

Laxmi Devi Sugar Mills vs Nand Kishore Singh on 4 October, 1956

Equivalent citations: 1957 AIR, 7 1956 SCR 746, AIR 1957 SUPREME COURT 7, 1956 SCC 377, 1957 ALL. L. J. 37, 1956 SCR 746, 1956 2 LABLJ 439, 1956-57 11 FJR 202, 1956 SCJ 735, 1957 BLJR 5

Author: Natwarlal H. Bhagwati

Bench: Natwarlal H. Bhagwati, S.K. Das, P. Govinda Menon

PETITIONER:
LAXMI DEVI SUGAR MILLS

Vs.

RESPONDENT:
NAND KISHORE SINGH.

DATE OF JUDGMENT:
04/10/1956

BENCH:
BHAGWATI, NATWARLAL H.
BENCH:
BHAGWATI, NATWARLAL H.
AIYYAR, T.L. VENKATARAMA
DAS, S.K.
MENON, P. GOVINDA

CITATION:
1957 AIR 7 1956 SCR 746

ACT:
Industrial Dispute-Application for permission to dismiss a workman-Resolution passed at a meeting of the Labour Union for removal of the General Manager-Vice President of the Union addressing the meeting to instigate the workers, if guilty of misconduct and indiscipline-Refusal to answer queries by the General Manager, if an act of insubordination-Theory of dual capacity, if tenable-Dismisal, if can be permitted on a ground not included in the charge -Industrial Disputes (Appellate Tribunal) Act (XLVIII of 1950) -U. P. Industrial Disputes Act, 1947 (U. P. Act XXVIII of 1947),a. 3, Standing Orders, cl. L(1)(j).

HEADNOTE:

The respondent, a stenotypist and the Vice-President of the Labour Union, was charged by the appellant with misconduct and indiscipline under clause L(1)(j) of the Standing Orders of the Government of Uttar Pradesh for instigating the workmen to pass a resolution for the removal of the General Manager by a defamatory speech delivered at a meeting of the Union. The question in issue was whether the respondent by doing so had committed "any act subversive of discipline" within the meaning of that clause. In course of the correspondence with the General Manager over the matter, as also during the enquiry made by him, the respondent took up the attitude that he, as a stenotypist, was not answerable to his employers for his activities as Vice-President of the Union outside the factory area and persistently refused to answer questions categorically put to him by the General Manager. The appellant applied to the Labour Appellate Tribunal under s. 22 of the Industrial Disputes (Appellate Tribunal) Act of 1960 for permission to dismiss the respondent. That application having been refused the appellant obtained Special Leave to appeal to the Supreme Court and it was contended that the passing of the resolution and the refusal to answer questions in course of the correspondence, and the enquiry amounted to acts subversive of discipline and the respondent was liable to be dismissed.

Hold, that it was perfectly legitimate for the Union to pass the resolution they did and no guilt either of a breach of the Standing Orders or of committing an act subversive of discipline could attach to the respondent for what part he took in the meeting as Vice President of the Union and the order of dismissal passed by the Labour Appellate Tribunal must be affirmed.

That where, as in the present case, the members of the Union were of opinion that the circumstances warranted the resolution, it

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was not for the court to scrutinise the correctness or otherwise the reasons for it.

Held further, that the respondent was primarily an employ of the appellant before he could be anything else and was in duty bound to answer such queries as were put to him by the General Manager and his persistent refusal to do so, on the pretext of a dual capacity, amounted to insubordination which would have justified his dismissal but the appellant having omitted to include this as ground in the charge-sheet, which was served on the respondent and formed the basis of the enquiry, could not be allowed to rely on it.

JUDGMENT:

Civil APPELLATE JURISDICTION: Civil Appeal No. 162 of 1954. Appeal by special leave from the judgment and order dated the 21st day of July 1953 of the Labour Appellate Tribunal of India, Lucknow in Miscellaneous Case No. C-III-33 of 1952.

H.J. Umrigar and R. A. Govind for the appellant B.P. Maheshwari for the respondent.

1956. October 4. The Judgment of the Court was delivered by BHAGWATI J.-The Labour Appellate Tribunal of India at Lucknow dismissed the application of the appellant made under section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, for permission to dismiss the respondent, its workman, and the appellant obtained from this Court Special Leave to Appeal against that order. The respondent has been working as a Steno-typist with the appellant since 3rd December, 1946, and is also the Vice-President of the Union of workers which is affiliated to the Indian National Trade Union Congress and is known as Chini Mills Mazdoor Sangh. One M. P. Singh has at all relevant times been and is still the General Manager of the appellant.

