Howrah Trading Company (Private) Ltd. Vs. Fourth Industrial Tribunal and ors.

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Court : Kolkata

Decided On : Aug-30-1965

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Judge : B.N. Banerjee, J.

Appellant : Howrah Trading Company (Private) Ltd.

Respondent : Fourth Industrial Tribunal and ors.

Judgement :

B.N. Banerjee, J.

1. Respondent 3, Doodhnath Pandey, used to serve as a durwan under the petitioner-company. On 3 May 1960, the petitioner-company charged respondent 3 with misconduct in the following language:

On 27 April 1960 at 9-45 a.m. when you went to give your attendance to Sri Motilal Misra, you shouted at the top of your voice and wanted Sri Miara to take your attendance disregarding other members of the sub-staff, who were there to give attendance. On Sri Misra asking you to wait a little, you. became very rude and insolent, shouted at the top of your voice and used filthy language against Sri Misra.

Your behaviour and motion in creating a scene is tantamount to activities subversive of discipline. You are therefore required to show cause within three days from date hereof why disciplinary action should not be taken against you.

2. On 9 May 1960, respondent 3 showed cause denying the charge.

3. In the meantime, respondent 3 is said to have committed further misconduct on 5 May 1960. A second chargesheet, dated 24 May 1960, was, therefore, served upon respondent 3, couched in the following language:

Further to the letter of charge dated 3 May 1960 it is again reported that on 5 May 1960 when you along with others went to the currency office to bring change for distribution of wages in the mills, you became insolent on other darwans and behaved very rudely and uttered that nobody should try to help (?) the cashier to get the changes required for the mills. You also showed your temper on others when they insisted to have the change from cashier and you would have quarrelled with other durwans and used filthy language and uttered that you would see them.

Your behaviour and action is in complete disregard to discipline and is subversive in

nature.

You are therefore required to submit your explanation within two days from date hereof.

4. In his explanation, dated 28 May 1960, respondent 3 again denied the charge. There was a domestic enquiry held on the two charges and witnesses were examined. The enquiring officer found respondent 3 guilty of both the charges and recommended that he be discharged from service. Pursuant to the recommendation, respondent 3 was ordered to be discharged from the service of the petitioner-company, with effect from 10 October 1660. Since there was an industrial dispute pending between the petitioner-company and its workmen at that time, before an industrial tribunal, the petitioner-company made an application for approval of the order of discharge under Section 33(2)(b) of the Industrial Disputes Act. Respondent 3 also filed a complaint under Section 33A ofthe Act. The industrial tribunal passed an order, dated 17 April 1961, directing that the applications shall be heard on merits. As against the aforesaid order, the petitioner-company moved this Court, under Article 226 of the Constitution, and obtained a rule, being Matter No. 144 of 1961. That rule was made absolute by this Court, on 20 September 1962, the order, dated 17 April 1961, was set aside and the matter was remanded to the respondent Industrial tribunal for disposal according to law.

5. After remand, the industrial tribunal came to the following conclusions:

A. ....Two facts have been brought to my notice ....The first thing is that although Sri Misra, the complainant and most important witness with regard to the first charge, did not say anything in his voluntary statement regarding the filthy language or threats, leading questions were put suggesting answers not stated earlier against Pandey....Sri Misra stated simply that although there were four or five persons before Pandey. he was requested by Pandey to record his attendance immediately. Sri Misra asked him to wait for a minute but Pandey shouted. Nothing has been stated about the actual word used in the shout or how he shouted. The grievance of Sri Misra was that he felt Insulted. After the narration several questions with answers have been recorded in the records of the proceedings. The questions are do doubt suggestive and leading. It is clear from the questions that attempts were made to elicit answers from the witness incriminating: Pandey ....The suggestive questions leading to the answers were certainly prejudicial to the best interest of Pandey, and the questions were allowed against the principles of natural justice. Similar queatiors were put to the other witnesses of the management and they were, no doubt, improper for a fair enquiry and just decisions...

B. It has been also submitted that the enquiry held against Pandey was not fair because neither the petition of complaint referred to at the enquiry was shown to the delinquent earlier nor a copy thereof was supplied along with the chargefiheet. It has also been argued that the contents of the letter were not even read over to Pandey at the time of enquiry. The evidence shows that the enquiring officer had a complaint, alleged to have been written by Sri Misra, with him from before the time of enquiry. Sri Misra also referred to this letter in reply to a leading question. Although this letter was not referred to in the findings of the enquiry officer, I cannot hold that the enquiry officer had been able to keep his mind quite free from that letter which was all the time in his possession...

