

Khedun M.S. v Building & Civil Engineering Co Ltd

2022 IND 33

Cause Number 184/2020

**IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)**

In the matter of:-

Mohammad Shafeek Khedun

Plaintiff

v.

Building & Civil Engineering Co Ltd

Defendant

Ruling

The averments of this plaint are to the following effect. Plaintiff is a well known professional in the field of construction and is highly qualified in Construction & Real Estate, in Project Management and in Civil Engineering. Defendant is a company involved in the construction industry.

Plaintiff joined Defendant in 2002 as a Site Engineer and gradually was called upon to handle other more important positions with a continuous increase in pay starting from January 2002 to January 2020 when he occupied in an escalating way the posts of Site Engineer, Contract Manager, Construction Manager and Senior Contracts Manager.

He has completed above 30 projects successfully for Defendant and has been eligible for a minimum yearly salary increase of 10% since 1 July 2016 and also perceived other benefits. He operated at management level with Defendant. His

total monthly salary including allowances stood at Rs 280,105/- and has accumulated 18.5 years of continuous employment with Defendant.

In July 2018, Defendant merged its operation with Cogir Ltée and the first project carried out following the merger impacted on the finance of Defendant resulting in Rs 100 million in losses and the project overran by 6 months due to poor management.

The projects Plaintiff was responsible for were still profitable and over and above the targeted profit.

Following Defendant's financial standing as at end of June 2019, Defendant was in an overall loss situation and was thus not in a position to pay any bonus for that year. Despite making substantial losses, Defendant appointed a head of human resources in February 2020, a Contracts Administrator and an Operations Manager in March 2020.

Soon after, the country was placed in confinement and lockdown, and financial uncertainty was discussed between Plaintiff and other persons from the management team, whereby Plaintiff made certain proposals to cut costs and reduce overheads.

On 28 April 2020, Defendant's managing director and préposé sent Plaintiff an email and complained that the performance on the Unicity Office Park was well below what was expected. Plaintiff was being blamed specifically in that regard and he replied that despite making a profit of Rs 16.5 million, there was a shortcoming of Rs 1.5 million. He further explained that performance was less than expected on account of the fact that the managing director was responsible for closing the site for 6 weeks and shifting labour force on that particular site to another site whereby the Defendant suffered a loss of Rs 1 million.

Plaintiff felt that he was being unfairly targeted by Defendant's managing director since he was being blamed for the contracts he was responsible for, despite the reasons thereof not being attributable to him.

On the other hand, other employees who were in charge of contracts which were running with major losses of Rs 4 million per month were not being reprimanded, such that Plaintiff was being unduly victimized and targeted.

On 20 May 2020, Plaintiff requested for a meeting with the managing director and the Head of Human Resources whereby several matters were discussed, such as but not limited to, labour losses, frustration of the Defendant's employees, staff from Cogir who were perceiving higher salaries despite having no degrees, etc. During the said meeting, the managing director of Defendant admitted that he was responsible for the loss of Rs 100 million on the Preskil contract and when Plaintiff queried as to why the merger with Cogir took place, the managing director replied that he could not answer and stated that if he required answers in that regard, he needed to write to the Board of Directors of Defendant.

On the same day, that is, 20 May 2020 onwards, Plaintiff became the victim of systematic harassment and victimization as follows:

- a. His laptop was taken by the IT department of Defendant one hour after his meeting with the managing director;
- b. A watchman was deployed on Plaintiff's site to monitor his every movement and then report to the managing director;
- c. A black van once followed Plaintiff when he was returning to his house;
- d. His phone calls might have been tapped and all his emails screened;
- e. On 21 May 2020, the managing director of Defendant came on site and started questioning Plaintiff in front of his subordinates, thereby putting into question his integrity and capability;

On 21 May 2020, he wrote to the Head of Human Resources to explain that he was being harassed by the managing director.

No action whatsoever was taken, nor was there any follow-up and/or response from the Head of Human Resources.

As directed by the managing director during the meeting of 20 May 2020, as a concerned employee of 18.5 years' standing, wrote to the Board of Directors of Defendant on 21 May 2020 to explain his point of view regarding the status of Defendant (financial or otherwise) post-merger and requested for answers regarding the purpose of the merger.

On 22 May 2020, Plaintiff wrote to the Head of Human Resources to request for the minutes of the meeting which he had with the managing director on the 20 May 2020 but to no avail. Plaintiff reiterated his request on 26 May 2020 and on 27 May 2020, the Head of Human Resources replied by stating that since Plaintiff had written to the Board of Directors, the whole matter has been referred to the Board and to request for the minutes of the meeting from the Board.

