

# The Delhi Cloth And General Mills Ltd vs Kushal Bhan on 10 March, 1959

**Equivalent citations: 1960 AIR 806, 1960 SCR (3) 227**

**Author: K.N. Wanchoo**

**Bench: K.N. Wanchoo, P.B. Gajendragadkar**

PETITIONER:  
THE DELHI CLOTH AND GENERAL MILLS LTD.

Vs.

RESPONDENT:  
KUSHAL BHAN

DATE OF JUDGMENT:  
10/03/1959

BENCH:  
WANCHOO, K.N.  
BENCH:  
WANCHOO, K.N.  
GAJENDRAGADKAR, P.B.

CITATION:  
1960 AIR 806                      1960 SCR (3) 227  
CITATOR INFO :  
RF              1961 SC 860 (15)  
RF              1965 SC 155 (9)  
R               1969 SC 30 (6)  
R               1988 SC2118 (5)

ACT:  
Industrial Dispute-Dismissal of employees by enquiry committee pending trial in Criminal Court-Subsequent acquittal of the, employee--Jurisdiction of Tribunal to refuse approval of dismissal-Industrial Disputes Act 1947 (XIV Of 1947), s. 33(2), proviso.

HEADNOTE:  
The appellant company served a charge-sheet on the respondent who was one of its employees alleging that he had stolen the cycle of the company's Head Clerk. A criminal case relating  
228

to the theft was pending against him then. He was asked to show cause why he should not be dismissed for misconduct, and as his explanation was unsatisfactory a certain date was fixed for enquiry. The respondent appeared before the enquiry committee but refused to participate in the enquiry by answering questions put to him as he did not want to produce any defence till the matter was decided by the Court. The company, however, after completing the enquiry directed the dismissal of the respondent on the ground that misconduct had been proved against him. The company thereafter made an application under s. 33(2) Of the Industrial Disputes Act to the Industrial Tribunal for approval of the disciplinary action taken against the respondent. In the meantime the respondent was acquitted by the Criminal Court. 'The judgment of the Criminal Court was produced before the tribunal which refused to approve the order of dismissal of the respondent. On appeal by the company by special leave :

Held, that the principles of natural justice do not require that an employer must wait for the decision of the Criminal Trial Court before taking disciplinary action against an employee.

Shri Bimal Kanta Mukherjee v. Messrs. Newsman's Printing Works, (1956) L.A.C. 188, approved.

If a case is of a grave nature involving questions of fact and law which are not simple it would be advisable for the employer to await the decision of the Criminal Trial Court but in a simple case like the present the tribunal erred in not granting approval under S. 33(2) of the Industrial Disputes Act.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 88 of 1959. Appeal by special leave from the judgment and order dated May 6, 1958, of the Industrial Tribunal, Delhi, in O. P. No. 54 of 1958.

M.C. Setalvad, Attorney-General for India, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for the appellant. Janardan Sharma, for the respondent.

1960. March 10. The Judgment of the Court was delivered by WANCHOO, J.-This is an appeal by special leave in an industrial matter. The appellant is a company carrying on the manufacture of textiles. The respondent Kushal Bhan was in the employ of the company as a peon. It appears that the cycle of Ram Chandra, Head Clerk of the Folding Department was stolen on August 24, 1957. The matter was reported to the police. Sometime later, the cycle was recovered from the railway station cycle-stand at the instance of the respondent who took the police there and picked out the stolen cycle from among 50/60 cycles standing there. This matter was apparently brought to the notice of the company in October 1957 and thereupon a charge-sheet was served on the respondent to the effect that he had stolen the cycle of Ram Chandra, Head Clerk, that it had been recovered at

his instance and that a criminal case was pending against him with the police. He was asked to show cause why he should not be dismissed for misconduct. The respondent submitted his explanation on October 13, 1957. As his explanation was unsatisfactory, November 14, 1957, was fixed for enquiry. The respondent appeared before the enquiry committee but stated that as the case was pending against him, he did not want to produce any defence till the matter was decided by the court. He further stated that he did not want to take part in the enquiry and was not prepared to give any answers to questions put to him. When questions were put to him at the enquiry he refused to answer them and eventually he left the place. The company, however, completed the enquiry and directed the dismissal of the respondent on the ground that the misconduct had been proved against him. Thereafter an application was made under s. 33(2) of the Industrial Disputes Act, No. 14 of 1947, by the company to the tribunal for approval of the action taken against the respondent. The matter came before the tribunal on May 6, 1958. In the meantime, the respondent had been acquitted by the criminal court on April 8, 1958, on the ground that the case against him was not free from doubt. The copy of the judgment of the criminal court was produced before the tribunal and it refused to approve the order of dismissal. The company thereupon applied for special leave to this Court resulting in the present appeal.

The main contention on behalf of the appellant company is that the company was not bound to wait for the result of the trial in the criminal court and that it could, and did, hold a fair enquiry against the respondent, and if the respondent refused to participate in it and left the place where the enquiry was being held, the company could do no more than to complete it and come to such conclusion as was possible on the evidence before it. Learned counsel for the respondent, on the other hand, urges that principles of natural justice require that an employer should wait at least for the decision of the criminal trial court before taking disciplinary action, and that inasmuch as the employer did not do so in this case the employee was justified in not taking part in the disciplinary proceedings which dealt with the very same matter which was the subject-matter of trial in the criminal court.

It is true that very often employers stay enquiries pending the decision of the criminal trial court and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. In *Shri Bimal Kanta Mukherjee v. Messrs. Newsman's Printing Works (1)*, this was the view taken by the Labour Appellate Tribunal. We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced. The present, however, is a case of a very simple nature and so the employer cannot be blamed for the course adopted by him. In the circumstances, there was in our opinion no failure of natural justice in this case and if the respondent did not choose to take part in the enquiry, no fault can be found with that enquiry. We are of opinion that this was a case in which the tribunal patently erred in not granting approval under s. 33(2) of the Industrial Disputes Act. Besides it is apparent that in making the order under appeal, the tribunal has completely lost sight of the limits of its jurisdiction under s. 33(2). We therefore allow the appeal and setting aside the order of the tribunal grant approval to the order of the appellant dismissing the respondent. In the circumstances we pass no order as to costs.

Appeal allowed.

(1) (1956) L.A.C. 188.