Associated Cement Companies Ltd

Vs

T. C. Shrivastava and Others

Rama Shankar and Others

Vs

T. C. Shrivastava and Another

Civil Appeal Nos. 209 of 1973

(V. D. Tulzapurkar, R. S. Pathak JJ)

29.03.1984

JUDGMENT

TULZAPURKAR, J. -

1. The principal question raised for our determination in these appeals is : Whether on its proper construction the certified Standing Order 17 provides for second opportunity being given to a workman after conclusion of the enquiry into his misconduct and before inflicting on him the punishment of dismissal and if so whether the enquiry gets vitiated by not affording him such opportunity ?

2. Facts giving rise to the question may be stated. The Associated Cement Companies Limited (hereinafter called 'the appellant') has quarries worked by its department called Kymore and Bamangaon Limestone Mines at Kymore, District Jabalpur, M.P. Workers employed in the said quarries have a union called Kymore Quarry Karamchari Sangh and the four concerned workmen Rama Shanker, Barmapradhan, Emmanual and Mohd. Rauf (hereinafter called 'the respondents') were at the material time the officer-bearers in the union.

3. In connection with the implementation of the Recommendations of Second Central Wage Board for the cement industry, after serving a strike notice on the management of the appellant on September 13, 1968, the Karamchari Sangh and all its members went on a strike for 24 hours commencing from the midnight of September 19, 1968 which was accompanied by acts of intimidation, threats, gheraoes and unlawful obstruction. According to the management before the commencement of the strike two meetings were organized by the respondents, one at 4 p.m. and the other at 11 p.m. on September 19 at which fiery speeches were made by them wherein they not only instigated the quarry workers to resort to strike but intimidated and prevented the willing workers from going to their work and threatened the supervisory staff and officers with dire consequences if they tried to work the quarries and what is more from the midnight of September 19 till 4.30 a.m. on September 20 the quarry manager and the supervisory staff were gheraoed and at 4.30 a.m. the agent's car stopped at the gate and he was unlawfully obstructed from visiting the quarry premises. Since resorting to a strike without giving 14 days' prior notice as also the aforesaid acts on the part of the respondents amounted to serious misconduct under the certified Standing Orders applicable to

the quarries the Management served charge-sheets dated October 3, 1968 on the respondents in which four common charges were levelled against all of them; in addition a fifth charge was levelled against two of them Emmanual and Mohd. Rauf; and yet another sixth charge was levelled against Mohd. Rauf. The common charges were (a) themselves going on strike without 14 days' prior notice, (b) inciting and instigating other workers to go on strike, (c) gheraoing the quarry manager and other supervisory staff between midnight and 4.30 a.m. on September 20 and inciting others to gherao the said staff and (d) forcibly and unauthorisedly occupying the area near the quarry canteen between 4 p.m. on September 19 and 1 a.m. on September 20 and installing and using loudspeakers for inciting the workers. Shri Emmanual and Shri Rauf were further charged with threatening the gheraoed staff with dire consequences, if they moved out; and Mohd. Rauf was charged in addition for having restrained the quarry agent from entering the quarry premises. The respondents were called upon to submit their explanation in respect of the charges to the general manager which they did; in their explanations they by and large denied the charges levelled against them. A departmental enquiry was held against them by Shri H. S. Mathur during the course of which at one stage the respondents withdrew from the enquiry on October 24, 1968 on the plea that the quarry agent should be examined first which was not being done, whereafter the enquiry proceeded ex parte and on a consideration of the entire evidence led before him the enquiry officer came to the conclusion that the first three charges were fully proved and the fourth charge was partly proved against all the respondents while the additional charges against Emmanual and Mohd. Rauf were also proved. The enquiry report was forwarded to the general manager who after considering the same and after taking into account the previous service record of the respondents by his order dated December 31, 1968 dismissed the respondents from service. That order was served on the respondents on January 30, 1969.

