

Management Of Indian Express And ... vs M.C. Kapur on 28 March, 1973

Equivalent citations: AIR1974SC1629, 1974LABLC1101, (1974)IILLJ240SC, (1974)4SCC848, AIR 1974 SUPREME COURT 1629, 1974 LAB. I. C. 1101, 1975 TAX. L. R. 1, 1974 2 LBLJ 240, 94 ITR 321, 45 FJR 38, 1974 SCC (TAX) 334

Author: A.N. Grover

Bench: A.N. Grover, S.N. Dwivedi

JUDGMENT

A.N. Grover, J.

1. This is an appeal by special leave from the order of the Additional Industrial Tribunal, Delhi in the matter of an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 filed by the Management of the Indian Express and Chronicle Press, New Delhi, against the respondent.

2. The respondent was a lino-operator in the service of the Indian Express and Chronicle Press, New Delhi. A Co-operative Society styled as the Indian Express Employees Thrift and Credit Co-operative Society (to be hereinafter called the Employees Co-operative Society) was set up in 1957. The membership of this Society was confined to the employees of the Indian Express and Chronicle Press. The President of the Employees Co-operative Society wrote to the General Manager of the Press that the Managing Committee of the Society had after a preliminary enquiry found that M. C. Kapur who was the Treasurer, was prima facie guilty of certain serious financial irregularities, including defalcation of the Society's funds.

3. On receipt of that letter the General Manager of the Company served a charge-sheet on September 5, 1966 on M. C. Kapur. He was charged with the following:

- (i) Misappropriating the funds of the Society.
- (ii) Getting false cash memo prepared.
- (iii) Falsification of accounts of the Society.
- (iv) Refusal to account for the amount of Rs. 3500/- of the Society.
- (v) Coercing the Society to make payment to Raj Sweets, New Delhi.

(vi) Refusal to hand over charge as Treasurer even after your resignation had been accepted and thus keeping the Society's money and books with you unauthorisedly.

4. An enquiry was held into the charges by Shri Ved Prakash, Public Relations Officer. M. C. Kapur denied all the charges. However, the Enquiry Officer found that with the exception of charge (v), all the other charges had been found proved against M. C. Kapur.

5. The question which the Industrial Tribunal had to decide was whether the termination of service which had been ordered by the General Manager as a result of the report of the Enquiry Officer was in accordance with the Standing Orders. According to the Standing Order 15(2) the, following acts and omissions shall be treated as misconduct. It is unnecessary to mention all of them but only those may be mentioned on which reliance has been placed by counsel for the appellant, namely (b) and (i) which read as follows:

(b) Theft, fraud or dishonesty in connection with the company's business or property.

(i) riotous or disorderly behavior during working hours at the establishment or any act subversive of discipline.

6. The Tribunal came to the conclusion that the Employees Co-operative Society was an altogether independent concern or organisation and the appellant's company had no financial or other interest in it nor did it have any control over its management, functioning or finances. According to the Tribunal, provision of certain amenities to the Employees Co-operative Society by the Company did not alter the character of the said Society. Hence the conduct of M. C. Kapur in regard to the affairs of the Society could not be regarded as affecting in any manner the smooth and efficient working of the press where he was employed. He repelled the arguments based on the ground that M. C. Kapur was guilty of an act "subversive of discipline" by saying that that would not be said to have been proved in the present case. He also did not agree that the definition of misconduct in the Standing Orders was exhaustive. In paragraph 19 the Tribunal stated that the finding of the Enquiry Officer was challenged by Kapur on three grounds, (1) that no proper enquiry had been conducted. (2) that no 'proper opportunity' was given to him to defend himself and (3) that the report of the Enquiry Officer was mala fide, arbitrary and bad. The Tribunal expressed the view that it had not been shown that the report of the Enquiry Officer based as it was on the evidence produced before him, was, in any manner, mala fide, arbitrary or biased or the enquiry had not been properly conducted. At any rate, in view of the finding that the misconduct alleged against M. C. Kapur was outside the purview of the Standing Orders governing him, the Tribunal declined to accord approval to the dismissal of M. C. Kapur.

7. Mr. Pai who appears for the appellant, relies primarily on Clause (i) of the Standing Order 15(2). He has not been able to show us how he can bring the findings which were given by the Enquiry Officer or the charges which were preferred against M. C. Kapur within the purview of that clause. No one charged M. C. Kapur with riotous or disorderly behavior during the working hours. The only other head under which he could be charged was that he had committed an act subversive of discipline. The charges which were preferred against him did not seem to relate, in any manner, to

the question of discipline. We are wholly unable to accede to the contention of Mr. Pai that the charges which were preferred and which were found proved by the Enquiry Officer and on the basis of which the dismissal was ordered by the General Manager, constituted acts subversive of discipline.

8. It is true that according to the Enquiry Officer's findings charges with regard to defalcation of certain amount and falsification of accounts etc. had been found proved but that is not the matter on which any final decision was given or could be given by the Tribunal and those findings were only of the Enquiry Officer although it was observed that the enquiry had been conducted in a fair manner. In view of the findings of the Tribunal the charges which were found proved by the Enquiry Officer would not be covered even by Clause (b) of the Standing Order 15(2). At any rate, on the finding of the Tribunal the order which was made was fully justified and we find no reason to interfere with it.

9. For these reasons the appeal must fail and is dismissed but keeping in view the entire circumstances we direct the parties to bear their own costs.