Associated Cement Companies Ltd. Etc vs T.C.Shrivastava & Ors on 29 March, 1984

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Bench: V.D. Tulzapurkar, R.S. Pathak

PETITIONER:
ASSOCIATED CEMENT COMPANIES LTD. ETC.

Vs.

RESPONDENT:
T.C.SHRIVASTAVA & ORS.

DATE OF JUDGMENT29/03/1984

BENCH:
TULZAPURKAR, V.D.
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TULZAPURKAR, V.D.
PATHAK, R.S.

CITATION:
1984 AIR 1227 1984 SCR (3) 361
1984 SCALE (1)596
CITATOR INFO :
F 1985 SC1416 (68,96)
RF 1986 SC 555 (6)

ACT:
Industrial Employment(Standing Orders) Act, 1946 - Standing Orders-Certified Standing Order No.17-Providing that all dismissal orders shall be passed by the Manager or Acting Manager who shall do so after giving the accused an opportunity to offer any explanation-Interpretation of-Whether contemplates second opportunity to workman after conclusion of enquiry and before inflicting punishment of dismissal-Whether enquiry gets vitiated in absence of such opportunity.

HEADNOTE:

Four workmen of the appellant company in Civil Appeal No. 209/73 were charged for mis-conduct as defined in Standing order No. 16. The enquiry officer found them guilty of the charges. On the basis of the Enquiry officer's report and after looking into the previous record of the workmen, the General Manager dismissed them. On a dispute having been raised it was referred to the arbitrator, first respondent, under section 10A of the Industrial Disputes Act 1947. The arbitrator held that the enquiry which was otherwise fair and valid was vitiated because no second opportunity was given to the workmen before dismissing them as required by the Standing order No. 17. The Arbitrator set aside the dismissal of two workmen and confirmed that of the other two. The management and the workman challenged the award in the High Court by two writ petitions. The High Court confirmed the award and dismissed both the writ petitions. Hence these appeals by management and the workmen.

Allowing the appeal of the management and dismissing that of the workmen.

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HELD: Under Standing order No. 17 no second opportunity of showing cause on the question of punishment is contemplated. [367D]

Neither under the ordinary law of the land nor under industrial law a second opportunity to show cause against the proposed punishment is necessary. This of course, does not mean that the standing order may not provide for it but unless the Standing order provide for it either expressly or by necessary implication, no enquiry which is otherwise fair and valid will be vitiated by non-affording of such opportunity. [369B-D]

Standing Order No. 17 provides that a worker may be suspended, fined or dismissed if found guilty of mis-conduct as defined in Standing Order No. 16. Para 3 of Standing Order No. 17 says that "all dismissal orders shall be passed by the Manager or Acting Manager who shall do so after giving the accused an opportunity to offer any explanation." The question is whether para 3 provides for such second opportunity being given to the delinquent ? The words "all dis-

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missal orders shall be passed by the Manager after giving, the accused an opportunity to any offer explanation" in para 3 of Standing Order No. 17 are wholly inappropriate to convey the idea of a second hearing or opportunity on the question of punishment but appropriate in the context of seeking an explanation' in regard to the alleged mis-conduct charged against him. An 'explanation' is to be called from the 'accused' which suggests that the same is to be called for prior to the recording of a finding that the delinquent is guilty of mis-conduct; it is the alleged mis-conduct that is to be explained by him and not the proposed punishment.

On a plain reading of the relevant words no second opportunity of showing cause against the proposed punishment is contemplated either expressly or by necessary implication. In other word, it is clear that the opportunity spoken of by para 3 of Standing Order No. 17 is the opportunity to be given to the delinquent to meet the charges framed against him. Further, since the instant Standing Order was certified prior to the enunciation of the law by Courts regarding the observance of the principles of natural justice such as issuance of a charge-sheet, holding of an inquiry, opportunity to lead evidence, etc. It merely contains a bald provision for 'giving the accrued an opportunity to offer any explanation'. In other words. different stages in domestic inquiry were never in the contemplation of the framers of the Standing Order. That being the position it would be difficult to attribute any intention to the framers thereof to provide for a second opportunity being given to the delinquent of showing cause against the proposed punishment. [368A-E; 369C-H; 370A-B]

The view of the Arbitrator as also the view of the High Court proceed on an assumption the Standing Order No. 17 deals with two different stages concerning disciplinary proceedings against a delinquent, first holding of a departmental inquiry into the charges where principles of natural justice must be implied and second the infliction of graver punishment before awarding which opportunity to show cause has been provided for; but the plain reading of the Standing Order read as a whole does not warrant any such assumption and, therefore, the construction placed on Standing order No. 17 by the Arbitrator or the High Court is not possible much less reasonably possible. [373H; 371A-B]

In the instant case, admittedly, opportunity to offer explanation in regard to the alleged mis-conduct was not only afforded but was availed of by the concerned foul workers by submitting their written explanations to the Manager whereafter the departmental inquiry was held. In other words Standing Order No. 17 was fully complied with and what is more the Arbitrator has held that the inquiry was otherwise fair and valid. [371D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 209 of 1973.

