

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 3rd October, 2011

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WP(C) No.8648/2009

SHRI CHHAUGUR PAL

..... Petitioner

Through: Mr. Sanjoy Ghose, Advocate

Versus

M/S. SAWHNEY RUBBER INDUSTRIES

..... Respondent

Through: Mr. Anurag Lakhotia, Adv.

AND

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WP(C) No.8649/2009

SHRI HARI SHANKAR

..... Petitioner

Through: Mr. Sanjoy Ghose, Advocate

Versus

M/S. SAWHNEY RUBBER INDUSTRIES

..... Respondent

Through: Mr. Anurag Lakhotia, Adv.

AND

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WP(C) No.8659/2009

SHRI CHAND KIRAN

..... Petitioner

Through: Mr. Sanjoy Ghose, Advocate

Versus

M/S. SAWHNEY RUBBER INDUSTRIES

..... Respondent

Through: Mr. Mr. Anurag Lakhotia, Adv.

AND

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WP(C) No.8660/2009

SHRI BANS BAHADUR

..... Petitioner

Through: Mr. Sanjoy Ghose, Advocate

Versus

M/S. SAWHNEY RUBBER INDUSTRIES

..... Respondent

Through: Mr. Anurag Lakhotia, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. These four petitions by different workmen but of the same employer impugn identical orders dated 25th July, 2007 of the Industrial Adjudicator holding the domestic inquiry held prior to meting out the punishment of dismissal to each of the workmen to have been held in accordance with law, properly and the principles of fair play and the consequent identical awards, all dated 3rd September, 2007 of the Industrial Adjudicator deciding the references as to the validity of the orders of dismissal from service of each of the workmen, in favour of the employer. Notices of the petitions were issued. Pleadings have been completed, records of the Industrial Adjudicator perused and the counsels heard.

2. The petitioners workmen were charged with having resorted to (i) illegal strike and tool down strike w.e.f. 30th August, 1999 to 16th September,

1999; (ii) having abused, threatened and misbehaved on 2nd September, 1999 with and beaten up the Maintenance Engineer Shri Ajit Singh Bedi; (iii) having broken the glasses of the time office, damaged the machines, pipelines and caused other losses to the respondent employer on 8th September, 1999 at 3:15 p.m. and having again assaulted the said Shri Ajit Singh Bedi with bricks and iron and threatened his life. The petitioners workmen were issued charge sheet and to which according to the respondent employer, they failed to reply. Thereafter an Inquiry Officer (IO) was appointed who reported, that the petitioners workmen failed to appear before him inspite of repeated notices; that the notices were finally published in the daily newspaper Raipco News Dainik dated 19th December, 1999 and the copies of the newspaper also sent to the petitioners workmen but they still failed to appear; that the IO thereafter proceeded against the petitioners workmen *ex parte* and recorded the statements of four witnesses of the respondent employer and on the basis of the evidence placed before him held the charges against the petitioners workmen to have been proved and amounting to misconduct under the certified standing order of the respondent employer. The Disciplinary Authority of the respondent employer has in its order recorded that a show cause notice was issued to the

petitioners workmen along with copy of the inquiry report and to which response had been submitted by the petitioners workmen; however the said response/explanation was not found such as to not justify the penalty of dismissal from service proposed. Accordingly the services of the petitioners workmen were terminated and cheques in payment of full and final settlement amount sent.

3. On dispute being raised by the petitioners workmen, reference was made to the Industrial Adjudicator. It was the case of the petitioners workmen before the Industrial Adjudicator that the Supreme Court vide its order dated 30th November, 1996 had directed closure of several polluting industries in Delhi and of which the industry of the respondent employer was one; that the respondent employer to get rid of the petitioners workmen started adopting victimization techniques on one pretext or the other; that without serving any charge sheet on them, they were informed of the appointment of an IO; that inspite of demand the charge sheet was not supplied to them; that the IO conducted the inquiry at Sarai Chowk, Amrit Sarpanch, 12/5 Mathura Road near Petrol Pump, Faridabad instead of at the factory of the respondent employer in which the petitioners workmen were employed; that the inquiry was purposefully held outside Delhi to deprive

the petitioners workmen of participation therein; that the petitioners workmen had repeatedly requested the IO to change the place of inquiry but which was not acceded to; that the petitioners workmen had also sought permission of the IO to be represented by one Shri Avdhesh Singh the officer of the Union but the same was disallowed; that the IO had not acted in a free and fair manner.

4. Needless to add that the respondent employer controverted the aforesaid facts and reiterated the serious misconduct of violence and manhandling of other employees by the petitioners workmen. It was further pleaded that it was not possible to hold the inquiry peacefully in the premises of the management for fear of violence and was thus held at Badarpur Border on the main Mathura road which was easily accessible to the petitioners workmen; that to and fro traveling expenses for attending the inquiry proceedings were also offered to the petitioners workmen. It was thus pleaded that the petitioners workmen were not prejudiced in any manner from the place of inquiry.

