M/S. Bengal Bhatdee Coal Co vs Shri Ram Prabesh Singh & Ors on 23 January, 1963

Equivalent citations: 1964 AIR 486, 1964 SCR (1) 709, AIR 1964 SUPREME COURT 486, 1963 2 SCJ 704, 1963-64 24 FJR 406, 1963 (1) SCWR 547, 1963 6 FACLR 361, 1963 (1) LABLJ 291, 1964 (1) SCR 709

Author: K.N. Wanchoo

Bench: K.N. Wanchoo, Bhuvneshwar P. Sinha, P.B. Gajendragadkar, M. Hidayatullah, J.C. Shah

PETITIONER:
M/S. BENGAL BHATDEE COAL CO.

Vs.

RESPONDENT:
SHRI RAM PRABESH SINGH & ORS.

DATE OF JUDGMENT:
23/01/1963

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
SINHA, BHUVNESHWAR P.(CJ)
GAJENDRAGADKAR, P.B.
HIDAYATULLAH, M.
SHAH, J.C.

CITATION:
1964 AIR 486 1964 SCR (1) 709
CITATOR INFO :
F 1965 SC 917 (5)
R 1978 SC1004 (12)

ACT:
Industrial Dispute-Obstruction by some workmen of the work of other workmen-Show cause notice served-Found guilty by the management-Powers of the Tribunal-Whether unconscionable punishment would amount to victimisation-Industrial Disputes Act, 1947 (14 of 1947), ss. 10, 33(2) (b).

HEADNOTE:

The respondents were the employees of the appellant and while a strike was going on in the concern of the appellant they physically obstructed the loyal and willing trammers from working in the colliery and insisted on other workmen to join them in the obstruction. A charge sheet was served on the respondents and they were asked to show cause why disciplinary action should not be taken against them. The respondents submitted their explanation and on an inquiry held by the welfare officer they were found guilty and the welfare officer recommended their dismissal. The appellant filed an application before the Industrial Tribunal under s. 33 (2) (b) of the Industrial Disputes Act and the tribunal approved of the dismissal. Thereafter reference was made under s. 10 of the Act and the present appeal is by way of special leave against the order of the Industrial Tribunal made in that reference. The Tribunal has held that the enquiry by the management was proper but it further held that the dismissal amounted to victimisation.

The main question in the appeal was whether there was victimisation.

Hold, where a domestic inquiry is held properly the tribunal cannot sit in appeal on the findings of the domestic tribunal and it can only interfere with the punishment inflicted as a result of the domestic inquiry where there is want of good faith or basic error or the violation of the principles of natural justice or where the findings are perverse or baseless or the case is one of victimisation.

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Though in a case of proved misconduct normally the imposition of a penalty may be within the discretion of the management there may by cases where the punishment of dismissal for misconduct proved may be unconscionable or so grossly out of proportion to the nature of the offence that the tribunal may be able to draw an inference of victimisation merely from the punishment inflicted. Such was not the case here.

National Tobacco Co. of India Ltd. v. Fourth Industrial Tribunal, (1960) 2 L.L.J. 175, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 24 of 1962. Appeal by special leave from the award dated November 23, 1960, of. the Central Government Industrial Tribunal, Dhanbad in reference No. 31 of 1960.

M. C. Setalvad, Nonicoomar Chakravarty and B. P. Maheshwari, for the appellant.

M. K. Ramamurthi, for Dipat Datta Choudhri, for respondents Nos. 1 to 13.

1963. January 23. The judgment of the Court was delivered by WANCHOO, J.-This is an appeal by special leave against the order of the Central Government Industrial Tribunal, Dhanbad. The brief facts necessary for present purposes are these. A dispute was referred by the Central Government under s, 10 of the Industrial Disputes Act, No. 14 of 1947, (hereinafter referred to as the Act) with reference to the thirteen workmen involved in this appeal in the following terms "Whether the dismissal of the following thirteen workmen of Bhatdee Colliery, swa justified ? If not, to what relief are they entitled and from which date ?"