(Appeal by Special leave from the Judgment and Order dated the 27th July 1972 of the Madhya Pradesh High Court in Misc. Petition No. 129 of 1970) AND (From the Judgment and order dated the 27th July, 1972 of the Madhya Pradesh High Court in Misc. Case No. 365 of 1970.) F.N. Kaku and D.N. Misra for the Appellants in CA. No. 209 of 1973 & For the Respondent No.2 in CA. 1140/74.

M.K. Ramamurthy, Vineet Kumar and Naresh K. Sharma, for the Respondent Nos.2 & 4 in CA.209/73 & for the Appellant in CA. No.1140 of 1974.

The Judgment of the Court was delivered by TULZAPURKAR, J. The principal question raised for our determination in these appeals is: Whether on its proper construction the certified Standing Order 17 provides for second opportunity being given to a workman after conclusion of the inquiry into his misconduct and before inflicting on him the punishment of dismissal and if so whether the enquiry gets vitiated by not affording him such opportunity?

Facts giving rise to the question may be stated. The Associated Cement Companies Limited (hereinafter called 'the Appellant') has quarries worked by its department called Kymore & Bamangaon Lime-stone Mines at Kymore, District Jabalpur, M.P. Workers employed in the said quarries have a union called Kymore Quarry Karamchari Sangh and the four concerned workmen Rama Shanker, Barmapradhan, Emmanual and Mohd. Rauf (hereinafter called the Respondents') were at the material time the office bearers in the union.

In connection with the implementation of the Recommendations of Second Central Wage Board for the cement industry, after serving a strike notice on the management of the Appellant on 13th September, 1968, the Karamchari Sangh and all its Members went on a strike for 24 hours commencing from the mid-night of 19th September, 1968 which was accompanied by acts of intimidation, threats, ghearoes and unlawful obstruction. According to the management before the commencement of the strike two meetings were organized by the Respondents, one at 4 P.M. and the other at 11 P.M. on 19th September at which fiery speeches were made by them wherein they not only instigated the quarry workers to resort to strike but intimidated and prevented the willing workers from going to their work and threatened the supervisory staff and officers with dire consequences if they tried to work the quarries and what is more from the mid-night of 19th September till 4.30 A.M. on 20th September the quarry Manager and the supervisory staff were ghearoed and at 4.30 A.M. the Agent's car stopped at the gate and he was unlawfully obstructed from visiting the querry premises. Since resorting to a strike without giving 14 days' prior notice as also the aforesaid acts on the part of the Respondents amounted to serious mis-conduct under the certified Standing Orders applicable to the quarries the Management served Charge-sheets dated 3rd of October. 1968 on the Respondents in which four common charges were levelled against all of them; in addition a fifth charge was levelled against two of them Emmanual and Mohd. Rauf; and yet another 6th charge was levelled against Mohd. Rauf. The common charges were (a) themselves going on strike without 14 days' prior notice, (b) inciting and instigating other workers to go on strike, (c) gheraoing the Quarry Manager and other supervisory staff between mid-night and 4.30 A.M. on 20th September and inciting others to gherao the said staff and (d) forcibly and unauthorisedly occupying the area near the quarry canteen between 4 P.M. on 19th Sept. and 1 A.M. on 20th Sept. and installing and using loud-speakers for inciting the workers. Shri Emmanual and Shri Rauf were further charged with threatening the gheraoed staff with dire consequences, if they moved out; and Mohd. Rauf was charged in addition for having restrained the Quarry Agent from entering the quarry premises. The respondents were called upon to submit their explanation in respect of the charges to the General Manager which they did; in their Explanations they by and large denied the charges levelled against them. A departmental enquiry was held against them by

Shri H.S. Mathur during the course of which at one stage the Respondents withdrew from the enquiry on 24th October, 1968 on the plea that the Quarry Agent should be examined first which was not being done, whereafter the enquiry proceeded ex-parte and on a consideration of the entire evidence led before him the Enquiry Officer came to the conclusion that the first three charges were fully proved and the fourth charge was partly proved against all the respondents while the additional charges against Emmanual and Mohd. Rauf were also proved. The Enquiry Report was forwarded to the General Manager who after considering the same and after taking into account the previous service record of the Respondents by his order dated 31st December, 1968 dismissed the Respondents from service. That order was served on the Respondents on 30th January, 1969.

