# Tata Oil Mills Co. Ltd vs Its Workmen on 31 March, 1964

## Equivalent citations: 1965 AIR 155, 1964 SCR (7) 555, AIR 1965 SUPREME COURT 155, 1964 9 FACLR 142, 1964 2 LABLJ 113, 1965 KER LJ 90, 1965 (1) SCWR 204, 1965 (1) SCJ 281, 1964 7 SCR 555, 1964-65 26 FJR 199

## Author: P.B. Gajendragadkar

## Bench: P.B. Gajendragadkar, K.N. Wanchoo, K.C. Das Gupta

PETITIONER:
TATA OIL MILLS CO. LTD.

Vs.

RESPONDENT:
ITS WORKMEN

DATE OF JUDGMENT:
31/03/1964

BENCH:
GAJENDRAGADKAR, P.B. (CJ)
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GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
GUPTA, K.C. DAS

CITATION:
1965 AIR 155 1964 SCR (7) 555
CITATOR INFO :
R 1969 SC 30 (6)
R 1972 SC 136 (23)
F 1972 SC1343 (11)
F 1975 SC2025 (7)
R 1978 SC1004 (7)
RF 1984 SC 289 (10)
R 1984 SC5050 (18)
R 1988 SC2118 (5)
RF 1991 SC1070 (6)

ACT:
Industrial Dispute-Assault on co-employee-Whether Standing Order 22(viii) attracted-Domestic enquiry-Findings binding unless shown to be perverse or evidence lacking-Criminal Trial also pending-Failure to stay enquiry, if vitiates enquiry-Standing Order 22(viii).

HEADNOTE:

On a report that R and M, both employees of the appellant waylaid A, another employee and assaulted him outside the factory, the appellant held an enquiry and sought approval for the dismissal of R and M from the Industrial Tribunal, before which an industrial dispute was pending. The Tribunal approved the dismissal of R but not that of M. Thereupon R was dismissed. The respondent raised an industrial dispute in regard to the propriety and validity of the said dismissal. On reference of this dispute, the Industrial Tribunal held that the assault could be treated as a private matter between R and A with which the appellant was not concerned and as a result Standing Order 22(viii) could not be invoked against R, and it ordered the reinstatement of R. On appeal by special leave:

Held: (i) that It would be unreasonable to, include within Standing Order 22(viii) any riotous behaviour without the factory which was the result of purely private and individual dispute and in course of which tempers of both the contestants become hot. In order that standing order 22(viii) may be attracted, the appellant should be able to show that the disorderly or riotous behaviour had some rational connection with the employment of the assailant and the victim.

(ii) In the present case the assault by R on A was not a purely private or individual matter but was referable to the difference of opinion between the two in regard to the introduction of incentive bonus scheme and that cannot be said to be outside the purview of standing order 22(viii).

(iii) The Tribunal was in error in coming, to the conclusion that the enquiry suffered from the infirmity that it was conducted contrary to the principles of natural justice.

It is true that if it appears that by refusing to adjourn. the hearing at the instance of charge-sheeted workmen, the Enquiry Officer failed to give the said workmen a reasonable opportunity to lead evidence, that may in a proper case, be considered to introduce an element of infirmity in the enquiry; but in the circumstances of this case, it would not be possible to draw such an inference.

(iv) The finding of the Tribunal that the dismissal was malafic, cannot possibly be sustained.

The Tribunal has completely overlooked an elementary principle of judicial approach that even if a judge or Tribunal may reach an erroneous conclusion either of fact or of law, the mere error of the conclusion does not make the conclusion malafide.

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(v) Since the domestic enquiry had been fairly conducted, and the findings recorded therein were based on Evidence which was believed, there was no justification for the Industrial Tribunal to consider the same facts for itself.