The relations between the appellant and its workmen are governed by the Standing Orders framed by mutual agreement between the Labour and the Sugar Mills in Uttar Pradesh which have been approved by the Government of Uttar Pradesh. Clause L(1)(j) of the said Standing Orders runs as under:-

"Drunkenness or gambling or riotous or disorderly behaviour while on duty in factory premises, or in quarters provided by the mills or elsewhere or any act subversive of discipline".

These are among the items of misconduct which would entitle the appellant, after due enquiry, to dismiss a workman from its employ.

There were longstanding disputes between the appellant and its workmen since October, 1946, and on the 23rd February, 1949, Kedar Nath Khetan, one of the partners of the appellant, wrote to Shri Kashi Nath Pandey, General Secretary, Indian National Sugar Workers Federation, promising to remove the General Manager as soon as the season of the Chhitauni factory was over. There was, however, an agreement arrived at between the partners of the factory and the Chini Mills Mazdoor Sangh on the 13th September, 1949, under which the demand for the removal of the General Manager was withdrawn by the workers. The disputes, however, continued and matters came to a head in 1952. In May, 1952, the management charged 76 members of the Union for participation in a 'Tools-down' strike. The matter went up to the Labour Appellate Tribunal which, by its award, reinstated all the 76 workmen. The management preferred writ petitions Nos. 402 and 409 in the Allahabad High Court but the same also were dismissed. Special Leave was obtained from this Court against those decisions of the Allahabad High Court and the same are pending. During the pendency of the application of the management for the discharge of the said 76 workmen before the Labour Appellate Tribunal, the workers held a meeting on the 10th June, 1952, near an old mosque outside the factory area to consider the situation arising out of the suspension of the 76 workmen and the ways and means of meeting the same. The respondent participated in the said meeting as the Vice-President of the Union and made a speech criticising the attitude of the General Manager in terms

which were set out in the report dated the 10th June, 1952 submitted by two workers by name Ganga Dhar Tewari and Jamuna Prasad to the General Manager. The speech of the respondent as reported there was to the following effect:-

"The General Manager of this factory wants to crush the Labour movement from the very beginning. He allowed some of his intermediaries to join strike when Shri Shibban. Lal Saxena had served a strike notice. His men had also persuaded some of our members to join the strike. As a result of this we had decided to launch a strike. On the other hand, the Manager Sahib was sitting on the phone for the permission of the Collector to dismiss all our fellow workers. Shri Moti Lal Singh was able to discover this conspiracy and he at once prevented us from going on strike. Then Manager Sahib could not succeed in his plan. This time he has falsely accused 76 of our workers of resorting to Tools-down strike. These workers will surely be reinstated. But our efforts are rendered useless due to the acts of the Government Officers; the Collector of this District is getting some thing secretly from the Manager Sahib. We have only one alternative open to us, let us again agitate for his dismissal. Many of the proprietors have written to me against him".

A resolution was moved at that meeting for the reinstatement of the 76 workers and dismissal of Shri Madan Pal Singh, the General Manager and the same was passed.

As stated above, the two workers Ganga Dhar Tewari and Jamuna Prasad reported the proceedings of the said meeting to the General Manager on the very same day. The General Manager thereafter addressed a letter to the respondent on- the 16th July, 1952 stating that he, the respondent, was present in and addressed a meeting held on the 10th June, 1952, wherein, among other matters, a resolution for the reinstatement of the 76 suspended workers and the removal of the General Manager was passed. He asked the respondent to give him information regard-

ing the above-mentioned facts within 24 hours of the receipt of the letter. The respondent replied on the 17th July, 1952, stating that he never attended any meeting whatever in his capacity as the Steno-typist of the factory and expressed his inability, therefore, to say anything in the capacity in which the letter dated the 16th July, 1952, had been addressed by the General Manager to him. Not being content with bypassing the whole issue in this manner, he proceeded to observe that it was none of the factory's business to seek information from him for his personal, social or political activities outside the factory area. He stated that as a matter of courtesy any information asked for would have been supplied by him, but, as the things stood, he very much regretted his inability to comply with the wishes of the General Manager. The General Manager again addressed a letter to the respondent on the 17th July, 1952, stating that he was entitled to seek the information from him even in his personal capacity and asked him to let him have the reply to the queries contained in the letter dated the 16th July, 1952. The respondent, in his letter dated the 17th July, 1952 in reply, observed that some of the conclusions drawn by the General Manager were "simply out of self-complacency" and he respectfully begged- to differ from the General Manager. He stated that he had nothing further to add to his earlier reply dated the 17th July, 1952.