C. ...I am inclined to hold that the contents of the letter alleged to have been written by Sri Misra were not read over and explained to the delinquent at the time of enquiry. I have great doubt in my mind as to the existence of this letter at the time when the chargesheet was served upon the delinquent...

I have given my anxious consideration to the records of the proceedings and the evidence and I am satisfied that the enquiry held against Pandey was improper and unfair and against the principles of natural justice...

D.... the findings of the enquiring officer are recorded in Ex. 6-a. The decision is very short and without any details. Practically speaking, there is no discussion as to how the enquiring officer came to his findings against the delinquent...

E. ... the first charge against Pandey relates to 27 April 1960 when Pandey, as alleged, became very rude and insolent by shouting at the top of his voice and using filthy language against Sri Misra. Sri Misra has stated at the enquiry that Pandey shouted and that he felt insulted. He has categorically stated that Pandey did not abuse him. Sri Misra has not stated anything to suggest even that Pandey used any filthy and objectionable language. One Ram Manohar Sharma was also examined at the enquiry on the side of the management. He has stated that Pandey asked Sri Misra to take his attendance immediately as he was getting late in going to department. Sri Misra asked him to wait but Pandey, according to Sri B. M. Sharma, asked him to taka his attendance. Pandey said that he was going away and this statement was made loudly ... He has Dot spoken about filthy language . . . There was no other witness regarding the first charge. From the evidence recorded by the enquiring officer, it cannot be said by any reasonable person by any stretch of imagination that the first charge relating to the use of filthy language, rude and insolent behaviour has been prima facie proved.

* * *F. Regrading the second charge, the place of occurrence has been described as the currency office, and the date is 5 May 1960. Two witnesses were examined at the enquiry regarding this charge. Ramkhelwan Tewari and Maui Lai Dubey were the witnesses. According to Sri Tewari, he went to the currency office on 4 May 1960 and there the witness told Pandey to go to Sara Cashier to make some enquiry. Panday, in reply, angrily said: 'What business you have?' There was no other incident at the currency office. This incident took place on 4 May 1960. Sri Tewari then Spoke about some altercation between him and Pandey in the cash department of the company's office on 5 May 1960. This was not a subject matter of the charge. Sri Dubey, the other witness, has spoken about some altercation between Pandey and Sri Tewari at the office of the company on 6 May 1960, There is no allegation regarding abusive language . . . It is to be noted that the facts stated In the second chargesheet alleged to have taken place on the dates mentioned at the currency office, have not been supported by any witness.

* * *G. ...regarding the method of enquiry, the nature of report of the enquiring officer and the manner in which the chargesheets were issued to the delinquent, I have no manner of doubt in my mind that the enquiry as well as the order of discharge terminating the service of Doodhnath Pandey were mala fide, improper and illegal. It is clearly a case of victimization and unfair labour practice.

6. In the view taken, as stated above, the respondent-tribunal dismissed the application under Section 33(2) of the Industrial isputes Act. Aggrieved by the order,

the petitioner-company moved this Court, under Article 226 of the Constitution, praying for a writ of certiorari for quashing of the order or writ of mandamus directing respondent 1 to forthwith recall, cancel and withdraw the said order and obtained this rule.

7. Sri Ginwalla, learned advocate for the petitioner, contended, in the first place, that the respondent tries mal was wrong in importing considerations of the violation of the principles of natural justice, because in his opinion leading questions were put to some of the witnesses examined by the patitioaer-company, in particular to Motilal Misra, the timekeeper. In my opinion, in this contention Sri Ginwalla is right, under Section 141 of the Indian Evidenca Act, ' leading question' is defined as 'any question suggesting the answer which the person putting it wishes or expects to receive.' In other words, a question, if framed in such a manner that it throws a hint or suggestion as to the answer which the examiner desires to get from the witness, is a leading question. The general principle applicable to leading questions, as stated in Wigmore on Evidence (Vol. III, Article 769, p. 122), is this:

On the direct examination, i.e., by the counsel of the party in whose favour the witness is called, the moat important peculiarity of the interrogational system is that it may be misused by suggestive questions to supply a false memory for the witness, that is, to suggest desired answers not in truth based upon a real recollection. The problem is to discriminate between the form of questions which will too probably have that effect and those which will not. Questions may legitimately Biggest to the witness the topic of the answer; they may be necessary for this purpose where the witness is not aware of the next answering topic to be testified about, or where he is aware of it but its terms remain dormant in his memory until by the mention of some detail the associated details are revived and independently remembered. Questions, on the other hand, which so suggest the specific tenor of reply as desired by the counsel that such a reply is likely to be given, irrespective of actual memory, are illegitimate.