On 29 May 2020, Plaintiff was shocked to receive a letter from Defendant to the effect that the Board of Directors has decided to suspend him on alleged grounds that an inquiry was being done on alleged adverse information received against Plaintiff.

It is surely not coincidental that Defendant allegedly found grounds to suspend him one week after he wrote to the Board of Directors to raise the issue of his harassment by the managing director amongst others. Following his suspension, he has no access to his emails and has had his access to Defendant's server blocked.

It is Plaintiff's contention that he has been constructively dismissed from his employment by Defendant through the acts and doings of the latter's managing director:

- a. It is the managing director who asked Plaintiff to write to the Board of Directors during their meeting of 20 May 2020;
- b. The Head of HR who was also present persistently refused to provide a copy of the minutes of the meeting to Plaintiff despite he has been asking for same several times knowing fully well that those minutes would have clearly established that it was the managing director who directed him to write to the Board;
- c. Plaintiff acted as directed by the managing director and wrote to the Board to explain how he was harassed and also to explain the bad situation that BCE was in;
- d. In return just one week later, he was suspended on bogus grounds;
- e. He has been set up by the managing director of Defendant (against whom he has made a complaint of harassment).

On 2 June 2020, he was requested by the Corporate Governance Committee (“CGC”) of Defendant to submit particulars of the harassment by the managing director. He had already prepared a letter in that regard on the eve and tabled same at the meeting of the 2 June 2020. However, the CGC acted as if it did not receive same because on 20 June 2020, it again requested for particulars of harassment.

As such on 10 June 2020, Plaintiff caused a Notice Mise en Demeure to be served upon Defendant setting out that he deemed himself to have been constructively dismissed following a long period of harassment by the managing director.

Defendant through its *préposé* and HR Officer wrote to Plaintiff on 15 June 2020 following his request to return company property and informed him that arrangements have been made for the return of company property on 18 June 2020 at 14 hrs.

On 17 June 2020, Defendant caused a reply to the notice to be served upon Plaintiff denying the contents of the notice sent and summoning Plaintiff to report to the Head of Human Resources Department on 19 June 2020 failing which it will be considered that he has abandoned his employment.

It is only after he has caused a notice to be served upon Defendant on 10 June 2020 that the latter has started reacting by firstly asking him to return company property on 18 June 2020 and eventually asking him to report to the Head of HR on 19 June 2020. Indeed, he as requested by Defendant went to return the company property on 18 June 2020 and a receipt to that effect was issued by Defendant to him at 14h05. In those circumstances, Defendant cannot come and plead abandonment of employment.

Plaintiff has not been aware of the reason as to why he needs to report to the Head of HR and is not aware whether he is still suspended or not. Since he was notified in writing that he was suspended on the 29 May 2020, he cannot now be expected to report to the Head of HR failing which he will be considered to have abandoned his employment.

To all intents and purposes, Plaintiff cannot be considered to have abandoned his employment while he is still in suspension save and except if he is informed in writing that his suspension has been lifted or dealt with otherwise. In any event, Defendant has already been informed on the 10 June 2020 that he has been

constructively dismissed such that there can be no question of him abandoning his employment.

Defendant has asked for particulars in terms of demand of further and better particulars as follows:

Under Answer 4 of the Answer to Particulars

Q.4. Defendant moves for full and detailed particulars of the latest terms and conditions governing the employment of Plaintiff and for communication of documents if any in support thereof.

A.4. Defendant ought to be aware of same.

Q.1. Defendant insists on a proper answer to Question 4 of the Demand of Particulars.

A.1. Plaintiff maintains answer 4 of the Answer to Particulars.

Under Answer 13 of the Answer to Particulars

Q.13. Defendant moves for full and detailed particulars of "poor management". In case Plaintiff relies upon documents in support thereof, Defendant moves for communication of same.

A.13. This is evident ex-facie the Plaintiff – Plaintiff will depone further thereon at trial stage.

Q.3. Defendant insists on a proper answer to Question 13 of the Demand of Particulars.

A.3. Plaintiff maintains answer 13 of the Answer to Particulars.

Q.4. Defendant moves for the list of projects for which Plaintiff was responsible and were (a) profitable and (b) above targeted profit.

A.4. This is not relevant for the present purposes.

Under Answer 22 of the Answer to Particulars

Q.22. Defendant moves for full and detailed particulars of the reasons not attributable to the Plaintiff.

A. 22. As pointed out by the Defendant's Managing Director, for instance, for a Project at La Balise which finished quite late due to workers had been deployed to other sites, Plaintiff was blamed for not finishing on time. However, it is to be noted that the project was successful financially.

Q.5. When was the Project to be finished?

