The Dunlop Rubber Co vs Workmen on 10 November, 1964

Equivalent citations: 1965 AIR 1316, 1965 SCR (2) 414

Author: S.M. Sikri

Bench: S.M. Sikri, P.B. Gajendragadkar, M. Hidayatullah, J.C. Shah, R.S. Bachawat

PETITIONER:
THE DUNLOP RUBBER CO.

Vs.

RESPONDENT:
WORKMEN

DATE OF JUDGMENT:
10/11/1964

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
GAJENDRAGADKAR, P.B. (CJ)
HIDAYATULLAH, M.
SHAH, J.C.
BACHAWAT, R.S.

CITATION:
1965 AIR 1316 1965 SCR (2) 414

ACT:
Domestic enquiry-Dismissal of workmen for 'go slow'-Charge not expressly mentioning go slow but referring to Standing Order dealing inter alia with 'go slow'-Enquiry officer turning down workmen's request of representation through a member of unrecognised union-Enquiry whether vitiated.

HEADNOTE:
The appellant company dismissed some workmen after a domestic enquiry holding them guilty on a charge of 'go slow' action. The respondents raised an industrial dispute. The Industrial Tribunal found that the dismissal of the respondents could not be sustained as there was no specific mention of 'go slow' in the charge. Further it found that there was denial of natural justice at the enquiry as the

workmen were not allowed to be represented by a person of their choice. The Tribunal set aside the dismissal of the respondents and ordered their reinstatement. The company appealed to the Supreme Court by special leave.
HELD : (i) The charge specified cls. 10(vii) and (xvi) of the Operators Standing Orders. These clauses deal with insubordination and, inter alia, with 'go slow'. The workmen had been expressly warned by notice that they were "going slow" and in their reply to the charge they denied that they were going slow. The Tribunal was thus wrong in holding that the workmen were not charged with 'go slow' action and could not be found guilty of that charge. [143 B-C, G-H]
(ii) 'Mere was no denial of natural justice because the workmen asked to be represented by a member of a union which was not recognised The Standing Orders clearly provided that only a representative of a union which is registered under the Trade Union Act and recognised by the company can assist. 'Mere was no right to representation as such unless the company by its Standing Order recognised such a right. [144 F-G, H]
Kalindi & Ors. v. Tata Locomotives & Engineering Co. Ltd.[1960]3 S.C.R. 407 and Brook Bond India (P) Ltd. v. Subba Raman [1961] 11 L.L.J. 417, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 464 of 1964. Appeal by special leave from the Award dated the September 29, 1962 of the Third Industrial Tribunal in Case No. VIII- 197 of 1960.

A. V. Viswanatha Sastri, Anand Prakash and D. N. Gupta, for the appellant.

N. C. Chatterjee, D. L. Sen Gupta and Janardan Sharma, for the respondent.

The Judgment of the Court was delivered by Hidayatullah, J. The Dunlop Rubber Co. Ltd. was granted on January 21, 1963 special leave to appeal against the award of the Third Industrial Tribunal, West Bengal dated September 29, 1962. By that award the Tribunal set aside the dismissal from service of twelve workmen of the Company and ordered their reinstatement with continuity of service but awarded only 25 per cent of the back wages etc. during the period they were out of employment treating the period as leave. This dispute was referred by the Government of West Bengal on July 20, 1960 under s. 10 of the Industrial Disputes Act, 1947. The workmen were dismissed after a domestic enquiry commenced on February 4, 1960 which was carried on exparte because these workmen did not choose to be present. The Tribunal held that the enquiry was not proper and some of the witnesses were re-examined before the Tribunal whose verdict was against the Company and hence this appeal.

Eleven of these workmen belonged to what is known as the Dual Auto Mill and the twelfth was working on what is described as the Baby Mill. These workmen and several others stopped work from January 21, 1960 and they were placed under suspension on 25/27th January. Ten other workmen were also dismissed but they were taken back on the intercession of the Government of Bengal. The incident arose in the following circumstances :

