Supreme Court of India
The Delhi Cloth And General Mills ... vs Kushal Bhan on 10 March, 1960
Equivalent citations: AIR 1960 SC 806, (1960) ILLJ 520 SC, 1960 3 SCR 227
Author: Wanchoo
Bench: K Wanchoo, P Gajendragadkar
JUDGMENT Wanchoo, J.

1. 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 committed 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.

2. 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.

3. It is true that very often employers stay enquiries pending the decision of the criminal trial courts 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 the employee. In Shri Bimal Kanta Mukherjee v. Messrs. Newsman's Printing Works ((1956) L.A.C. 188), this was the view taken by the Labour Appellant 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.

4. Appeal allowed.