A dispute having been raised with regard to their dismissal, by common consent, the same was referred to the arbitration of Shri T.C. Shrivastava, a retired Judge of M.P. High Court, under sec. 10-A of the Industrial Disputes Act, 1947 on 14th 'April, 1969. The Arbitrator gave his Award on 9th February, 1970 whereby he came to the conclusion that the enquiry which was otherwise fair and valid was vitiated because no second opportunity was given to the Respondents of showing cause against the proposed punishment before the issuance of their dismissal order as required by the Standing Order No. 17; he further held that though before him the Management had by leading evidence proved their mis-conduct by establishing the first three charges against all, the fifth charge against Emmanual and Mohd. Rauf (fourth charge being held not to have been proved) the punishment of dismissal in respect of Emmanual and Mohd. Rauf could be confirmed but set aside the dismissal in respect of Rama Shanker and Barmapradhan on the ground that while fomenting the strike the conduct of Emmanual and Mohd. Rauf was graver than that of Rama Shanker and Barmapradhan and instead ordered their reinstatement but without back wages. The Appellant challenged the Award in the High Court by means of a Writ Petition (Misc. Petition No. 129 of 1970) contending that the Arbitrator had misconstrued Standing Order No. 17 and that no second opportunity was required to be given to the Respondents and that in the alternative the interference with the punishment of dismissal in respect of Rama Shanker and Barmapradhan was erroneous while another writ petition (Misc. Petition No. 365 of 1970) was filed by the Respondents against the punishments that were awarded to each one of them the High Court by its judgment dated 27th July, 1972 confirmed the Award of the Arbitrator by dismissing both the writ petitions.

The Appellant has come up in appeal (being Civil Appeal No. 209/73) by special leave challenging the interference with the dismissal of Rama Shanker and Burma Pradhan while the Respondents have preferred their appeal (being Civil Appeal No. 1140 of 1974) on a Certificate granted by the High Court challenging the punishments operating against each one of them. At this stage it may be stated that as regards Emmanual and Mohd. Rauf the matter has been compromised between the parties which has already been recorded by this Court with the result that Civil Appeal No. 1140 of 1974 in so far as their dismissal is concerned no longer survives and the same needs to be dealt with by us only as regards back wages that have been denied to Rama Shanker and Burmapradhan.

In support of civil Appeal No. 209 of 1973 Counsel for the Appellant raised three contentions before us. In the first place, he contended that the learned Arbitrator as well as the High Court have erroneously construed the certified Standing order No. 17 as requiring a second opportunity being given to a workman at the conclusion of the enquiry into his mis-conduct and before inflicting upon

him the punishment of dismissal; he urged that the concept of second opportunity being given to a delinquent which obtained under sec. 240(3) of the Government of India Act, 1935 or Art. 311 of the Constitution prior to the insertion of the Proviso to Article 311 (2) could not be invoked or applied to the instant case nor was such second opportunity any requirement of the ordinary law of the land or of Industrial law and in this behalf reliance was placed on two decisions of this Court in Hamdard Dawakhana case and in Saharanpur Light Rly, case. Counsel urged that on proper construction of the Standing order it should have been held that no second opportunity was contemplated thereunder and therefore the finding that the enquiry was vitiated deserved to be set aside and according to him if the enquiry was valid and was not vitiated the punishment of dismissal imposed on Rama Shanker and Barmapradhan could not be interfered with. In the alternative counsel contended that assuming that the enquiry was vitiated for the reason mentioned by the Arbitrator even than once serious mis- conduct was proved by leading evidence before the learned Arbitrator it was not open to him to interfere with the punishment of dismissal unless the punishment was so harsh as to smack of victimisation. In the further alternative counsel contended that assuming that the Arbitrator had power to interfere with the punishment in the instant case having to the facts and circumstances he was not justified in setting aside the dismissal of Rama Shanker and Barmapradhan especially on the ground on which he did so namely, that the conduct of Shri Emmanual and Mohd. Rauf was more grave than that of Rama Shanker and Barmapradhan while fomenting the strike; counsel urged that passively taking part in the strike was distinguishable from the more serious mis-conduct of fomenting or inciting the strike and all the respondents were found guilty by the learned Arbitrator of such serious mis-conduct and as such no distinction on the distinction on the basis indicated between the two sets of workmen should have been made in the matter of punishment, on the other hand coun- sel for the Respondents urged that Standing order No. 17 had been properly construed by the Arbitrator and the High Court and that construction should be upheld and in any case if two constructions were reasonably possible no interference by this Court was called for and counsel in that behalf relied upon the decision Agani (W.M.) v. Badri Das and ors. Counsel further urged that once the enquiry got vitiated the entire field of determining the mis-conduct as also the punishment therefor became open and the Arbitrator had jurisdiction and power to consider both the aspects and that the Arbitrator in the facts and circumstances of the case had justifiably interfered with the dismissal of Rama Shanker and Barmapradhan and had directed their reinstatement.