> In the processing of rubber which is used in the manufacture of rubber goods by the Company, a number of departments have to work in sequence. The Banbury Section prepares a mixture of rubber and chemicals and it is passed on to the Dual Auto Mill which, after further processing, turns out blocks of rubber called "batches". Each batch is of about 1250 lbs. There were at the material time two Dual Auto Mills and they were working in three shifts and as each auto mill required the attendance of two workmen, twelve such workmen were employed to look after the two mills. Each shift was of 8 hours with half an hour's rest for meals and an extra 20 minutes for emergencies. It was expected to produce and was, in fact, producing 17 batches till January 12, 1960. There was another mill called the Baby Mill but what it was used for is not quite clear on the record of the case. One of the dismissed workmen (S. R. Sen Gupta--Check No. 252 was working on the Baby Mill and he was a protected worker. The workmen in this Company are grouped under three Unions :
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> the most numerous is Union No. 4145 which goes under the name of Dunlop Workers' Union. This Union was registered but it was not recognised by the Company. Another Union which bears No. 729 and goes under the, name of Dunlop Rubber Factory Labour Union was recognised by the Company.. We need not refer to the third Union which does not figure in these proceedings. It appears that Union No. 4145, which came into existence in 1957, managed to capture all the elective seats open to the workmen by defeating the candidates set up by Union No. 729. There was great rivalry between the two Unions and the dismissed workmen belonged to Union No. 4145. It appears that Union No. 4145 had raised a demand for revision of wages etc. which was being resisted by the Company. The Baby Mill, the Banbury Mill and the Dual Auto Mills were manned by the workmen belonging to Union No. 4145, except one Raghunandan Das, Check No. 100, who belonged to Union No. 729 and was teamed with Chandramma Chaube one of the dismissed workmen. Raghunandan Das was absent on leave from January 12 to January 19, 1960. From January 12, there was a fall in the output of the Dual Auto Mills at all the three shifts. The number of batches fell from 17 to 15 and later still further. On January 15, 1960 warnings were issued to these workmen that they were going slow and that "go slow" action was misconduct under cl. 10(XVI) of the Company's Standing Orders for operators and under cl. 18(C) of the Labour Union Agreement for operators. They were told that if they did not immediately return to their normal output the Company would be forced to take disciplinary action against them. All the workmen were served with such letters.

On January 19, Raghunandan Das joined his duties and was teamed again with Chandramma Chaube. It seems that Raghu- nandan Das found that Chandramma Chaube was not giving the full output and was taking more than the required time over the mixing operations. Chandramma Chaube's case, on the other hand, was that Raghunandan Das was not allowing sufficient technical time for the mixtures and he (Chandramma Chaube) was objecting to it. It may be pointed out that the workmen were. paid extra if they turned out more than the expected quota of batches and Raghunandan Das was anxious to earn more, if possible. Be that as it may, it seems that these two workmen quarreled on January 21 and Raghunandan Das abused Chandramma Chaube and also Union No. 4145. Immediately the members of 4145 Union threatened to stop work unless Raghunandan Das was removed from the Dual Auto Mill and transferred to another Department. The officers of the Company promised an enquiry but asked the workmen to go back to work. The workmen belonging to the 4145 Union refused to do this. As a result the Dual Auto Mills either remained closed or worked much below their capacity. The workmen were again and again requested and ultimately on 25/27th January they were called to the office so that they could be served with charge- sheets. They declined to accepted the charge-sheets and were there and then placed under suspension. The suspended workmen included these twelve workmen and ten others as already stated. One Mr. P. K. Maitra commenced enquiry into the charges in the presence of Mr. R. M. Bhandari, an observer. At the commencement of the enquiry each of the workmen asked for a representative of Union No. 4145 who was "conversant with the art of cross-examination" to be present. Under the Standing Orders of this Company representation could only be by a member of a recognised Union but as Union No. 729 was anathema to the members of Union No. 4145 they would not avail of the services of any member of that Union. They elected to remain absent except S. R. Sen Gupta who, though their leader, appeared at the enquiry against himself and made a statement clearing himself but took no further part in the enquiry. As a result of the enquiry, which was ex parte, Mr. Maitra held that these workmen were going slow and that they were guilty of the charge brought against them. He recommended the punishment of dismissal. The Company accordingly ordered their dismissal seeking at the same time the permission of the Tribunal under s. 33 of the Industrial Disputes Act and tendering one month's wages to each workman. Later, the Government of West Bengal took interest in the matter and at the intercession of the Government the Company agreed to take back 10 of the workmen leaving it to Union No. 4145 to select the persons who should be taken back. All the workmen of the Banbury Mill were taken back and the 1 1 workmen of the Dual Auto Mill and Sen Gupta of the Baby Mill remained dismissed.

The Tribunal in reaching the conclusion that the dismissal was improper and that the workmen should be reinstated held that the Company had not really charged the workmen with "go slow" action but had found them guilty of that charge. It held that the Company was showing favours to Union No. 729 and was trying to put down the Union of the dismissed workmen. The Tribunal, however, held that the stoppage of

work by the workmen amounted to strike as there were proceedings pending before the Tribunal, but since the strike was peaceful and non-

vident it was only technically illegal. The Tribunal blamed the Company for contributing to the strike by its refusal to shift Raghunandan Das from his place of work. In view of these findings the Tribunal held that the punishment of dismissal was not justified and the order now impugned was accordingly passed.