4. A dispute having been raised with regard to their dismissal, by common consent, the same was referred to the arbitration of Shri T. C. Shrivastava, a retired Judge of M.P. High Court, under Section 10-A of the Industrial Disputes Act, 1947 on April 14, 1969. The Arbitrator gave his Award on February 9, 1970 whereby he came to the conclusion that the enquiry which was otherwise fair and valid was vitiated because no second opportunity was given to the respondents of showing cause against the proposed punishment before the issuance of their dismissal order as required by the Standing Order 17; he further held that though before him the management had by leading evidence proved their misconduct by establishing the first three charges against all, the fifth charge against Emmanual and Mohd. Rauf and sixth one against Mohd. Rauf (fourth charge being held not to have been proved) the punishment of dismissal in respect of Emmanual and Mohd. Rauf could be confirmed but set aside the dismissal in respect of Rama Shanker and Barmapradhan on the ground that while fomenting the strike the conduct of Emmanual and Mohd. Rauf was graver than that of Rama Shanker and Barmapradhan and instead ordered their reinstatement but without back wages. The appellant challenged the Award in the High Court by means of a writ petition (Miscellaneous Petition No. 129 of 1970) contending that the Arbitrator had misconstrued Standing Order 17 and that no second opportunity was required to be given to the respondents and that in the alternative the interference with the punishment of dismissal in respect of Rama Shanker and Barmapradhan was erroneous while another writ petition (Miscellaneous Petition No. 365 of 1970) was filed by the respondents against the punishments that were awarded to each one of them. The High Court by its judgment dated July 27, 1972 confirmed the Award of the Arbitrator by dismissing both the writ petitions.

5. The appellant has come up in appeal (being Civil Appeal No. 209 of 1973) by special leave challenging the interference with the dismissal of Rama Shanker and Barmapradhan while the respondents have preferred their appeal (being Civil Appeal No. 1140 of 1974) on a Certificate

granted by the High Court challenging the punishments operating against each one of them. At this stage it may be stated that as regards Emmanual and Mohd. Rauf the matter has been compromised between the parties which has already been recorded by this Court with the result that Civil Appeal No. 1140 of 1974 insofar as their dismissal is concerned no longer survives and the same needs to be dealt with by us only as regards back wages that have been denied to Rama Shanker and Barmapradhan.

6. In support of Civil Appeal No. 209 of 1973 counsel for the appellant raised three contentions before us. In the first place, he contended that the learned Arbitrator as well as the High Court have erroneously construed the certified Standing Order 17 as requiring a second opportunity being given to a workman at the conclusion of the enquiry into his misconduct and before inflicting upon him the punishment of dismissal; he urged that the concept of second opportunity being given to a delinquent which obtained under Section 240(3) of the Government of India Act, 1935 or Article 311 of the Constitution prior to the insertion of the proviso to Article 311(2) could not be invoked or applied to the instant case nor was such second opportunity any requirement of the ordinary law of the land or of industrial law and in this behalf reliance was placed on two decisions of this Court in Hamdard Dawakhana case (Hamdard Dawakhana Wakf v. Its Workmen, (1962) 2 LLJ 772 : (1963) 6 FLR 86 (SC)) and in Saharanpur Light Rly. case (Shahdara (Delhi)-Saharanpur Light Railway Co. Ltd. v. Shahdara-Saharanpur Railway Workers' Union, (1969) 1 LLJ 734 : AIR 1969 SC 513 : (1969) 2 SCR 131). Counsel urged that on proper construction of the Standing Order it should have been held that no second opportunity was contemplated thereunder and therefore the finding that the enquiry was vitiated deserved to be set aside and according to him if the enquiry was valid and was not vitiated the punishment of dismissal imposed on Rama Shanker and Barmapradhan could not be interfered with. In the further alternative counsel contended that assuming that the enquiry was vitiated for the reason mentioned by the Arbitrator even then once serious misconduct was proved by leading evidence before the learned Arbitrator it was not open to him to interfere with the punishment of dismissal unless the punishment was so harsh as to smack of victimisation. In the further alternative counsel contended that assuming that the Arbitrator had power to interfere with the punishment in the instant case having regard to the facts and circumstances he was not justified in setting aside the dismissal of Rama Shanker and Barmapradhan especially on the ground on which he did so namely, that the conduct of Shri Emmanual and Mohd. Rauf was more grave than that of Rama Shanker and Barmapradhan while fomenting the strike; counsel urged that passively taking part in the strike was distinguishable from the more serious misconduct of fomenting or inciting the strike and all the respondents were found guilty by the learned Arbitrator of such serious misconduct and as such no distinction on the basis indicated between the two sets of workmen should have been made in the matter of punishment. On the other hand counsel for the respondents urged that Standing Order 17 had been properly construed by the Arbitrator and the High Court and that construction should be upheld and in any case if two constructions were reasonably possible no interference by this Court was called for and counsel in that behalf relied upon the decision Agnani (W.M.) v. Badri Das ((1963) 1 LLJ 684 (SC)). Counsel further urged that once the enquiry got vitiated the entire filed of determining the misconduct as also the punishment therefore became open and the Arbitrator had jurisdiction and power to consider both the aspects and that the Arbitrator in the facts and circumstances of the case had justifiably interfered with the dismissal of Rama Shanker and Barmapradhan and had directed their reinstatement.