The essential notion then of an improper (commonly called a leading) question which suggests the specific answer desired. It will be seen that a collusive or conscious intention of the witness to answer, as desired, is here not a necessary assumption. That is a frequent danger but not the only one ; for the known principles of human nature tell us that a witness may also uncon-Bciously accept the suggestion of a question. It is, therefore, not necessary to attribute a corrupt intention either to a witness or to a counsel, since the danger has larger aspects than that.

8. The matter is entirely one of procedural law, i.e., of the correct procedure by which evidence is to be obtained. The ban on leading questions is, however, not absolute and this appears from Section 142 of the Evidence Act:

Leading questions must not, if objected to by the adverse party, b asked in an examination-in-chief or in a re-examination except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

9. Thus, if evidence has been admitted without objection, it must not be later on rejected on the theory that such evidence was obtained by questioning the witness in the leading form. Even been questions are objected to, as leading questions, a Court

may allow such questions to go in, so far as civil cases are concerned, under the procedar prescribed by order XVIII, Rule 11, of the Code of Civil Procedure:

Where any question put to a witness is objected to by a party or his pleader and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it together with the decision of the Court thereon.

10. Thus, it follows that the admissibility of leading questions must rest largely, if not entirely, in the hands of the trial Court. So much depends on circumstances of each case, the demeanour of each witness and the tenor of the preceding questions, that it would be unwise, if not Impossible, to attempt in an appellate tribunal to consider each question adequately. This, again, is pointed out by Wigmore on Evidence (Vol. 3, Article 770, pp. 126-127):

The entire regulation of the procedure, furtherance, is attended by no fixed rules. For example, when an improperly suggestive question has baen put but ruled out, it may be allowed to be phrased in proper form and put again, although presumably the harm has been irretrievably done; or, the witness in such a case may be prevented from answering at all on the subject of the question. The proper consequence to be applied is peculiarly a matter for the trial Court's discretion.

11. The legal position as to leading questions under the Indian Evidence Act being as hereinbefore stated, the position is easier in domestic enquiry in which the Indian Evidence Act does not apply and where the enquiring officer is entitled to collect evidence not hedged in any way by limitations prescribed under the Indian Evidence Act. The respondent tribunal was in an error in importing considerations of procedure under the Indian Evidence Act to domestic enquiries and in holding that violation of that procedure resulted in the violation of the principles of natural justice. In this view, I find support from a judgment of the Supreme Court in State of Madhya Pradesh v. Chintaman Sadasive Waishampayan A.I.R. 1961 S.C. 1623, in which Venkatarama Ayyar, J., observed:. tribunals exercising quasi-judicial functions are not Courts and that, therefore, they are not bound to follow the procedure prescribed for trials of actions, in Courts, nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all the information, material for the points in enquiry, from all sources and through all channels without being fettered by rules and procedure which govern proceedings in Courts. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity, to explain it.

The same view appears to have been reiterated by P.B. Mukerji, J. (Masud, J., agreeing with him) in K. L. Agarwal v. Collector of Land Customs 69 C.W.N. 864, where his lordship observed as follows:

Natural justice must not be strained to become artificial justice. Procedural justice, according to statutes or under statutory rules, are different from concepts of natural justice; there the procedure under the statute or the rules must govern. If the Collector of Land Customs is to convert himself into a regular Court of law for hearing formal cross-examination and apply the Evidence Act and the Civil or Criminal Procedure Code in this manner, as a Court of law, then of course it will be physically or literally impossible for him to function as the Collector of Customs.

His lordship no doubt made the observation in the context of cross-examination but the observation equally applies to examination-in-chief. In my opinion, the glamour of procedural requirements, in the matter of collecting evidence in judicial proceedings under the Evidence Act, so far blinded the respondent tribunal that it forgot that the enquiring officer, exercising quasi-judicial functions, was not bound by those requirements. This forgetfulness led the tribunal to come to the further erroneous conclusion that the violation of the procedural requirements amounted to violation of principles of natural justice. The equation by the tribunal of violation of procedural rules under the statute with violation of principles of natural justice justifies the criticism levelled by P. B. Mukherji, J., in K. L. Agarwal case 69 C.W.N. 864 (vide, supra) that

Natural justice is fast becoming the most artificial and for that confusion Courts are no less responsible than the litigants.