The General Manager waited for a while and on the 1st August, 1952, served upon the respondent a chargesheet calling upon the respondent to show cause why action should not be taken against him under clause L(1)(j) of the Standing Orders for making a speech in a meeting held near the local mosque on the 10th June, 1952, 'wherein, among other defamatory remarks he, the respondent, instigated the workers to take steps for the removal of the General Manager. The respondent was asked to submit his explanation latest by 10 a.m. on the 2nd August, 1952. The respondent submitted his written statement accordingly wherein he stated that there was absolutely no justification whatsoever for charging him with breach of the Standing Orders under clause L(1)(j). He denied the allegations contained in the charge-sheet and wound up by asking the General Manager to enlighten him as to under what rules of the Factories Act, Commercial Establishments Act or the Standing Orders, written replies in the matters other than one's daily routine work of the factory were demanded at such short notice.

The General Manager fixed 10 a.m. on Monday the 4th August, 1952, for the holding of the enquiry and the respondent was called upon to present himself in time and he was also intimated that he would be at liberty to produce oral or documentary evidence in defence against the charges framed against him.

An enquiry was accordingly (held by the General Manager on the 4th August, 1952. The proceedings thereat were recorded in the form of questions and answers. The respondent adopted an attitude which was consistent with the one which he had adopted in the course of the correspondence above referred to. He refused to answer the questions which were categorically put by the General Manager to him and stated that he had nothing -to add to his written statement. He also took up the attitude that if he had taken part in any meeting held under the auspices of the Chini Mills Mazdoor Sangh outside the factory, the General Manager should write to the officials of the Sangh for necessary information. When it was specifically put to him that no confidential work was taken from him as he had been taking active interest in the anti-management activities maliciously and had been exploiting the poor labour to force himself being confirmed by the management, he said that he did not agree with it and it was not a question which needed any reply. As a result of the enquiry, the General Manager made his report on the 24th October, 1952, wherein he found that the respondent had made a speech exhorting the workmen of the factory to pass a resolution for the removal of the General Manager, that the management was bound to lose confidence if a worker who had excited other workers against the General Manager of the concern refused to give a direct reply to direct questions, that, in the absence of a Stenotypist who could enjoy the confidence of the management, it was impossible to run the factory without the risk of any trouble and that the respondent was thus guilty of misconduct and acts subversive of discipline. As, however, there was a pendency of a proceeding before the Labour Appellate Tribunal, an application should be made to that authority for permitting his dismissal.

This report was accepted by the management and the appellant made the application under section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, for permission to dismiss the respondent from its employ.

The Labour Appellate Tribunal embarked on the freedom of speech vouchsafed to the citizens of India under article 19(1)(a) of the Constitution, observed that the making of the speech in question at the meeting held by the respondent as the Vice-President of the Union was within the scope of the legitimate activities of the Union and held that the speech said to have been made by the respondent at the meeting could not be said to be an act subversive of discipline. The application of the appellant was accordingly dismissed. Hence this appeal before us. The only question for determination before us is whether the speech made by the respondent at the meeting held on the 10th June, 1952, was an act subversive of discipline. The respondent was the Vice President of the Union and, *prima facie*, any resolution passed by the Union asking for the removal of the General Manager would be perfectly legitimate if the members of the Union thought that there were circumstances warranting the same. The correctness or otherwise of the reasons given for such removal would not be liable to scrutiny by the Court, the only thing requisite being that the Union was not acting *mala fide* or was not actuated by any malice or illwill against the General Manager in passing such resolution. The resolution by itself would not have the effect of harming the General Manager at all, It would have to be forwarded to the management and the management would take such steps as it may be advised on receipt of the resolution. It would then be for the management to find for itself whether the reasons given for the removal of the General Manager were such as to warrant his removal. The management would then, if it thought necessary, institute proper enquiries and come to his own conclusion as to the desirability or otherwise of the removal of the General Manager. So far as the Union is concerned, apart from *mala fides* or malice or illwill, the act of its passing the resolution would be innocuous and would not be liable to be visited with any punishment and the members of the Union would not be committing any breach of the Standing Orders nor would they be guilty of any act subversive of discipline. The gravamen of the charge made by the management against the respondent, however, was that the latter was not merely responsible for the passing of such resolution, but, in the speech which he made in support, he gave vent to such expressions as were quite false and defamatory and was actuated by malice against the General Manager. He Edited the members of the Union who were there assembled against the General Manager with the result that his act was thus subversive of discipline. The speech had the effect of lowering the General Manager in the esteem of the workmen and subjecting him to hatred or ridicule and the necessary effect of making such speech before the workmen would be that they would look down upon the General Manager and would not be amenable to discipline and it would be impossible to conduct the management with efficiency with such disgruntled workmen in the factory. The words used by the respondent were, therefore, it was urged, calculated to undermine the discipline in the factory and his act was, therefore, subversive of discipline bringing him well within the mischief of clause L(1) (j). of the Standing Orders.