Findings properly recorded at such enquiries are binding on parties, unless, of course, it is shown that such findings are perverse or are not based on any evidence.
Phulbari Tea Estate v. Its Workmen, [1960] 1 S.C.R. 32, referred to.
(vi) The Industrial Tribunal was in error when it characterised the result of the domestic enquiry as malafide partly because the enquiry was not stayed pending criminal proceedings against R.
It is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course when the charge is of a grave character because it would be unfair to compel the workman to disclose the, defence which he may take before the criminal court. But to say that domestic enquiries may be stayed pending criminal trial is very different from saying that if an employer proceeds with the domestic enquiry inspite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion arrived at in such, an enquiry is either bad in law or malafide.
Delhi Cloth & General Mills Ltd. v. Kishan Bhan [1960] 3 S.C.R. 227, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 51.7 of 1963. Appeal by special leave from the Award dated September 28, 1960 of the Industrial Tribunal, Ernakulam, in Industrial Dispute No. 81 of 1958.

G. B. Pai, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the appellant.

P. Govinda Menon, M. S. K. Iyengar and M. R. K. Pillai, for respondent No. 1.

March 31, 1964. The Judgment of the Court was delivered by GAJENDRAGADKAR, C. J.-This appeal by special leave raises a short question about the validity of the order passed by the Industrial Tribunal, Ernakulam, directing the appellant, the Tata Oil Mills Co. Ltd., to reinstate its workman K. K. Raghavan whom it had dismissed with effect from the 14th of November, 1955. The appellant is a public limited concern engaged in the industry of soaps and toilet articles. It owns three factories in addition to 12 sales offices. One of these factories is located at Tatapuram, Ernakulam, in the State of Kerala. Mr. Raghavan was working with the appellant at its factory at Tatapuram. It was reported to the appellant that on the 12th November, 1955, Mr. Raghavan and another employee of the appellant, Mr. Mathews by name, waylaid Mr. C. A. Augustine, the Chargeman of the Soap Plant of the company's factory at Tatapuram while he was returning home after his duty in the second shift and assaulted him. That is why charge-sheets were issued against

both Messrs Raghavan and Mathews on the 14th November, 1955. Pursuant to the service of the charge- sheets, two officers were appointed by the appellant to hold an enquiry, but the respondent Union represented to the appellant that justice would not be done to Raghavan and Mathews unless somebody outside Tatapuram was invited to hold the enquiry. Thereupon, the General Manager of the appellant appointed Mr. Y. D. Joshi, who is a Law Officer of the appellant in the Head Office, to hold the enquiry. Mr. Joshi held the enquiry from the 27th to 30th December, 1955, and subsequently, he made his report to the General Manager of the appellant on the 7th January, 1956. At that time, an industrial dispute was pending between the appellant and its employees, and so, the appellant applied to the Industrial Tribunal for approval of the dismissal of Messrs Raghavan and Mathews. The Tribunal approved of the dismissal of Raghavan, but did not accord its approval of the dismissal of Mathews. Acting in pursuance of the approval accorded by the Tribunal, the appellant dismissed Raghavan with effect from the 14th November, 1955. Not satisfied with the order of dismissal, the respondent raised an industrial dispute in regard to the propriety and validity of the said dismissal of Raghavan and that has become the subject-matter of the present reference which was ordered on the 3rd of December, 1958. It is on this reference that the Industrial tribunal has held that the appellant was not justified in dismissing Raghavan, and so, has ordered his reinstatement. This is the order which has given rise to the present appeal by special leave.

The first point which calls for our decision in this appeal is whether the Tribunal was right in holding that the facts proved against Raghavan did not attract the provisions of Standing Order 22(viii) of the Certified Standing Orders of the appellant. The said standing order provides that without prejudice to the general meaning of the term "misconduct", it shall be deemed to mean and include, inter alia, drunkenness, fighting, riotous or disorderly or indecent behaviour within or without the factory. It is common ground that the alleged assault took place outside the factory, and, in fact, at a considerable distance from it. The Tribunal has held that the assault in question can be treated as a purely private matter between Raghavan and Augustine with which the appellant was not concerned and as a result of which standing order 22(viii) cannot be invoked against Raghavan. Mr. Menon who has appeared for the respondent before us, has contended that in construing standing orders of this charac- ter, we must take care to see that disputes of a purely private or individual type are not brought within their scope. He argues that on many occasions, individual employees may have to deal with private disputes and sometimes, as a result -of these private disputes, assault may be committed. Such an assault may attract the relevant provisions of the Indian Penal Code, but it does not fall under standing order 22(viii). In our opinion, this contention is well-founded. It would, we think, be unreasonable to include within standing order 22(viii) any riotous behaviour without the factory which was the result of purely private and individual dispute and in course of which tempers of both the contestants became hot. In order that standing order 22(viii) may be attracted, the appellant should be able to show that the disorderly or riotous behaviour had some rational connection with the employment of the assailant and the victim.

