

Mulchandani Electrical And Radio ... vs The Workmen on 24 January, 1975

Equivalent citations: AIR1975SC2125, [1975(30)FLR169], 1975LABLC1508, (1975)ILLJ391SC, (1975)4SCC731, 1975(7)UJ161(SC), AIR 1975 SUPREME COURT 2125, 1975 LAB. I. C. 1508, 1975 (1) LABLJ 391, 1975 4 SCC 731, 48 FJR 1, 30 FACLR 169, 1976 (1) SERVLR 48

Author: A.C. Gupta

Bench: A.C. Gupta, M.H. Beg, Y.V. Chandrachud

JUDGMENT

A.C. Gupta, J.

1. This appeal by special leave is directed against the Award made on August 9, 1973 by the Fifth Labour Court at Bombay deciding some of the issues arising for consideration in the reference before it.

2. The appellant company owns a factory at Thana near Bombay. Among the workmen of the Company are "Operators" who work under the supervision of "Charge-hands". On December 30, 1970 one Asha Bhambani who was an Operator employed in the Company's aforesaid factory is alleged to have threatened a Charge-hand, Ramesh Thadani, with assault because Ramesh Thadani had reported against another operator who was consequently removed from service. According to the Management, Ashok Bhambani followed up the threat by assaulting Ramesh Thadani at about 5:30 p m. that very day in the train between Thana and Mulund when Ramesh Thadani was on his way home after the day's work. Next day i.e. December 31, 1970 several Junior Assistants and Charge-hands employed in the factory submitted to the factory Manager a memorandum signed by them protesting against the assault on Ramesh Thadani. A charge sheet was served on Ashok Bhambani asking him to explain in writing why disciplinary action should not be taken against him for threatening and assaulting Ramesh Thadani which, it was stated, constituted a grave misconduct. After Ashok Bhambani had submitted his explanation there was an enquiry into the charges against him conducted by Shri D.S. Chandnani, Personnel Officer of the Company. The Enquiry Officer having considered the evidence adduced at the Enquiry found that the charges of threat and assault against Ashok Bhambani had been established. Ultimately, on February 9, 1971 Ashok Bhambani was dismissed from service. The employees, Union having raised a demand for his reinstatement in service with full back wages and continuity of service, the dispute was referred for adjudication to the Labour Court, Bombay.

3. At the request of the parties, the Labour Court heard as a preliminary issue the question whether the domestic enquiry was unfair, improper and unjust and against the principles of natural justice. It appears that along with this issue the Court also dealt with another question, namely, whether or not Ashok Bhambani was guilty of misconduct as alleged by the Company. Both the parties made their submissions also on this point before the Labour Court. In this Court the findings recorded by the Labour Court on both the questions were assailed by the appellant and supported by the respondent and no objection was taken by either side that the Labour Court while deciding the preliminary issue should not have gone on to record a finding on the other question as well. The propriety of the Award containing the findings of the Labour Court on these two points is in question in this appeal.

4. On the preliminary issue the Labour Court held that the enquiry had not been conducted in a fair and proper manner and, on the question of misconduct, found that the alleged assault did not amount to misconduct under the standing orders of the Company.