The Tribunal was wrong in almost all its conclusions. It was wrong in holding that the workmen were not charged with "go slow" action and therefore could not be dismissed on the finding that they were guilty of "go slow". Under the Standing Orders of the Company "go slow" is a major misconduct. Clauses (VIII) and (XVI) of Standing Order 10 deal with insubordination or disobedience or failure whether alone or in combination with others, to carry out any lawful and reasonable or proper order of a Superior (cl. VIII) and engaging or inciting others to engage in irregular or unjustified or illegal strikes; malingering or slowing down of work (cl. XVI). The charge-sheet stated as follows :-

"You are hereby asked to show cause why disciplinary action should not be taken against you for the following misconduct under Operators Standing orders Clauses 10(VIII) and (XVI).

The two clauses of Standing Order 10, as pointed out above, deal with insubordination and inter alia with going slow. It was contended before us that the words "go slow" did not figure in this charge as they did in the charges against workmen in the Banbury AM. It is to be remembered that on January 15, 1960 these workmen had been expressly warned that they were going slow and that "go slow" action was misconduct under cl. 10(XVI) of the Company's Standing Orders for Operators. No doubt Mr. Lobo, who drew up the charge, had not mentioned go slow in these charges as he had done in the charges framed against the workmen of the Banbury Mill, but it is nevertheless clear that these charges refer to go slow and indeed the workmen in their replies to the charge denied that they were going slow. It may be pointed out that Mr. Lobo had stated before the Enquiry Officer that the charge was "go slow". The log books also showed that from January 12, 1960 against the Dual Auto Mills the remark was "slow work". It is clearly established by the records produced that instead of 17 batches 15 batches or less were turned out at each shift. This proves that there was a deliberate "go slow" no sooner Raghunandan Das left on leave and the Dual Auto Mills came into the exclusive hands of Union No. 4145. This Union thought that the opportunity was too good to be wasted to force their demand for increase of wages by the tactics of "go slow". The explanation of the workmen that the mixture received from the Banbury Mill was too cold and had to be reheated before it could be processed in the Dual Auto Mills was false. They attributed the cooling of the mixture to the working of a new machine called the festooner from the 12th of January. It is clear that this machine was tried for three months before it was put into operation and had worked for three months prior to January 12, 1960 and so such complaint had been made by the workmen. It is possible that the Banbury Mill operators, who were also suspended and dismissed, were cooling the mixture unduly by means of their blower to delay operation. But whether the Banbury Mill cooled it and the Dual

Auto Mills were required to reheat it or the Dual Auto Mills delayed the operations, it is clear that the motivating force behind it was the action of Union No. 4145 to force the hands of the Company in support of their demands. It is sufficient to say that after the new workmen had got trained in the working of the Dual Auto Mills the production again reached the same number of batches and after the figure was even better though the festooner continued in operation. We are satisfied that the workmen were going slow from January 12, 1960, that the charge of "go slow" was incorporated in the charge-sheet read with the warning letter and that it was fully substantiated. This amounted to misconduct under Standing Order No. 10 and was not a minor offence as contended before us by their learned counsel. The minor offences deal with conduct of a very different kind.

The Tribunal was also wrong in thinking that there was a denial of natural justice because the workmen were refused the assistance of a representative of their own Union. Under the Standing Orders it is clearly provided that at such enquiries only a re-presentative of a Union which is registered under the Indian Trade Union Act and recognised by the Company can assist. Technically, therefore, the demand of the workmen that they should be represented by their own Union could not be accepted. It has been ruled by this Court in Kalindi & Ors. v. Tata Locomotive & Engineering Co. Ltd.(1) and Brook Bond India (P) Ltd. v. Subba Raman(2) that there is no right to representation as such unless the Company by its Standing Orders recognises such a right.

(1)[1960] 3 S.C.R. 407.

(2) [1961] 11 L.L.J. 417.