7. From the rival contention summarised above it will appear clear that the real question that arises in these appeals is, does the certified Standing Order 17 provide for second opportunity being given to a workmen to show cause against the proposed punishment of dismissal, for, it was not disputed before us that if no such second opportunity is contemplated by it then the only ground on which the

enquiry has been held to be invalid by the learned Arbitrator and the High Court would disappear and the Arbitrator could not have entered into merits of the case or interfered with the punishment of dismissal inflicted upon Rama Shanker and Barmapradhan. The question obviously depends upon the proper construction to be placed on said Standing Order 17. It may be stated that the certified Standing Order 16 enlists several acts or omissions that constitute 'misconduct' and striking work either single or with other workers without giving 14 days' previous notice, inciting whilst on the premises and (sic) worker to strike work and indulging in a gherao, (which would amount to an "act subversive of discipline or efficiently") are obviously included therein. Standing Order 17 which deals with punishments and procedure therefore runs thus :

> 17. A worker may be suspended for a period not exceeding 4 days or fined in accordance with the Payment of Wages Act or dismissed without notice or any compensation in lieu of notice if found guilty of misconduct defined in Standing Order 16.

All orders of suspension and fines shall be in writing setting out the misconduct for which the punishment is awarded. No officer below the rank of the Head of Department shall award the above punishment.

All dismissal orders shall be passed by the manager or acting manager who shall do so after giving the accused an opportunity to offer any explanation. Due consideration to the gravity of the misconduct and the previous record of the worker shall be given in awarding the maximum punishment.

In the event of a discharge or dismissal, the worker shall be paid off within the second working day following the discharge or dismissal.

The questions is whether when paragraph 3 of the above Standing Order says : "all dismissal order shall be passed by the manager or acting manager who shall do so after giving the accused an opportunity to offer any explanation", it contemplates giving of a second opportunity to the delinquent to show cause against the proposed punishment of dismissal after he has been found guilty or the opportunity spoken of is the opportunity to meet the charges in the domestics enquiry ?

8. At the outset the legal position as has been clarified by this Court in the Saharanpur Light Railway Co. case (Shahdara (Delhi)-Saharanpur Light Railway Co. Ltd. v. Shahdara-Saharanpur Railway Workers' Union, (1969) 1 LLJ 734 : AIR 1969 SC 513 : (1969) 2 SCR 131) may be stated. In the context of certain modification sought to be introduced in a Standing Order requiring a second show cause notice this Court has observed thus :

> As regard the modification requiring a second show cause notice, neither the ordinary law of the land nor the industrial law requires an employer to give such a notice. In none of the decisions given by courts or the tribunals such a second show cause notice in the case of removal has ever been demanded or considered necessary. The only class of cases where such a notice has been held to be necessary are those arising under Article 311. Even that has now been removed by the recent amendment of that Article. To impact such a requirement from Article 311 in industrial matters does not appear to be either necessary or proper and would be equating industrial employees with civil servants. In our view, there is no justification on any principle for such equation. Besides, such a requirement would unnecessarily prolong

> disciplinary enquiries which in the interest of industrial peach should be disposed of in as short time as possible. In our view it is not possible to consider this modification as justificable either on the ground of reasonableness or fairness and should therefore be set aside.