A.5. Plaintiff will depone thereon at trial stage.

Q.6. When did the Project finish?

A.6. Plaintiff will depone thereon at trial stage.

Q.7. Was the blame made in writing? If yes, Defendant moves for communication of same.

A.7. Plaintiff will depone thereon at trial stage.

Under Answer 26 of the Answer to Particulars

Q.26. Defendant moves for full particulars of all topics discussed during the meeting.

A. 26. This is evident ex-facie the said Paragraph.

Q.8. Defendant insists on a proper answer to Question 26 of the Demand of Particulars.

A.8. Plaintiff maintains answer 26 of the Answer to Particulars.

Under Answer 37 of the Answer to Particulars

Q.37. Will Defendant state how and by whom his phone might have been tapped? Defendant moves for full particulars of such tapping.

A.37. There were several sudden distortions in the phone calls after these events.

Q.10. Defendant insists on a proper answer to Question 37 of the Demand of Particulars.

A.10. Plaintiff maintains answer 37 of the Answer to Particulars.

Under Answer 50 of the Answer to Particulars

Q.50. Defendant moves for full and detailed particulars of the basis and grounds upon which he based himself to aver that "*it is surely not coincidental that the Defendant allegedly found grounds to suspend him one week after he wrote to the Board of Directors*".

A.50. *Plaintiff will depone thereon at trial stage.*

Q.11. Defendant insists on a proper answer to Question 50 of the Demand of Particulars.

A.11. Plaintiff maintains answer 50 of the Answer to Particulars.

Under Answer 60 of the Answer to Particulars

Q.60. Defendant moves for full and detailed particulars of the alleged set-up. In case Plaintiff relies upon documents in support of same, Defendant moves for communication thereof.

A.60. Plaintiff will depone thereon at trial stage.

Q.13. Defendant insists on a proper answer to Question 60 of the Demand of Particulars.

A.13. Plaintiff maintains answer 60 of the Answer to Particulars.

Under Answer 68 of the Answer to Particulars

Q.68. Defendant moves for full particulars as to how was the request to return company property on 18 June 2020 was made. If in writing, Defendant moves for communication of same.

A.68. Defendant should be aware of same.

Q.14. Defendant insists on a proper answer to Question 68 of the Demand of Particulars.

A.14. Plaintiff maintains answer 68 of the Answer to Particulars.

Under Answer 69 of the Answer to Particulars

Q.69. Defendant moves for communication of all and any communication in relation to the request to return company property on 18 June 2020.

A.69. Defendant is already in possession of same.

Q.15. Defendant insists on a proper answer to Question 69 of the Demand of Particulars.

A.15. Defendant maintains answer 69 of the Answer to Particulars.

Under Answer 70 of the Answer to Particulars

Q. 70. Defendant moves for full particulars as to how the request to report to the Head of HR on 19 June 2020 was made. If in writing, Defendant moves for communication of same.

A.70. Defendant ought to know since it made the request.

Q.16. Defendant insists on a proper answer to Question 70 of the Demand of Particulars.

A.16. Plaintiff maintains answer 70 of the Answer to Particulars.

Under Answer 71 of the Answer to Particulars

Q. 71. Defendant moves for communication of all and any communication in relation to the request to report to the Head of HR on 19 June 2020.

A.71. Defendant is aware of same.

Q.17. Defendant insists on a proper answer to Question 71 of the Answer to Particulars.

A.17. Plaintiff maintains answer 71 of the Answer to Particulars.

Under Answer 72 of the Answer to Particulars

Q. 72. Defendant moves for communication of receipt dated 18 June 2020.

A.72. Defendant has same in its possession.

Q.18. Defendant insists on a proper answer to Question 72 of the Answer to Particulars.

A.18. Plaintiff maintains answer 72 of the Answer to Particulars.

Learned Counsel for Defendant moved that the matter be fixed for arguments in the light of the above answers given by Plaintiff. The motion was granted and arguments heard.

The main thrust of the arguments of learned Counsel for Defendant is to the following effect. The principle relating to particulars has been recently reiterated in the Supreme Court case of **Jhuboo E S v Ganoo A & Ors** [\[2021 SCJ 49\]](#). It was stated that the requirement to give particulars reflects the overriding principle in the litigation between the parties and particularly the trial should be conducted fairly, openly, without surprise and as far as possible to minimize costs. Objection to an application for particulars on the ground that the applicant must know the true facts of the case better than his opponent, same is to his knowledge, should be aware of, it is in the possession of, the Supreme Court said that it was misconceived. Each party is entitled to know the outline of the case that his opponent is going to make against him and to bind him to a definite story. The application for particulars made is for the Plaintiff to be bound to a definite story and not to keep vague and general averments opening the door for all sorts of evidence of any kind to come in. The case of **Gujadher v Gujadher**[\[1962 SCJ 49\]](#) was referred to where it was stated that the object of particulars was to prevent surprise at the trial by informing the opposite party what case which he has to meet, to explain and limit the pleadings which are vague and require limitation and to define and narrow the issue to be tried and to prevent unnecessary expenses.

