for was refused.

12. Before us Mr. H. L. Anand, learned counsel for the appellant raised two contentions : (1) That the view of the Industrial Tribunal about the enquiry proceeding not being proper is not correct; and (2) in any event the Tribunal erred in law in declining to permit the appellant to adduce evidence on merits.

13. In *Delhi Cloth and General Mills Co. v. Ludh Budh Singh* (C.A. No. 984 of 1967, decided on January 11, 1972 : (1972) 1 SCC 595), where the present appellant was also a party, we have elaborately considered the nature of the jurisdiction exercised by a Tribunal in dealing with such a matter and also the stage when an application for adducing evidence has to be made by the management and therefore, we do not think it necessary to cover the ground over-again.

14. Regarding the first contention it is enough to state that even a reference to a few facts will make it clear that the enquiry proceedings conducted by the management were grossly unfair to the workman.

15. It was on February 18, 1966 that the workman was informed that the enquiry will take place at 8 a.m. on the next day, i.e. February 19, 1966 and the workman was desired to be present to face the enquiry and be ready with his witnesses in defence. Therefore, the interval between the date of the notice and the time when the enquiry was to start itself was very short. As soon as the enquiry commenced on February 19, 1966 there is no controversy that the respondent made a written

request to the Enquiry Officer to postpone the enquiry for two or three days to enable him to contact his representative to represent him in the enquiry and also to bring his witnesses. This very reasonable request was summarily rejected by the Enquiry Officer on the ground that as the notice of the enquiry, dated February 18, 1966 specifically asked the workman to be ready with his witnesses, he should have been ready when the enquiry commenced and that he had already sufficient time. To say the least, it is a very unreasonable attitude to be adopted by an Enquiry Officer.

16. We have already pointed out that the Enquiry Officer without any material on record, has stated that the representative of the workman is one Babu Ram Mishra Kunta, working in the third shift and that he is easily available. The workman never mentioned that Babu Ram Mishra Kunta is the person whom he has in view for representing him in the enquiry. As to how the Enquiry Officer got this information or impression is not made clear from the record. The Enquiry Officer very curtly declined the request for adjournment. The result was that the management, on the same day, examined as many as three witnesses. These witnesses also produced a number of notifications and conciliation settlements with which, it is reasonable to infer, the workman would not have been familiar at all. It is not surprising that under those circumstances the workman was not in a position to effectively cross-examine those three witnesses. As soon as the evidence of these three witnesses was completed at about 12.30 p.m. the workman was immediately called upon to enter on his defence. He again made a request for adjournment to enable him to produce his witnesses. He was given just an hour's time and the enquiry again commenced at 1.30 p.m. on the same day. The workman was able to get only one witness who spoke to the respondent merely mentioning to the people that there was strike on that day. There is no evidence to the effect that the workman was actively inciting any workman to go on strike. The Enquiry Officer, on these materials, has held that the respondent is guilty of misconduct alleged against him and this finding has been accepted by the management. The above fact clearly shows that the enquiry has been conducted in gross violation of the principles of natural justice without giving a real and fair opportunity to the workman to participate in the proceedings. Therefore, the Tribunal was perfectly justified in holding that the enquiry proceedings were not properly held.

17. Coming to the second contention which related to the request made by the management in its application, dated March 15, 1966 for being given an opportunity to adduce evidence, if the domestic enquiry is held to be defective, we agree with the Tribunal when it rejected the application; but however, we do not agree with the reasons given by the Tribunal for rejecting the same. In its order the Tribunal has stated that if the management is allowed to adduce evidence, it will mean that it can coach up its witnesses so as to give improved statements before the Tribunal. This is not a proper approach to be made when dealing with such an application. The nature of the evidence to be let in before the Tribunal is entirely a matter for the management and if such witnesses give a version different from the one given in the domestic enquiry, then it will be a matter for the Tribunal to consider these aspects in appreciating their evidence.

18. The legal position regarding the stage when such a request is to be made has also been very fully discussed by us, as pointed out earlier, in *Delhi Cloth and General Mills v. Ludh Budh Singh* case (supra). Having due regard to the principles stated therein, we are of the opinion that the application filed by the appellant for adducing additional evidence has not been filed at a proper stage and therefore the Tribunal was justified in rejecting the said application.

19. In the result, the order of the Special Industrial Tribunal is confirmed and this appeal dismissed with costs.

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