5. The finding that the enquiry had not been fair is based on the following facts. One Anant Bana, a Charge-hand, who had signed the Memorandum dated December 31, 1970 stated before the Enquiry Officer that he had not signed any such Memorandum. No one represented the Management at the enquiry. It appears that the Enquiry officer made a note that Mr. Bana had "turned hostile" and proceeded to put certain questions to the witness to resolve the apparent conflict between his statement at the enquiry and what the Memorandum dated December 31, 1970 purported to show. In answer to the questions put by the Enquiry officer, Mr. Bana admitted that he had signed the memorandum and that the words. "I was present at the times of the incident" appearing against his signature were by his own hand, and further that he presented the memorandum along with others to the factory Manager. This witness was cross-examined at length on behalf of the Union after the Enquiry Officer had put questions to him. In respect of another witness, Shri Mohan Shahani, also a Charge-hand, the Enquiry Officer made a similar note that he had turned hostile and put a number of questions to him. This witness also had signed the memorandum dated December 31, 1970 in which he stated that he was with Ramesh Thadani at the time of assault and had seen the "whole thing". Before the Enquiry Officer, however, he stated that he had not in fact seen the assault on Ramesh Thadani but he "felt that the assault on the Charge hand was a criminal offence." and therefore had signed the memorandum. In answer to one of the questions put to him by the Enquiry Officer, the witness admitted his signature on the memorandum and also that against his signature he had himself written that he had seen the incident himself. This witness also was cross examined on behalf of the Union after he had replied to the questions put to him by the Enquiry Officer. The labour Court held that the Enquiry Officer "had no business to treat the Company's witnesses Shri Anant Bana and Shri Mohan Shahani as hostile witnesses on his own" and "to ask questions for proving the misconduct alleged against the delinquent employee." Ashok Bhambani deposing before the Labour Court said that his only grievance against the enquiry was that the Enquiry Officer had "cross examined" the witnesses of the Management. As stated already no one was present on behalf of the Management at the enquiry. The memorandum dated December 31, 1970 was in apparent conflict with what Shri Anant Bana and Shri Mohan Shahani had stated before the Enquiry Officer. It was reasonable and also necessary to look for some explanation for the contradictory statements. If therefore, the Enquiry Officer had put certain questions to these two witnesses by way of

clarification, it could not be said that he had done something that was not fair or proper. The witnesses were allowed to be cross-examined on behalf of the Union after they had answered the questions asked by the Enquiry Officer. In our opinion the note made by the Enquiry Officer stating that the witnesses had turned hostile meant only that they had stated before him something that was inconsistent with what appeared in the memorandum signed by them. We do not think that the enquiry was vitiated because the enquiry officer put some questions to the laid witnesses by way of clarifications in the circumstances stated above. This Court in *workmen in Buckingham and Camatic Mills Madras v. Buckingham and Camatic Mills Madras* (1970) 1 LLJ 26 held that the Enquiry Officer in a domestic enquiry can put questions to the witnesses for clarification wherever necessary and if he allows the witnesses to be cross-examined thereafter, the enquiry proceeding cannot be impeached as unfair. We are therefore unable to accept that the enquiry in this case had not been conducted in a fair and proper manner.

6. On the question of misconduct the relevant Standing Order is standing Order 24 (1) which is in these terms:

24. The following acts and omissions on the part of a workman amount to misconduct :

XX XX XX XX (1) Commission of any act subversive of discipline or good behavior within the premises or precincts of the establishment :

XX XX XX XX It was not disputed before us that the allegation of assault, if proved, would be an act subversive of discipline; what was contended on behalf of the respondent was that the alleged assault having taken place in the train between Thana and Mulund which was obviously outside the premises or precincts of the establishment, was not covered by Standing Order 24(1). The Labour Court also found that the alleged assault did not amount to misconduct under Standing Order 24(1) which, it was held, was restricted to acts and omissions inside the premises of the establishment. In our opinion, on a plain reading of the clause, the words "within the premises or precincts of the establishment" refer not to the place where the act which is subversive of discipline or good behavior is committed but where the consequence of such an act manifests itself, in other words, an act, wherever committed, if it has the effect of subverting discipline or good behavior within the premises or precincts of the establishment, will amount to misconduct under Standing Order 24(1). We are unable to agree that Standing Order 24(1) leaves out of its scope an act committed outside though it may result in subversion of discipline or good behavior within the premises or precincts of the establishment in question. Such a construction in our view would be quite unreasonable.

7. For the reasons stated above the appeal is allowed, the findings recorded by the Labour Court on the questions referred to above are set aside. The Labour Court will now proceed to dispose of the reference in accordance with law. In the circumstances of the case we make no order as to costs.