The main thrust of the arguments of learned Counsel for Plaintiff is that if Defendant does not have the terms and conditions governing the employment of Plaintiff, who will have those terms and conditions? He further relied on the case of **Glover v Duval & Ors.**[\[1993 SCJ 30\]](#) where it was held that particulars are related and confined to the averments in the pleadings. Interrogatories as opposed to particulars travel outside the material averments in the pleadings and are indeed questions extraneous to those averments and are consequently not permissible under our rules of procedure. The other questions requested are matters of evidence

and the Defendant is fishing for evidence. Particulars will not be ordered where the issue is a matter of evidence. What Defendant is trying to achieve by insisting for the particulars is to elucidate matters of evidence and to shape his case so as to defeat justice. This cannot be condoned by the Court. He relied on **Gujadhur(supra)**. The issues are clearly defined, Defendant knows what case it has to meet and it will be able to prepare its defence properly and accordingly and hence, the present case will be conducted fairly, openly and without surprise at the trial. Pleadings are matters of facts which constitute the cause of action but the cause of action is a matter of law. He relied on the case of **Gheesah I M v The Road Transport Commissioner, National Transport Authority & Anor** [\[2016 SCJ 77\]](#). He went on to say that in **Modaykhan & Ors v State Bank of Mauritius Ltd & Anor** [\[2014 MRC 48\]](#), the Court held that particulars will not be ordered where the issues raised are a matter of law and a reading of the whole plaint clearly shows that the facts averred by Plaintiff amount to a wrongful and constructive dismissal claim against Defendant. There is no surprise. The Defendant knows the case it has to answer and it is a question of law and there is no need to give particulars.

I have given due consideration to the arguments of both learned Counsel. I find it appropriate to quote an excerpt from the recent Supreme Court case of **Duval A.C. v The Electoral Commissioner & Ors** [\[2021 SCJ 188\]](#) which reads as follows:

*"The principles regarding particulars are well established and reiterated in **ES Jhuboo v A Ganoo & Ors** [\[2021 SCJ 49\]](#), which stated –*

*"The requirement to give particulars reflects the overriding principle that the litigation between the parties and particularly the trial, should be conducted fairly, openly, without surprise and, as far as possible, to minimise costs. It was held in **Gujadhur v Gujadhur** [\[1962 SCJ 49\]](#) that "it is settled principle that the object of particulars is to prevent surprise at the trial by informing the opposite party what the case which he has to meet, to explain and limit the pleadings which are vague and require limitation, and generally to define and narrow the issue to be tried and to save expense. It is sometimes argued as an objection to an application for particulars that the applicant must know the true facts of the case better than his opponent. However, this objection is misconceived: each party is entitled to know the outline of the case that his opponent is going to make against him and to bind him to a definite story.*

It is explained in Odger's Principles of Pleading and Practice in Civil Action in the High Court of Justice, 22 nd Edition, at page 156, that particulars will not be extracted where it would be oppressive or unreasonable to make such an order, as where the information is not in the possession of either party, or could only be obtained with great difficulty, or where the particulars are not applied for till the last moment. The advantage of obtaining particulars therefore from the opponent is that "he is bound by his particulars and cannot, at trial go into any matter not fairly included therein".

As a general rule, particulars will not be ordered:

- 1) *where the party asking for them is fishing for evidence or where the issue is a matter of evidence;*
- 2) *the questions are in the nature of an interrogatory;*
- 3) *the issues raised are a matter of law; or*
- 4) *they are not within the knowledge of the petitioner."*

I am of the view that the issue of the successful completion of above 30 projects by Plaintiff for Defendant is only aimed at showing the escalating posts Plaintiff had occupied entailing an increase in salary and benefits and leading him to operate at management level and it is his action at management level that has led to his alleged constructive dismissal namely persistent harassment and victimization by the managing director since the merger of Defendant company with Cogir Ltée in July 2018.

Because, he operated at management level, on 20 May 2020, he was able and did request for a meeting with the managing director and the Head of HR where labour losses, frustration of the Defendant's employees and staff from Cogir Ltée who were perceiving higher salaries were discussed and more importantly where the managing director of Defendant admitted that he was responsible for the loss of Rs 100 million on the Preskil contract and when the Plaintiff queried as to why the merger with Cogir Ltée took place, the managing director replied that he could not answer and to write to the Board of Directors of Defendant.