Refusal to allow representation by any Union unless the Standing Orders confer that right does not vitiate the proceedings. It is true that only the rival Union was recognised and there was hostility between the two Unions. The quarrel itself which sparked off the strike was also between two representatives of the rival Unions. In such circumstances it is idle to expect that these workmen would have chosen to be represented by a member of the rival Union and the Company might well have considered their demand to be represented by any other workman of their choice. The workmen, however, insisted that the representation should be in the capacity of a representative of their own unrecognised Union. In other words, they were desiring recognition of their Union in an indirect way. The dispute, therefore, was carried on by these workmen with the twin object of achieving their demand for increased wages and also for the recognition of their Union. The implication of their demand that they should be represented by a member of their own Union was not lost upon the Company and the refusal to allow representation on these terms cannot be characterised as a denial of natural justice or amounting to unfair play. If the Company had been asked that the workmen wished to be represented by a workman of their own choice without the additional qualification about Union No. 4145 it is possible that the Company might have acceded to the request. We think, the Company might have asked the workmen to delete all reference to Union No. 4145 and allowed them to have a representative of their own choice in the special circumstances of this dispute. But we cannot say that the action of the Enquiry Officer was for that reason illegal or amounted to a denial of natural justice. In this connection, we have repeatedly emphasised that in holding domestic enquiries, reasonable opportunity should be given to the delinquent employees to meet the charge framed against them and it is desirable that at such an enquiry the employ should

be given liberty to represent their case by persons of their choice, if there is no standing order against such a course being adopted and if there is nothing otherwise objectionable in the said request. But as we have just indicated, in the circumstances of this case, we have no doubt that the failure of the Enquiry Officer to accede to the request made by the employees does not introduce any serious defect in the enquiry itself, and so, we have no hesitation in holding- that the result of the said enquiry cannot be successfully challenged in the present proceedings.

It follows that the two main reasons for interfering with the order of dismissal do not really exist. The charge was under cls. (VIII) and (XVI) of Standing Order No. 10. It said so and its meaning was quite clear to the workmen who, according to plan, were definitely going slow from January 12, 1960 when the Dual Auto Mills passed into the control of workmen belonging to Union No. 4145. The demand of the workmen, couched as it was, could not be granted by the Enquiry Officer, because the Standing Orders did not permit representation by a member of any but a recognised Union. The additional reasons given by the Tribunal that later the demands of this Union were accepted in respect of wages can hardly justify the action of these workmen in going on an illegal strike and in declining to resume work unless what they demanded was done. There was thus justification for the order passed by the Company. It is on record that the Dual Auto Mills perform a key operation and no rubber goods can be produced without the batches being available. By their action these workmen slowed down production of every category and by their refusal to work when asked to go back to work cause enormous loss to the Company. The motive underlying the action is more deep seated than a mere quarrel between Chandramma Chaube and Raghunandan Das or the abuses which Raghunandan Das is alleged to have showered on Chandramma Chaube and his Union.

It is contended that there was discrimination between the Banbury Mill and the Dual Auto Mills because workmen of the Banbury Mill were reinstated but not the workmen of the Dual Auto Mills. The discrimination, if any, was made by Union No. 4145 which nominated those who should be taken back in service. There must be some reason why the Banbury Mill workmen were treated differently and if we are to hazard a guess, it seems that those workmen were not sending out a cold mixture as alleged but that the Dual Auto Mill workmen were taking more time on their own operation. The production was slowed down not by the Banbury Mill operators but by the Dual Auto Mill operators. In other words, the Banbury Mill workmen, though they joined in the strike, did not probably join in the "go slow", but the Dual Auto Mill workmen not only started "go slow" but also led the strike affecting a large number of workmen. In any event the workmen chosen for reinstatement'. were chosen by their own Union and it cannot be said that the Company made any discrimination.

We are satisfied that in this case the Tribunal was not justified in interfering. It has acted as a court of appeal in scrutinizing the evidence and in reaching conclusions of its own. We are also satisfied that the conclusions reached by it were not justified on the evidence in the case. In these circumstances, we think that the order passed by the Tribunal should be vacated and the order passed by the Company ought to be accepted.

It is a pity that these workmen, who, on their own admission were better paid than in any other Organisation should lose their job in an attempt to get an indirect recognition of their Union. But it

cannot be helped because the Company must have a free hand in the internal management of its own affairs. No outside agency should impose its will unless the action of the Company is lacking in bona fides or is manifestly perverse or unfair. There is nothing to indicate this. At the same time we must say that existence of Union No. 4145 which has a larger membership than Union No. 729 which is the only recognised Union, has in a great measure contributed to this dispute. We have often noticed that Companies favour one Union out of several and thus create rivalry which disturbs industrial peace. It often turns out that this has adverse effect on Company itself. Since Union No. 729 was formed in 1950 and Union No. 4145 in 1957 we cannot say that the non-recognition of Union No. 4145 was deliberate. But as that Union seems to be the stronger of the two Unions the Company should seriously consider whether Union No. 4145 should not also be recognised. The appeal must succeed. It will be allowed but we make no order about costs.

Appeal allowed.