The East India Hotels

Vs

Their Workmen and Others

Civil Appeal No. 311 of 1973

(P. Jagmohan Reddy, S. N. Dwivedi, P. K. Goswami JJ)

12.12.1973

JUDGMENT

JAGANMOHAN REDDY, J. -

The Hindustan Motors Ltd. hosted a cocktail party on November 24, 1969, for about fifty or sixty members in the small Banquet Room of the Oberoi Grand Hotel at Calcutta. Janab Suleman one of the workmen employed as Bar Cooly by the Hotel was deputed to look after the work of Barman to attend on the party. At about 9.35 p.m. it appears one B. S. Sethi of the Hindustan Motors Ltd. one of the hosts of the party found the workman concerned pouring whisky bottle (sic) into an empty gingerale bottle. Sethi asked him as to why he was pouring the whisky into the gingerale bottle, whereupon the workman started pouring down the whisky into the tub for cooling sodas. When he poured half the bottle into the tub, Sethi took the bottle in his hand and called one Pyare Lal Steward who was on duty and complained to him. Even as he was complaining the respondent workman took the bottle from Sethi in the presence of Pyare Lal and started pouring down the contents again into the tub. On seeing this Sethi was annoyed and asked Pyare Lal to call the Manager. As the Manager Mital was not to be found, Pyare Lal called Agrawal who came there accompanied by Bakshi. Sethi then informed him of the facts which were also confirmed by Pyare Lal. The bottle was taken into custody and was sealed in the presence of the workman concerned who when asked to sign the sealed bottle refused to sign it. The bottle was sent to the Chemical Analyser who found the contents to be whisky. Again the bottle was sealed. Sethi then made a written complaint to the management of the Hotel as under :

> "This is to bring to yours notice that the Barman on duty during the Cocktail Party on 28-11-1969 in small Banquet Room was caught by me for pouring whisky in a gingerale bottle. When I saw it I asked him why he was doing it, so he immediately poured out more than half the gingerale bottle in the tub, saying it was only gingerale.
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> This was not expected of Oberoi Grand Hotel and we have reported the matter to Mr. Agrawal. We hope some action will be taken against the workman concerned. His number is 386."

2. On receipt of this complaint the appellant Hotel served the workman with a charge-sheet dated November 29, 1969 for major misconduct as per clauses 17(2) and 17(19) of the Standing Orders and Service Rules of the Hotel. In reply to the above charge-sheet the workman concerned submitted his explanation on December 1, 1969, denying the charges made against him. The relevant portion of his explanation is as follows :

"That I am a Bar Cooly having been deputed to look after the work of Barman for attending a party consisting of 50/60 members. I was rather responsible to bring the drinks from downstairs and to supply them to the party at Small Banquet Room. It is also common practice to pour down the drops of remnants of drinks while taking back the empty bottles. Accordingly, after returning from downstairs, I found the empty bottles and poured down the remaining drops to take them down as I did not like being drenched with liquors during 'Roza period'.

Being not conversant with the incidents for which I am blamed of, I did not feel any justification of signing in the sealed bottle."

3. The Enquiry Officer conducted the enquiry in the presence of the workman. It appears that the Enquiry Officer read over the charge-sheet to the workman, recorded his plea of denial and examined Agrawal, Bakshi, Pyare Lal and Lal Singh on behalf of the employers in the presence of the workman. The workman was asked whether he wanted to ask each of the witnesses any questions as and where their evidence was recorded, but he did not do so. After the witnesses were examined the respondent workman was questioned and his answer was that he was all alone to look after the service in the Bar. He was deputed to bring drinks, ice, cigarettes, etc., from Embassy Bar, and that he was not present in the Bar all the time when the party was going on. He admitted that he was asked by Sethi what was there in the gingerale bottle which he showed him. He had then replied that it must be containing 'Nimboo Pani or Squash' and did not know exactly what it contained, and then went away to do his job. After a while he saw Pyare Lal talking to Sethi. He did not know what they were talking nor he was called there. He also saw Agrawal and Bakshi there. Agrawal asked him to sign. When sealed cover but he refused to sign. When he asked whether he poured whisky in the gingerale bottle his reply was in the negative. It was put to him that according to him when Sethi first showed the gingerale bottle the respondent had stated that it contained 'Nimboo Pani and Squash', if this was so, he was asked to say what was the colour of the contents of the bottle. His reply was that he did not remember. He even asserted that he could not distinguish between 'Nimboo Pani, Squash, or Whisky'. He was again asked that since he admitted working in the Bar since 1951 or 1952, whether he would still say that he could not distinguish the colour of squash or whisky, brandy, etc., and his answer was still in the negative. He also admitted that he went to Sethi to apologise for what had happened. But he said he did so at the instance of Pyare Lal. Though Sethi was not examined, the Enquiry Officer considered the evidence and the explanation and the reply of the respondent workman, and in a well considered report in which the evidence of these witnesses was discussed found the respondent guilty of misconduct under cl. 17(2) and cl. 17(19) of the Standing Orders of the Hotel. On a consideration of this report the person authorised by the Hotel dismissed him.