In the present case, however, it is quite clear that the assault committed by Raghavan on Augustine was not a purely private or individual matter. What the occasion for this assault was and what motive actuated it, have been consider- ed by the domestic Tribunal and the findings of the domestic Tribunal 'on these points must be accepted in the present proceedings, unless they are shown to be based on no evi- dence or are otherwise perverse. Now, when we look at the report of the Enquiry

Officer, it is clear that on the evidence given by Mr. M. M. Augustine and K. T. Joseph it appeared that the assault was committed by Raghavan on C. A. Augustine, because he was in favour of the introduction of the Incentive Bonus Scheme. It appears that the introduction of this incentive bonus scheme was approved by one set of workmen and was 'opposed by another, with the result that the two rival unions belonging to these two sets respectively were arrayed against each other on that question. The evidence of the two witnesses to whom we have just referred clearly shows that when Raghavan assaulted C. A. Augustine, he expressly stated that Augustine was a black-leg (Karinkali) who was interested in increased production in the company with a view to obtain bonus-, and the report further shows that the Enquiry Officer believed this evidence and came to the conclusion that the assault was motivated by this hostility between Raghavan and C. A. Augustine. In fact, the charge framed clearly suggested that the assault was made, for that motive. It was alleged in the charge that Augustine was assaulted to terrorise the workmen who had been responsible for giving increased production under the incentives bonus scheme. According to the charge, such acts were highly subversive of discipline. The Enquiry Officer has held that in the light of the evidence given by M. M. Augustine and K. T. Joseph, the charge as framed had been proved. This finding clearly means that the assault was not the result of a purely individual 'or private quarrel between the assailant and his victim, but it was referable to the difference of opinion between the two in regard to the introduction of the incentive bonus scheme on which the two unions were sharply divided. Therefore, if Raghavan assaulted Augustine solely for the reason that Augustine was supporting the plea for more production, that cannot be said to be outside the purview of standing order 22(viii). The next point which needs to be considered arises out of a plea which has been strenuously urged before us by Mr. Menon that the Tribunal was justified in holding that the Enquiry Officer did not conduct the enquiry in accordance with the principles of natural justice, and so, the Tribunal was entitled to go into the evidence itself and decide whether, Raghavan's dismissal was justified or not. The legal position in this matter is not in doubt. If it appears that the domestic enquiry was not conducted in accordance with the principles of the natural justice and a reasonable opportunity was not, for instance, given to Raghavan to lead evidence in support of his defence, that would be a valid ground on which the Tribunal can discard the finding of the domestic enquiry and consider the matter on the merits uninfluenced by the said finding. Unfortunately for the respondent, however, on the material on record it is very difficult to sustain the finding of the Tribunal that the Enquiry Officer did not conduct the enquiry in accordance with the principles of natural justice.

The whole of this contention is based on the fact that Raghavan wanted to examine two witnesses, -Messrs M. P. Menon and Chalakudi. It appears that Raghavan told the Enquiry Officer that he wanted to examine these two wit- nesses and he requested him to invite the said two witnesses to give evidence. The Enquiry Officer told Raghavan that it was really not a part of his duty to call the said two witnesses and that Raghavan should in fact have kept them ready himself. Even so, in order to assist Raghavan, the Enquiry Officer wrote letters to the two witnesses. Mr. Menon replied expressing his inability to be present before the Enquiry Officer, and the Enquiry Officer communicated this reply to Raghavan, so that for Raghavan's failure to examine Menon no blame can be attributed to the enquiry officer at all. In regard to Chalakudi, it appears that he sent one letter addressed to the Enquiry Officer and it reached him on the 31st December, 1955, the day on which he was leaving for Bombay. This letter was not signed, and so, the Enquiry Officer took no action on it and gave no time to Chalakudi to appear three or four days later as had been suggested