Sri Arun Prokash Chatterjee, learned advocate for respondent 3, invited my attention to a decision by the Madras High Court in Peirce, Leslie & Co., Ltd., Coimbatore v. Labour Court, Coimbatore, and Anr. 1963-I L.L.J. 797 in which Veerswami, J. sitting singly, observed:. If facts of the enquiry show that an attempt was made in it to put leading questions only to get answers in support of the charge, it is obisous that such an enquiry cannot be said to be quite fair.

I have already indicated the reasons why I am unable the condemn leading questions In domestic enquiries. I therefore respect fully dissent from the views expressed by the Madras High Court. Although I do so, I desire to make one position clear. Leading questions may be permitted to be asked in a domestic enquiry or evidence may be collected by suggestive form of questioning. But a domestic tribunal may evaluate answers obtained by questions in the suggestive form. If circumstances juatify, a domestic tribunal may not rely upon such answers, if it is of the view that bat for that form of questioning, the answer given by the witness would have been otherwise.

12. Sri Ginwalla contended, in the next place, that the respondent-tribunal was in error in holding that the enquiry was improper, unfair and against the principles of natural justice because the copy of the complaint made by Motilal Misra, the timekeeper, was not given to respondent 3 nor was even shown to him. Sri Ginwalla contended that the complaint was not relied upon by the enquiring officer and therefore the nondisclosure of the document to respondent 3 need not be treated as fatal to the enquiry. The complaint is annexure F to the petition, addressed to Kishorilal Babu (meaning K. L. Jalan) and reads as follows:

Most humbly this is to bring to your notice that Dudhnath Pandey came to give his attendance today. He was standing after a few persons and coming to give attendance he shouted that his attendance should be taken immediately. On my asking him to be quiet and wait for the turn, he showed his red eyes and moving his hands, he became very insolent, shouted and uttered ' Lat Sahib ka baccha ban gayer has and I will not remain standing for giving attendance. Ho threatened me and then left without giving attendance.

In this case, you will please enquire from anyone and after enquiry take such action as you deem fit and proper.

Sri Ginwalla is not quite correct in this submission. The enquiring officer asked two

questions to Motilal Misra, the timekeeper, on the written complaint made by him. The first question and answer were:

Q. Did you make any petition to Sri M. L. Jalan ?-Yes, I made the same.

13. The second question and answer were:

Q. Can you say when did you report and to whom?-On 27 April 1960 when I felt pain I reported to Sri K. L. Jalan on 27 April 1960.

14. This complaint by Misra, the timekeeper, was a piece of evidence in the enquiry and Motilal Miara was questioned thereon. No copy of the document was given to the petitioner. This is admitted and this is bad enough. The enquiring officer, who gave evidence before the industrial tribunal, tried to salvage the situation by deposing in the following manner:

In the records of the proceedings there is no note to suggest that the petition of complaint was read over or explained to Dudhnath. But, in fact, I read over and explained the contents of the petition to Dudhnath and I explained the document in English to the representative of Dudhnath. Important matters are to be recorded in the proceedings.

* * *I cannot attribute any reason as to why I did not state in the records of the proceedings about the reading over of the petition of complaint.

15. If this evidence had been accepted by the tribunal, then, on the principles laid down by the Supreme Court in New Prokash Transport Co. Ltd. v. New Suwarna Transport Co. Ltd. : [1957]1SCR98 , I might have held that it was enough compliance with the rules of natural justice. But this evidence was not accepted by the respondent-tribunal, for reasons already quoted, Since I do exercise appellate jurisdiction over the tribunal, I cannot come to a different conclusion myself. The position, therefore, is that a written document against respondent 3 was used in the disciplinary proceeding against him, without disclosing the document to him. Since the doctrine of natural justice, known as and alter am partem, requires that before reliance can be placed on any document the same must be placed before the person charged for his information, comment and criticism and also for rebuttal by him, if at all, the non-disclosure of the complaint to respondent 3 was rightly regarded by the respondent tribunal as violation of the principles of natural justice.