From the rival contentions summarised above it will appear clear that the real question that arises in these appeals is, does the certified Standing order No. 17 provide for second opportunity being given to a workman to show cause against the proposed punishment of dismissal, for, it was not disputed before us that if no such second opportunity is contemplated by it then the only ground on which the inquiry has been held to be invalid by the learned Arbitrator and the High Court would disappear and the Arbitrator could not have entered into merits of the case or interfered with the punishment of dismissal inflicted upon Rama Shanker and Barmapradhan. The question obviously depends upon the proper construction to be placed on said S.O. 17. It may be stated that the certified S.O. 16 enlists several acts or omissions that constitute 'mis-conduct' and striking work either singly or with other workers without giving 14 days previous notice, inciting whilst on the premises and worker to strike work and indulging in a Gherao, which would amount to an 'act subversive of discipline or efficiency' are obviously included therein. S.O. 17 which deals with punishments and procedure

therefor runs thus:

> "17. A worker may be suspended for a period not exceeding 4 days or fined in accordance with the Payment of Wages Act or dismissed without notice or any compensation in lieu of notice it found guilty of misconduct defined in Standing order No. 16.
>
> All orders of suspension and fines shall be in writing setting out the misconduct for which the punishment is awarded. No officer below the rank of the Head of Department shall award the above punishment All dismissal order shall be passed by the Manager or Acting , 'Manager who shall do so after giving accuse an opportunity to offer any explanation. Due consideration to the gravity of the misconduct and the previous record of the worker shall be given in awarding the maximum punishment.
>
> In the event of a discharge of dismissal, the worker shall be paid off within the second working day following the discharge or dismissal."

The question is whether when paragraph 3 of the S.O. says: "all dismissal orders shall be passed by the Manager or Acting Manager who shall do so after giving the accused an opportunity to offer any explanation", it contemplates giving of a second opportunity to the delinquent to show cause against the proposed punishment of dismissal after he has been found guilty or the opportunity spoken of is the opportunity to meet the charges in the domestic inquiry ?

At the outset the legal position as has been clarified by this Court in the Saharanpur Light Railway Co.'s case (supra) may be stated. In the context of certain modification sought to be introduced in a Standing order requiring a second show cause notice this Court has observed thus: ' "As regards the modification requiring a second show cause notice, neither the ordinary law of the land nor the industrial law requires an employer to give such a notice. In none of the decisions given by the Courts or the Tribunals , such a second show cause notice in the case of removal has ever been demand or considered necessary. The only class of cases where such a notice has been held to be necessary are those arising under Art. 311. Even that has now been removed by the recent amendment of that Article. To import such a retirement from Art. 311 in industrial matters does not appear to be either necessary or proper and. would be equating industrial employees with civil servants. In our view, there is no justification or any principle for such equation.

Besides, such a requirement would unnecessarily prolong disciplinary enquiries which in the interest of industrial peace should be disposed of in short time as possible. In our view it is not possible to consider this modification as justifiable either on the ground of reasonableness of fairness and should therefore be set aside."

It is thus clear neither under the ordinary law of the land nor under industrial law a second opportunity to show cause against the proposed punishment is necessary. This, of course, does not mean that a Standing order may not provide for it but unless the Standing order provides for it. either expressly or by necessary implication no inquiry which is otherwise fair and valid will be