in that unsigned letter. The Tribunal thought that this attitude on the part of the Enquiry Officer was unsympathetic and that introduced an element of Unfairness in the enquiry itself. We are unable to appreciate how such a conclusion can follow on facts which are admitted. We do not think the Enquiry Officer was called upon to accept an unsigned letter and act upon it. Besides, the Enquiry Officer had gone to Ernakulam from Bombay for holding this enquiry, because the respondent Union itself wanted that the enquiry should be held by some other officer outside the local station and it was known that the Bombay Officer would go back as soon as the enquiry was over. In such a case, if Raghavan did not take steps to produce his witnesses before the Enquiry Officer, how can it be said that the Enquiry Officer did not conduct the enquiry in accordance with the principles 'of natural justice? Mr. Menon has suggested that the Enquiry Officer should have taken steps to get the witnesses M. P. Menon and Chalakudi brought before him for giving evidence. This suggestion is clearly untenable. In a domestic enquiry, the officer holding the enquiry can take no valid or effective steps to compel the attendance of any witness; just as the appellant produced its witnesses before the officer, Raghavan should have taken steps to produce his witnesses. His witness Menon probably took the view that it was beneath his dignity to appear in a domestic enquiry, and Chalakudi was content to send an unsigned letter and that too so as to reach the Enquiry Officer on the day when he was leaving Ernakulam for Bombay. It would be unreasonable to suggest that in a domestic enquiry, it is the right 'of the charge-sheeted employee to ask for as many adjournments as he likes. It is true that if it appears that by refusing to adjourn the hearing at the instance of the charge-sheeted workman, the Enquiry Officer failed to give the said workman a reasonable opportunity to lead evidence, that may, in a proper case, be considered, to introduce an element of infirmity in the enquiry; but in the circumstances of this case, we do not think it would be possible to draw such an inference. The record shows that the Enquiry Officer went out of his way to assist Raghavan; and if the witnesses did not turn up to give evidence in time, it was not his fault. We must accordingly hold that the Tribunal was in error in coming to the conclusion that the enquiry suffered from the infirmity that it was conducted contrary to the principles of natural justice.

Let us then consider whether the dismissal of Raghavan is actuated by malafides, or amounts to victimisation. In regard to the plea of victimisation, the Tribunal has definitely found against the respondent. "I do not for a moment believe", says the Tribunal, "that the management foisted a case against the ex-worker. Regarding the allegation of victimisation, there is no sufficient evidence in the case that the management 'or its Manager Mr. John was motivated with victimisation or unfair labour practice". This finding is quite clearly in favour of the appellant. The Tribunal, however, thought that because the Enquiry Officer did not give an adjournment to Raghavan to examine his witnesses, that introduced an element of malafides. It has also observed that since the case against Raghavan did not fall within the purview of standing order 22(viii) and yet, the appellant framed a charge against Raghavan under that standing order, that introduced another element of malafides. It is on these grounds that the conclusion as to malafides recorded by the Tribunal seems to rest. In regard to the first ground, we have already held that the Tribunal was not justified in blaming the Enquiry Officer for not adjourning the case beyond 31st December, 1955. In regard to the second ground, we are surprised that the Tri- bunal should have taken the view that since in its opinion, standing order 22(viii) did not apply to the facts of this case, the framing of the charge under the said standing 'order and the finding of the domestic Tribunal in favour of the appellant on that ground showed malafides. It seems to us that the Tribunal has completely overlooked an elementary