It was further urged that the conduct of the respondent in the course of the correspondence which took place between the General Manager and himself was, to say the least, impudent. He relied upon his dual personality distinguishing between his capacity as the Steno-typist and his capacity as the Vice-President of the Union. The act complained of was attributed to his capacity as the Vice-President of the Union and he refused to give any reply to the queries addressed to him-because in the letter; addressed by the General Manager to him he was described as the Steno-typist. He refused to give any information to the General Manager and asked him to communicate with the Sangh or the Union if any information was required by the General Manager

in the matter of what took place at the meeting of the Union on the 10th June, 1952. In the enquiry also, he adopted a similar attitude and refused to answer the direct questions addressed to him by the General Manager in regard to the proceedings of that meeting.

It was strenuously urged before us by the learned counsel for the appellant that this conductor the respondent was subversive of discipline and amounted to such misconduct as would entitle the appellant to dismiss him from its employ. There is considerable force in this argument and we are of the opinion that the respondent adopted an attitude unbecoming an employee of the appellant. He adopted a truculent attitude in the course of the correspondence and resorted to the theory of his dual personality refusing to answer the queries addressed to him by the General Manager. This attitude was, to say the least, reprehensible. Even though he happened to occupy what he considered to be the august position of the Vice President of the Union he did not cease to be an employee of the appellant and the attempt to distinguish between his capacity as the Steno-typist and his capacity as the Vice-President of the Union was absolutely puerile. He ought to have realised that he was first-and foremost an employee of the appellant and owed a duty to the appellant to answer all the queries which had been addressed to him by the General Manager. His evasion to give such replies on the pretext of shielding himself under his capacity as the Vice-President of the Union was absolutely unjustifiable and if such insubordination and breach of discipline had been the subject-Matter of the charges made against him, we do not see how the respondent could have escaped the punishment of dismissal.

Similar is the position in regard to the attitude which the respondent adopted at the enquiry. He refused to answer the direct questions which were addressed to him and had the temerity to ask the General Manager to see his written statement and find out for himself the answers to the same. To say the least, the respondent was guilty of insubordination and if his attitude was such as would not conduce to the maintenance of discipline in the factory, here also we would have found it difficult to resist the appellant's claim for his dismissal if he had been charged with having been guilty of such misconduct.

The charge-sheet, however, only complained about the speech which he had made on the 10th June, 1952, wherein, among other defamatory remarks, he, the respondent, had instigated the workers to take steps for the removal of the General Manager. The enquiry which was held on the 4th August, 1952, also concentrated on this particular charge and the report which was made by the General Manager on the 24th October, 1952, also found that the respondent had made a speech exhorting the workers to pass the resolution for the removal of the General Manager. The acts of insubordination calculated to undermine the discipline in the factory which we have adverted to above were neither the subject-matters of the charge nor were they relied upon by the General Manager in his report as the grounds of misconduct entitling the management to dismiss the respondent' from its employ. The passing of the resolution for the removal of the General Manager by itself was not, as already stated, an act subversive of discipline and would not entitle the management to dismiss him and we are of the opinion that, on the record as it stood, the Labour Appellate Tribunal was justified in refusing to the appellant the permission to dismiss the respondent from its employ.

The charge-sheet which was furnished by the appel-

lant to the respondent formed the basis of the enquiry which was held by the General Manager and the appellant could not be allowed to justify its action on any other grounds than those contained in the chargesheet. The respondent not having been charged with the acts of insubordination which would have really justified the appellant in dismissing him from its employ, the appellant could not take advantage of the same even though these acts could be brought home to him. We have, therefore, come to the conclusion that the order made by the Labour Appellate Tribunal was correct even though we have done so on grounds other than those which commended themselves to it.

We accordingly dismiss this appeal but having regard to the conduct of the respondent which We have characterised above as reprehensible we feel that the ends of justice will be met if we ordered that each party do bear and pay its own costs of this appeal.

Appeal dismissed.