vitiated by non-affording of such second opportunity. The question is whether para 3 of the Standing order No. 17 provides for such second opportunity being given to the delinquent ? The relevant words are " all dismissal order shall be passed by the Manager alter giving the accused an opportunity to offer any explanation". The underlined words are wholly inappropriate to convey the idea of a second hearing on opportunity on the question of punishment but appropriate in the context of seeking an explanation in regard to the alleged misconduct charged against him. An explanation' is to be called from the 'accused' which suggests that the same is to be called for prior to the recording of finding that the delinquent is guilty of misconduct: it is the alleged misconduct that is to be explained by him and not the proposed punishment. On a plain reading of the relevant words no second opportunity of showing cause against the proposed punishment is contemplated either expressly or by necessary implication. In other words, it is clear to us that the opportunity spoken of by para 3 OE S.O. 17 is the opportunity to be given to the delinquent to meet the charge framed against him. In this connection it will be pertinent to mention that the concerned S.O. was framed and came into force on March 1, 1946 and was duly certified on October 16, 1954 under the Industrial employment (Standing orders) Act, 1946 i.e. prior to the enunciation of the law by Courts regarding the observance of the principles of natural justice such as issuance of a charge-sheet, holding of an inquiry, opportunity to lead evidence, etc. and it is well-known that after the enunciation of these principles model standing orders have been framed to provide for the detailed steps required to be undertaken during a domestic inquiry. Since the Instant Standing order was certified prior to the formulation of the above principles it merely contains a bald provision for `giving the accused an opportunity to offer any explanation'. In other words, different stages in domestic inquiry were never in the contemplation of the framers of the S.O. That being the position it would be difficult to attribute any intention to the framers thereof to provide for a second opportunity being given to the delinquent of showing cause against the proposed punishment. The latter part of para 3 merely casts a unilateral obligation on concerned authority or the officer to give due consideration to the gravity of the misconduct and the previous record of the delinquent in awarding the maximum punishment.

It is true that the Arbitrator has undoubtedly taken the view that the opportunity spoken of by para 3 does not refer to the opportunity to meet the charges but refers to the further opportunity being given to the delinquent to show cause against the graver punishment of dismissal that may be proposed to be inflicted on him. But for reaching such a conclusion he has resorted to some involved reasoning which is not warranted by the Standing order if read as a whole. According to him in the earlier paragraph which speaks of awarding lighter punishment there is no reference to any opportunity being given to meet the charges but no punishment not even lighter punishment can be inflicted without inquiry being held according to the principles of natural justice and if such an inquiry as implicit in cases of lighter punishments it would be so in cases of graver punishment like dismissal and since specific mention of opportunity as made in cases of graver punishment in the relevant sentence para 3 it must have a meaning and the words cannot be considered a surpulsage and, therefore, the opportunity mentioned in the relevant sentence of para 3 refers to the second opportunity being given to the delinquent at the stage of inflicting the punishment of dismissal. The High Court has confirmed the view of the basis that the first part of the Standing order deals with several punishments and requires finding of guilt in respect of each one of them and this procedure is, therefore, different from that which has been contemplated in the last part of the Standing order

and that last part deals only with the punishment of dismissal and for that punishment alone makes a special provision that no order awarding that punishment will be passed unless the Manager gives an opportunity to a workman to offer his explanation. In our opinion, the view of the Arbitrator as also the view of the High Court proceed on an assumption that the Standing Order No. 17 deals with two different stages concerning disciplinary proceedings against a delinquent, first holding of a departmental inquiry into the charges where principles of natural justice must be implied and second the infliction of graver punishment before awarding which opportunity to show cause has been provided for; but the plain reading of the Standing Order read as a whole does not warrant any such assumption and, therefore, we do not feel that the construction placed on Standing Order No. 17 by the Arbitrator or the High Court is possible much less reasonably possible. The ratio of this Court's decision in Agnani (W.M.) v. Badri Das & Ors. (supra) is, therefore, not attracted.

In view of the construction which we are placing on S.O. No. 17, it will be clear that the only ground on which inquiry was held to be invalid by the Arbitrator and by the High Court must disappear. Admittedly, opportunity to offer explanation in regard to the alleged misconduct was not only afforded but was availed of by the concerned four workers (including Rama Shankar and Burma) Pradhan) by submitting their written explanations to the Manager whereafter the departmental inquiry was held by H.S. Mathur. In other words S.O. 17 was fully complied with and what is more the Arbitrator has held that the inquiry was otherwise fair and valid. The solitary ground on which the inquiry was held to be invalid having disappeared it must follow that the Arbitrator had no Jurisdiction to enter into the merits of the case or interfere with the punishment of dismissal inflicted upon Rama Shankar and Burma Pradhan. That part of the Arbitrator's award which has been confirmed by the High Court is, therefore, set aside. The alternative contentions raised by counsel for the Management in these appeals do not survive. C.A. No. 209 of 1973 (filed by the Management) is allowed and C.A. No. 1140 of 1974 (filed by the two workmen Rama Shankar and Burma pradhan) is dismissed. There will be no order as to costs.

H.S.K. C.A. 209/72 allowed and CA. 1140/74 dismissed.