Plaintiff has sufficiently particularised the issue of "poor management" namely after the merger of Defendant's operations with Cogir Ltée, the first project carried out by the managing director of Defendant had an impact on the finance of

Defendant resulting in Rs 100 million in losses and the project overran by 6 months. Defendant's financial standing as at end of June 2019 was in an overall loss situation and was not in a position to pay bonus for that year and yet appointed a head of human resources in February 2020, a Contracts Administrator and an Operations Manager in March 2020. Because after the country was placed in confinement and lockdown, financial uncertainty was discussed between Plaintiff and other persons from the management team whereby Plaintiff made certain proposals to cut costs and reduce overheads.

Subsequently, again that poor management was reflected by the fact that the project for which Plaintiff was blamed was making a profit of Rs 16.5 million and the shortcoming was explained by the fact that the managing director was responsible for closing the site for 6 weeks and shifting labour force on that particular site on another site whereby Defendant suffered a loss of Rs 1 million. This is where the harassment and victimization started by the managing director as he was targeted as opposed to other employees who were in charge of contracts running with major losses of Rs 4 million per month because he was concerned with management and which did not please the managing director because his poor management was being disclosed one way or the other by Plaintiff after the merger with Cogir Ltée whereas the projects Plaintiff was responsible for were still profitable and over and above the targeted profit. Thus, all the questions pressed including the latest terms and conditions governing the employment of Plaintiff are an attempt to fish for evidence (see- **Gujadhur(supra)**, **Glover(supra)**, **Modaykhan(supra)** and **Gheesah(supra)**) and are not allowed save and except those below under the authority of **ES Jhuboo v A Ganoo & Ors [2021 SCJ 49]** as applied in **Duval (supra)**.

1. **Under Answer 68 of the Answer to Particulars (Q.14.)**

Q.68. Defendant moves for full particulars as to how was the request to return company property on 18 June 2020 was made. If in writing, Defendant moves for communication of same. Given that Plaintiff did aver in his plaint that it was in writing, he was under a duty to communicate same to Defendant or if not available for inspection, he should have mentioned it (which is relevant to a possible inference of either constructive dismissal or an abandonment of work).

2. **Under Answer 70 of the Answer to Particulars (Q.16.)**

Q. 70. Defendant moves for full particulars as to how the request to report to the Head of HR on 19 June 2020 was made. If in writing, Defendant moves for communication of same. The Plaintiff ought to have particularised whether it was verbal or if in writing whether it could be available for inspection or not as the issue of abandonment of work was allegedly pressed by Defendant.

3. **Under Answer 72 of the Answer to Particulars (Q.18.)**

Q. 72. Defendant moves for communication of receipt dated 18 June 2020. This answer should have been given as to whether it was available for inspection or not because Plaintiff has averred that as requested by Defendant, he went to return the company property on 18 June 2020 and a receipt to that effect was issued by Defendant to Plaintiff at 14h05 and in that manner Defendant could not plead abandonment of work.

4. **Under Answer 60 of the Answer to Particulars (Q.13.)**

Q.60. Defendant moves for full and detailed particulars of the alleged set-up. In case Plaintiff relies upon documents in support of same, Defendant moves for communication thereof. The Plaintiff could have communicated the letters if any which he wrote to the head of HR for communication of the minutes of the meeting where the managing director asked him to write to the Board of Directors as to why the merger with Cogir Ltée and which were persistently refused, and the letter he wrote to the Board and his subsequent suspension on bogus grounds ought to have been communicated by being made available for inspection as it is in relation to the issue of constructive dismissal.

It is only after questions 13, 14, 16 and 18 above of the demand of further and better particulars are answered that it can be inferred that the trial would be conducted openly, fairly and without surprise and unnecessary costs inasmuch as it can be reasonably invoked that each party has now known "*the outline of the case that his opponent is going to make against him and to bind him to a definite story*"(see- **Jhuboo(supra)** followed in **Duval (supra)**) .

For all the reasons given above, I decline to make an order for the furnishing of further and better particulars as regards questions 1, 3, 4, 5, 6, 7, 8, 10, 11, 15 and 17 but order that the particulars be given in relation to questions 13, 14, 16 and 18. It is to be noted that particulars for questions 2, 9, 12, 19 and 20 have not been pressed.

Accordingly, this case is to be fixed before the formal matters for the pleadings to be closed and to be in shape for trial.

S.D. Bonomally (Mrs.) (*Vice President*)

13.7.2022