principle of judicial approach that even if a judge or Tribunal may reach an erroneous conclusion either of fact or of law, the mere error of the conclusion does not make the conclusion malafiedes. Besides, as we have just indicated, on the merits we are satisfied that the Tribunal was in error in holding that standing order 22(viii) did not apply. Therefore, the finding of the Tribunal that the dismissal of Raghavan was malafide, cannot possibly be sustained. There is one more point which has been press-Id before us by Mr. Menon. In Phulbari Tea Estate v. Its Workmen,(1) this Court has held that even if a domestic enquiry is found to be defective, the employer may seek to justify the dismissal of his employee by leading evidence before the Tribunal to which an industrial dispute arising out of the impugned dismissal has been referred for adjudication. Mr. Menon contends that by parity of reasoning, in cases where the em- ployee is unable to lead his evidence before the domestic Tribunal for no fault of his own, a similar opportunity should be given to him to prove his case in proceedings before the Industrial Tribunal. In our opinion, this contention is not well-founded. The decision in the case of Phulbari Tea Estate (supra) proceeds on the basis which is of basic importance in industrial adjudication that findings properly recorded in (1) [1960] 1 S.C.R. 32.

domestic enquiries which are conducted fairly, cannot be re- examined by Industrial adjudication unless the said findings are either perverse, or are not supported by any evidence, or some other valid reason 'of that character. In such a case, the fact that the finding is not accepted by the Industrial Tribunal would not necessarily preclude the employee from justifying the dismissal of his employee on the merits, provided, of course, he leads evidence before the Industrial Tribunal and persuades the Tribunal to accept his case. That, however, is very -different from a case like the present. In the case before us, the enquiry has been fair, the Enquiry Officer gave Raghavan ample opportunity to lead his evidence. If at reasonable opportunity had been denied to the employee, that would have made the enquiry itself bad and then, the employer would have been required to prove his case before the Industrial Tribunal, and in dealing with the dispute, the Industrial Tribunal would have been justified in completely ignoring in the findings of the domestic enquiry. But if the enquiry has been fairly conducted, it means that all reasonable opportunity has been given to the employee to prove his case by leading evidence. In such a case, how can the court hold that merely because the witnesses did not appear to give evidence in support of the employee's case, he should be allowed to lead such evidence before the Industrial Tribunal. If this plea is upheld, no domestic enquiry would be effective and in every case, the matter would have to be tried afresh by the Industrial Tribunal. Therefore, we are not prepared to accede to Mr. Menon's argument that the Tribunal was justified in considering the merits of the dispute for itself in the present reference proceedings. Since the enquiry has been fairly conducted, and the findings recorded therein are based on evidence which is believed, there would be no justification for the Industrial Tribunal to consider the same facts for itself. Findings properly recorded at such enquiries are binding on the parties, unless, of course, it is known that the said findings are perverse, or are not based on any evidence. There is yet another point which remains to be considered. The Industrial Tribunal appears to have taken the view that since criminal proceedings had been started against Raghavan, the domestic enquiry should have been stayed pending the final disposal of the said criminal proceedings. As this Court has held in the Delhi Cloth and General Mills Ltd. v. Kushal Bhan,(1) it is desirable that if the incident giving rise to a charge framed against a workman in a domes- tic enquiry is being tried in a criminal court, the employer, should stay the domestic enquiry pending

the final disposal of the criminal case. It would be particularly appropriate to (1) [1960] 3 S.C.R. 227.

adopt such a course where the charge against the workman is of a grave character, because in such a case, it would be unfair to compel the workman to disclose the defence which he may take before the criminal court. But to say that domestic enquiries may be stayed pending criminal trial is very different from saying that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or malafide. In fairness, we ought to add that Mr. Menon did not seek to justify this extreme position. Therefore, we must hold that the Industrial Tribunal was in error when it characterised the result of the domestic enquiry as malafide partly because the enquiry was not stayed pending the criminal proceedings against Raghavan. We accordingly hold that the domestic enquiry in this case was properly held and fairly conducted and the conclusions of fact reached by the Enquiry Officer are based on evidence which he accepted as true. That being so, it was not open to the Industrial Tribunal to reconsider the same questions of fact and come to a contrary conclusion. The result is, the appeal is allowed. The order passed by the Industrial Tribunal is set aside and the reference made to it is answered in favour of the appellant. Before we part with this appeal, we ought to add that Mr. Pai for the appellant has fairly offered to pay ex gratia Rs. 1,000/- to Raghavan in addition to the amount which has already been paid to him by the appellant in pursuance of the order of this Court granting stay to the appellant pending the final disposal of the present appeal. There would be no order as to costs.

Appeal allowed.