4. An industrial dispute under Section 10 of the Industrial Disputes Act, 1947 was raised and the matter was referred on November 24, 1970, by the Government of West Bengal to the Industrial Tribunal for decision of the following issue :

"Whether dismissal of Janab Suleman, Bar Cooly, Ticket No. 386 is justified ? To what relief if any, is he entitled ?"

The Industrial Tribunal considered the case to be one governed by Section 11A of the Act and on that assumption re-appreciated the evidence as if it was a first appellate Court, and considered the question whether the Enquiry Officer was justified in finding the workman guilty under clauses 17(2) and 17(19) of the Standing Orders of the Hotel, and on the evidence it came to the following

conclusion :

> "I have already stated that the person who lodged the complaint against the workman was not examined at the time of domestic enquiry. No attempt of any kind was made by the company to summon the witness to prove the allegations made by him against the workman. The witnesses who were examined by the company were not present at the time of occurrence. They are not competent to say what had actually happened. They simply stated what they had heard from Shri Sethi. They also stated that there was smell of liquor in a bottle shown to them. In my opinion, this sort of evidence is insufficient to prove the charges levelled against the workman. It is admitted that it was the duty of the workman to remove the bottle after serving the liquor. It was also his duty to empty the bottle after ginger and liquor were served. In the circumstances, there is no reason to disbelieve the explanation submitted by the workman. In view of the nature of evidence adduced before the enquiry officer, it must be held that the workman was not negligent in performing his duty. In that view of the matter, the conclusion is irresistible that the enquiry officer has committed an error in finding the workman guilty under clauses 17(2) and 17(19) of the Standing Orders."

On the above reasoning, the Tribunal found the order of dismissal passed by the company against the workman illegal and set it aside. It further directed that the period from the date of suspension to May 31, 1972, was to be treated as service without pay and the said period would not in any way interfere in the matter of increment and other allowances, etc.

5. This appeal is by special leave against the award of the Tribunal. It is not denied that the Tribunal was in error in applying Section 11A of the Act to this case, because of the complaint, the enquiry, the report and the reference were all prior to the coming into operation of this Section on December 15, 1971. This Court held in The Workman of M/s. Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. v. The Management & Others ((1973) 1 SCC 813 : 1973 SCC (L&S) 341) that Section 11A has no retrospective operation as it is not only deals with procedural matters, but also has the effect of altering the law laid down by this Court in this respect by abridging the rights of the employer inasmuch as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by an employer as well as with the punishment imposed by it. In the undoubted exercise of the right of the employer to take disciplinary action, and to decide upon the quantum of punishment, both of which are part of the managerial functions, what has to be seen is whether the employer before imposing the punishment had conducted a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. When a proper enquiry has been held by an employer and the finding of misconduct has support from the evidence adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified when the enquiry is unfair or the findings arrived at in the enquiry are perverse or have no basis in evidence or the management is guilty of victimisation, unfair labour practice or mala fide or the punishment is harsh and oppressive. The Tribunal cannot, therefore, re-appraise the evidence and arrive at a conclusion different from that arrived at by the domestic Tribunal. Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribune in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action; and it is open to the employee to adduce evidence contra. Once misconduct is proved, either in the enquiry conducted by the employer or by the evidence placed before the Tribunal for the first time, the punishment imposed

cannot be interfered with by the Tribunal except in cases where the punishment is harsh and oppressive. This is not a case where no enquiry has been held, nor is it a case where either side had not adduced evidence before the Tribunal. What the Tribunal had to see is whether the enquiry is vitiated by any of the grounds referred to by us. Admittedly, no such grounds exist in this case. Nothing was stated as to in what respects the enquiry was defective. On the other hand, the Tribunal proceeded on the basis that the enquiry was not vitiated, but it had power under Section 11A to arrive at a different conclusion and award a different punishment. That apart, even the evidence justified the conclusion arrived at by the Enquiry Officer.

6. It is not necessary that Sethi should have given evidence. His absence may be due to the fact that it was now for the employer to take action on his complaint and to protect their prestige and reputation which was mainly their affair. It is, however, apparent from the evidence that Sethi had complained to Pyare Lal and Pyare Lal speaks to what the respondent did and what happened in his presence. He said even when he asked the respondent what was in the bottle the respondent replied that it contained 'Nimboo Pani' and that he was pouring the contents in the tub. Bakshi also found whisky in the gingerale bottle. He says that Agrawal was tasting something when he came. The bottle was sealed by him in the presence of Sethi, Agrawal and Pyare Lal. Agrawal also gave evidence and so did Lal Singh. When the respondent was asked to sign the envelope he refused to do so and when he was asked by Lal Singh why he was refusing to do so, his reply was "Hum Jab esme sign karange tob mar jayanga". The respondent did not challenge this statement also. As the enquiry and the dismissal do not suffer from any defect and there is evidence from which the impugned conclusions can be drawn, we set aside the award of the Tribunal and substitute instead the finding that the dismissal of the respondent was justified.

7. The appeal is accordingly allowed, but in the circumstances without costs.

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