It appears that the thirteen workmen had physically obstructed the surface trammers working in the colliery on different dates, namely October 20, October 27, and November 3,1959 .some of them had also incited the other workmen to join in this act of obstructing the loyal and willing trammers so that they may be prevented from working. This happened during a strike which was begun on October 20, 1959 by the Colliery Mazdoor sangh to which the thirteen workmen in question belonged. In consequence the appellant served charge-sheets on the thirteen workmen on November 9, 1959 charging that "they physically obstructed the surface trammers on duty at No. 1 and 2 Inclines from performing their duties and controlling the movement of the tubs by sitting in-between tramline track and inciting" on various dates, thus violating regulation 38 (1) (b) of the Coal Mines Regulations. They were asked to explain within 48 hours why disciplinary action should not be taken against them under r. 27 (19) and r. 27 (20) of the Coal Mines Standing Order. The workmen submitted their explanations and an inquiry was held by the Welfare Officer of the appellant. The Welfare Officer found all the thirteen workmen guilty of the charges framed against them and recommended their dismissal. As another reference was pending before this very tribunal in November 1959, the appellant made thirteen applications to the tribunal under s. 33 (2) (b) of the Act for approval of the action taken. Though the workmen submitted their replies in those proceedings they did not contest them thereafter, and the tribunal approved of the action taken. Thereafter the present reference was made under S.10 of the Act. The case put forward by the workmen in-the present reference was that there was no proper enquiry as the workmen were not given a chance to defend themselves. It was further submitted that the dismissals were nothing but victimisation pure and simple for trade union activities.

The tribunal apparently held that the inquiry was proper, though it has not said so in so many words in its award. It may be added that it could hardly do otherwise, for it had already approved of the action taken on applications made under s. 33 (2)(b) of the Act. If the inquiry had not been proper,the tribunal would not have approved of the dismissals. But the tribunal held that this was a case of victimisation. It therefore set aside the order of dismissal and ordered the reinstatement of the thirteen workmen within one month of its order becoming operative and ordered that they should be treated as on leave without pay during the period of forced unemployment. It did not grant back wages as the workmen had also contributed to their forced unemployment to some extent.

In the present appeal, the appellant contends that there was no evidence to justify the conclusion of the tribunal that the dismissals were an act of unfair labour practice or victimisation. We are of opinion that this contention of the appellant must prevail. The tribunal was. not unaware of the fact that where a domestic inquiry is held properly. the tribunal does not sit in appeal on the findings of the domestic tribunal and it can only interfere with the punishment inflicted as a result of the domestic inquiry where there is want of good faith or basic error or violation of the principles of natural justice, or where the findings are perverse or baseless or the case is one of victimisation or unfair labour practice. We have already indicated that the tribunal did not find that there was any basic error or violation of the principles of natural justice in the holding of the inquiry; nor did it find that the findings of the inquiry officer were perverse or baseless. It could hardly do so in the face of its own approval of the action taken on applications made to it under s. 33 (2) (b) of the Act, for if it had found that the inquiry was not proper, it would not have approved of the action taken against the workmen by the appellant when it was approached under s. 33 (2) (b). We must therefore proceed on the assumption that the inquiry was held properly and the inquiry officer who held the inquiry was justified on the evidence before him in coming to the conclusion which he did, namely, that the charges had been proved.

The tribunal however posed a further question as to victimisation in this way : "But even if assume that these men were guilty of the offence complained of, let me pause and consider if there is victimisation." .It then proceeded to point out that the workmen concerned had put in ten years service or more and their previous record of service was good. They were important office bearers of the union and some of them were also protected workmen. It then referred to previous disputes between the appellant and the union of which these workmen were members and was of the view that the union and its leaders were "eye-sore to the appellant."