16. The respondent-tribunal is also right in its criticism that the finding of the enquiring officer was too short and did not contain any discussion as to how the enquiring officer came to his conclusions. This is no doubt a lacuna, as pointed out by the Supreme Court in the case of Sur Enamel and Stamping Works, Ltd, v. their workmen 1963-II L.L.J. 367:. An enquiry cannot be said to have been properly held unless

(i) the employee proceeded against has been informed clearly of the charges levelled against him,

(ii) the witnesses are examined-ordinarily in the presence of the employee in respect of the charges,

(iii) the employee is given a fair opportunity to cross-examine witnesses,

(iv) he is given a fair opportunity to examine witnesses including himself in defence if he so wishes on any relevant matter, and

(v) enquiring officer records his findings with reasons for the same in his report.

17. In the instant case, the enquiry report is an exceedingly cryptic document, It reports the names of witnesses examined on behalf of the management and without stating what they said concludes:

From the record of evidence it is conclusively proved that Dudhnath Pandey committed the misconduct enumerated in the chargesheet. There is no reason to disbelieve the evidence of these people.

Thereafter, the report mentioned the names of witnesses examined by respondent 3 and rejects their evidence on the twofold theory that:

(1) they are interested witnesses without disclosing how they were so, and

(2) their evidence was fabricated because they did not say anything regarding the incident in the bank.

18. The report concludes by saying:

All other relevant points from the proceedings will be explained personally.

19. What explanation was personally given does not appear and I have no means of knowing the same. Sri Ginwalla tried to explain away the last-quoted statement with the contention that the same was a respectful form of making a report. I am unable to accept this explanation. If the enquiring officer verbally stated more to the authorities than what appeared from the report, the value of the written report becomes very much less. I therefore uphold the criticism made of the report by the respondent-tribunal.

20. Lastly the respondent-tribunal came to the finding that the first charge about the use of filthy language, rude and insolent behaviour was not prlma facie proved; also that the facts stated in the second charge-sheet were not supported by any witness. Sri Ginwalla tried to repel this finding by contending that' the respondent-tribunal misunderstood the first charge which found fault with the petitioner in creating a scene which was subversive to discipline and further that the respondent-tribunal erroneously constituted itself into a Court of appeal over the domestic tribunal in coming to the conclusion that both the charges were not proved toy evidence.

21. I have, therefore, to see what was exactly meant by the first charge, which I have hereinbefore set out. In my reading, the first charge meant that the petitioner by his behaviour, namely, by using filthy language against the timekeeper and by his manner, that is to say, by shouting out father language created a scene and thereby broke the office discipline. The respondent-tribunal examined evidence and came to the conclusion that there was no evidence of use of filthy language. Sri Ginwalla could not also point out to any piece of evidence which indicated the use of filthy language, excepting of course the letter of complaint, which was not shown to

respondent 3. But if the use of filthy language goes, then little remains of the first charge, because respondents was not charged of shouting' anything else except filthy language and thereby creating a scene. I therefore do not find any substance in this branch of submission of Sri Ginwalla.

22. I now turn to the findings of the tribunal regarding the second charge. The jurisdiction of the tribunal, while dealing with an application under Section 33(2)(b), is no doubt a limited jurisdiction. he tribunal may Interfere

(1) if there is want of good faith.

(2) if there is victimization and unfair labour practice,

(3) If the management has been guilty of basic error or violation of the principles of natural justice, and

(4) if, on the materials, the finding is completely perverse, in the sense that on such materials, no reasonable man could arrive at the impugned finding.

Now, there is no evidence of the use of filthy language by respondent 3 relating to the second charge, Sri Ginwalla also could not point to any. There is no doubt evidence of rude behaviour and frayed tamper exhibited by respondent 3. The charge was exhibition of temper and of quarrelling with other darwanfl in filthy language. The tribunal was right in observing that respondent 3 did not use filthy language. It was also right in holding that the evidence of misconduct of respondent 3, on other dates, had no relationship to the charge. That there was an occurrence in the currency office on 5 May 1960 between respondent 3 and other darwans appears but it is not exactly the type of occurrence mentioned in the chargesheet. I am not therefore in a position to dissent from the view expressed by the tribunal, on consideration of evidence.

23. I, however, further make it clear that I do not agree with the tribunal that the petitioner-company either victimized respondent 3 or acted mala fide. All errors do not spring from mala fides. Such sweeping findings, in the absence of better evidence, should not have been so glibly made.

24. In the result, although I do not agree with some of the findings of the tribunal, I do not think, regard being had to the other findings of the tribunal, that this is a fit case for interference by this Court. I therefore discharge the rule but make no order as to costs.