It is thus clear that neither under the ordinary law of the land nor under industrial law a second opportunity to show cause against the proposed punishment is necessary. This, of course, does not mean that a Standing Order may not provide for it but unless the Standing Order provides of it either expressly or by necessary implication no enquiry which is otherwise fair and valid will be vitiated by non-affording of such second opportunity. The question is whether para 3 of the Standing Order 17 provides for such second opportunity being giving to the delinquent ? The relevant words are "all dismissal orders shall be passed by the manager... after giving the accused an opportunity to offer any explanation". The italicised words are wholly inappropriate to convey the idea of a second hearing or opportunity on the question of punishment but appropriate in the context of seeking an explanation in regard to the alleged misconduct charged against him. An 'explanation' is to be called from 'accused' which suggests that the same is to be called for prior to the recording of a finding that the delinquent is guilty of misconduct; it is the alleged misconduct that is to be explained by him and not the proposed punishment. On a plain reading of the relevant words no seconds opportunity of showing cause against the proposed punishment is contemplated either expressly or by necessary implication. In other words, it is clear to us that the opportunity spoken of by para 3 of the Standing Order 17 is the opportunity to be give to the delinquent to meet the charges framed against him. In this connection it will be pertinent to mention that the concerned Standing order was framed and came into force on March 1, 1946 and was duly certified on October 16, 1952 under the Industrial Employment (Standing Order) Act, 1946 i.e. prior to the enunciation of the law by courts regarding the observance of the principles of natural justice such as issues of a charge-sheet, holding of an enquiry, opportunity to lead evidence, etc. and it is well-known that after the enunciation of these principles model Standing Order have been framed to provided for the detailed steps required to be undertaken during a domestic enquiry. Since the instant Standing Order was certified prior to the formulation of the above principles it merely contains a bald provision for "giving the accused an opportunity to offer any explanation". In other words, difference stages in domestic enquiry were never in the contemplation of the farmers of the Standing Order. That being the position it would be difficult to attribute any intention to the farmers thereof to provide for a second opportunity being give to the delinquent of showing cause against the proposed punishment. The latter part of para 3 merely casts a unilateral obligation on the concerned authority or the officer to give due consideration to the gravity of the misconduct and the previous record of the delinquent in awarding the maximum punishment.

9. It is true that the Arbitrator has undoubtedly taken the view that the opportunity spoken of by para 3 does not refer to the opportunity to meet the charges but refers to the further opportunity being given to the delinquent to show cause against the graver punishment of dismissal that may be proposed to be inflicted on him. But for reaching such a conclusion he has resorted to some involved reasoning which is not warranted by the Standing Order if read as a whole. According to him in the earlier paragraph which speaks of awarding lighter punishment there it no reference to any opportunity being give to meet the charges but no punishment - not even lighter punishment - can be inflicted without enquiry being held according to the principles of natural justice an if such an enquiry is implicit in cases of lighter punishments it would be so in cases of grave punishment like dismissal and since specific mention do opportunity is made in cases of graver punishment in the relevant sentence of para 3 it must have a meaning and the words cannot be considered a surplusage and, therefore, the opportunity mentioned in the relevant sentence of para 3 refers to the

second opportunity being given to the delinquent at the stage of inflicting the punishment of dismissal. The High Court has confirmed the view of the Arbitrator on the basis that the first part of the Standing Order deals with several punishments and requires finding of guilty in respect of each one of them and this procedure is, therefore, different from that which has been contemplated in the last part of the Standing Order and that last part deals only with the punishment of dismissal and for that punishment alone makes a special provision that no order awarding that punishment will be passed unless the manager gives an opportunity to a workman to offer his explanation. In our opinion, the view of the Arbitrator as also the view of the High Court proceed on an assumption that the Standing Order 17 deal with two different stages concerning disciplinary proceedings against a delinquent, first holding of a departmental enquiry into the cages where principles of natural justice must be implied and second the infliction of graver punishment before awarding which opportunity to show cause has been provided for; but the plain reading of the Standing Order read as a whole does not warrant any such assumption and, therefore, we do not feel that the construction placed on Standing Order 17 by the Arbitrator or the High Court is possible must less reasonably possible. The ratio of this Court's decision in Agnani (W.M.) v. Badri Das ((1963) 1 LLJ 684 (SC)) is, therefore, not attracted.

10. In view of the construction which we are placing on Standing Order 17, it will be clear that the only ground on which enquiry was held to be invalid by the Arbitrator and by the High Court must disappear. Admittedly opportunity to offer explanation in regard to the alleged misconduct was not only afforded but was availed of by the concerned four worker (including Rama Shanker and Barmapradhan) by the submitting their written explanation to the manager whereafter the departmental enquiry was held by Shri H. S. Mathur. In other words Standing Order 17 was fully complied with and what is more the Arbitrator has held that the enquiry was otherwise fair and valid. The solitary ground on which the enquiry was held to be invalid having disappeared it must follow that the Arbitrator had no jurisdiction to enter into the merit of the case of interfere with the punishment of dismissal inflicted upon Rama Shanker and Barmapradhan. That part of the Arbitrator's award which has been confirmed by the High Court is, therefore, set aside. The alternative contentions raised by counsel for the Management in these appeals do not survive. C.A. No. 209 of 1973 (filled by the Management) is allowed and C.A. No. 1140 of 1974 (filed by the two workmen Rama Shanker and Barmapradhan) is dismissed. There will be no order as to costs.

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