The tribunal was, however, conscious that merely because certain workmen were protected workmen they were not thereby given complete immunity for anything that they might do even, though it might be misconduct meriting dismissal. But it, pointed out that the misconduct complained in this case entailed fine, suspension or dismissal of the workmen, and the appellant chose dismissal, which was the extreme penalty. It referred to a decision of the Calcutta High Court in National Tobacco Company of India Ltd. v. Fourth Industrial Tribunal (1), where it was held that in a case where the punishment meted out was unconscionable or grossly out of proportion to the nature of the offence that may itself be a ground for holding that the dismissal was an act of victimisation. It seems to have held that the punishment of dismissal in this case was unconscionable or at any rate grossly out of proportion to the nature of the offence and therefore came to the conclusion that this was a case of victimisation. Now there is no doubt that though in a case of proved misconduct, normally the imposition of a penalty may be within the discretion of the management there may be cases where the punishment of dismissal for the misconduct proved may be so unconscionable or so grossly out of proportion to the nature of the offence that the tribunal may be able to draw an inference of victimisation merely from the punishment inflicted. But we are of opinion that the present is not such a case and no inference of victimisation can be made merely

from the fact that punishment of dismissal was imposed in this case and not either fine or suspension. It is not in dispute that a strike was going on during those days when the misconduct was committed. It was the case of the appellant that the strike was unsatisfied and illegal La it appears that the Regional Labour Commissioner, Central, Dhanbad, agreed with this view of the appellant. It was during such a strike that the misconduct in question took place and the misconduct was that these' thirteen workmen physically obstructed other workmen who were willing to work from doing their work by sitting down between the tramlines. This was in our opinion serious misconduct on the part of the' thirteen workmen and if it is found-as it has been found-proved punishment of dismissal would be perfectly justified. It cannot therefore be said looking at the nature of the offence that the punishment inflicted in this case was grossly out of, proportion or was unconscionable, and the tribunal was not justified in coming to the conclusion that this was a case of victimisation because the appellant decided to dismiss these workmen and was not prepared to let them off with fine or suspension.

There is practically no other evidence in support of the finding of the tribunal. It is true that the relations between the appellant and the union to which these workmen belonged were not happy. It is also proved that there was another union in existence in this concern. Perhaps the fact that there were two unions would in itself explain why the relations of the appellant with one of the unions to which these workmen belonged were not happy. But the fact that the relations between an employer and the union were not happy and the workmen concerned. were office-bearers or active workers of the union would by itself be no evidence to prove victimisation, for if that were so, it would mean that the office-bearers and active workers of a union with which the employer is not on good terms would have a carte blanche to commit any misconduct and get away with it on the ground that relations between the employer and the union were not happy. We are therefore of opinion that the finding of victimisation in this case is based, merely on conjectures and surmises. We have already considered the main reason given by the tribunal, namely, the nature of the punishment, and have held that that cannot be said to be unconscionable or grossly out of proportion to the nature of the offence.

Another reason given by the tribunal in support of the finding of victimisation is also patently wrong. The tribunal says that in reports made to the police certain persons were mentioned as having taken part in the misconduct of October 27, 1959; but in the written-statement filed by the appellant two other persons, namely Ratan Gope and Sohan Gope who were not mentioned in the police report, were also mentioned as having taken part in the incident of October 27. The tribunal thereby concluded that Sohan Gope and Ratan Gope were falsely implicated in the incident of October 27. Curiously, however, it went on to say that this might be a mistake but added that it meant dismissal of these people and the finding in this respect was not only wrong but perverse. It does appear 'that by mistake in para. 5 of the appellant's written statement before the tribunal names of Ratan Gope and Sohan Gope are mentioned as having taken part in the incident of October 27. But the charge-sheets which were given to them were only about the incident of October 20. The finding of the domestic inquiry also was with respect to the incident of October 20. So it seems that there was no justification for the tribunal to hold that the finding was perverse, because there was no finding that these two persons had taken part in the incident of October 27. There can be little doubt that there was a mistake in the written statement of the appellant for there was no

charge against these two people about the incident of October 27 and no finding about it by the Welfare Officer. The tribunal therefore was patently wrong in using this mistake as evidence of victimisation. We are therefore of opinion that there is no evidence worth the name in the present case to support the tribunal's finding as to victimisation and consequent want of good faith. In the circumstances the tribunal's award must be set aside.

We therefore allow the appeal.- set aside the award of the tribunal and uphold the dismissal of the thirteen workmen concerned. In the circumstances there will be no order as to costs.

Appeal allowed.