5. The Industrial Adjudicator in the aforesaid state of pleadings framed a preliminary issue as to the validity of the domestic inquiry. Vide order dated 25th July, 2007, the Industrial Adjudicator on examination of the deposition

of the petitioners workmen and the two witnesses of the respondent employer and the record of the inquiry proceedings held:-

- a. that the petitioners workmen did not appear before the IO inspite of sufficient notice;
- b. that though the petitioners workmen had argued inability to participate in the inquiry at Faridabad for fear of insecurity but their pleading was that they had wanted to be represented by Shri Avdhesh Singh who was neither the employee of the management nor a co-worker and which representation was wrongfully denied;
- c. that the real reason for the petitioners workmen not participating in the inquiry was not that it was outside the State but because of the fact that they were not allowed to be represented by Shri Avdhesh Singh;
- d. that there was nothing wrong with the decision of the IO of denying representation by Sh. Avdhesh Singh as the certified standing orders of the respondent employer nowhere provided that in a domestic inquiry workman can insist upon being represented by an outsider;

- e. that the petitioners workmen were not prejudiced in any manner by holding of the inquiry at Faridabad especially when to and fro travelling expenses were offered to them;
- f. Faridabad is not very far from the place of appointment;
- g. the plea of the petitioners workmen of being prevented from joining the inquiry at Faridabad was not supported by any material on record and was purely imaginative;
- h. that the IO at every stage gave sufficient opportunity to the petitioners workmen to present their defence;
- i. Four witnesses of the respondent employer had appeared before the IO and had proved the charges;
- j. no case of bias of the IO was made out;
- k. no case of violation of principles of natural justice was made out.

The Industrial Adjudicator accordingly decided the issue of the validity of the domestic inquiry in favour of the respondent employer.

6. The Industrial Adjudicator having held the domestic inquiry to be valid, proceeded to examine whether the punishment imposed on the

petitioners workmen was justified or not and held that the charges proved in the domestic inquiry of causing violence, manhandling/beating the officials of the management, causing of illegal strike, preventing other co-workers from doing the work under threat etc. constituted grave misconduct subversive of discipline required to be maintained and thus did not find any case for interference in the punishment to have been made out.

7. The petitioners workmen before this Court have pleaded that in the back drop of the judgment of the Apex Court regarding closure of polluting industries, the employer had extricated resignation of 700 workers; that in a writ petition instituted by the employees, the Supreme Court had vide order dated 27th August, 1997 issued directions for the employees to resume employment; that the petitioners workmen herein were also so reinstated in accordance with the order of the Supreme Court; that the petitioners workmen were however suspended and charge sheeted by way of retaliation; that it was the management which had brought *gundas* into the premises; that the petitioners workmen had replied to the charge sheet denying the charges; that the IO was an Advocate and a management consultant. It is contended by the petitioners workmen that since the IO appointed was an Advocate and the workmen were illiterate, they ought to have been granted

permission to be represented by a Union representative. It is further contended that the employment being at Delhi, the domestic inquiry could not be held in another State i.e. Faridabad. It is yet further contended that the inquiry was sham in as much as *ex parte* evidence of as many as four management witnesses in each case including putting of exhibit marks on hundreds of documents was all accomplished within a few minutes.

8. The counsel for the petitioners workmen has also submitted that the respondent employer has resorted to such proceedings against the petitioners workmen to save payment of compensation as directed by the Supreme Court in *M.C. Mehta's* case to workmen of polluting industries which were directed to be closed down. It is argued that the petitioners workmen would also be satisfied if paid the said compensation.

9. Though the counsel for the respondent employer did not make oral submission but has subsequently filed written arguments along with copies of judgments relied upon. It is *inter alia* contended therein that the respondent employer was not required to pay compensation to any workman as directed by the Supreme Court since the industry of the respondent did not have to be closed down, having been issued fresh licences after fulfilling all requirements relating to pollution. Else it is contended:-

- i. that no prejudice has been caused to the petitioners workmen by holding the inquiry at Faridabad particularly when the petitioners workmen did not even choose to participate in the inquiry. Reliance is placed on ***State Bank of Patiala v. S.K. Sharma*** 1997 LLR 268;
- ii. it is contended that the factory premises were not suitable/conducive for holding the inquiry because of the tense atmosphere prevailing therein. Reliance in this regard is placed on ***Sandvik Asia Ltd. v. Maruti Mahlpati jagadale*** 2002 LLR 1138 (Bombay) and on ***Reform Flour Mills Pvt. Ltd. v. First Labour Court, West Bengal*** 1962 (11) LLS 431 (Calcutta);
- iii. that the petitioners workmen themselves were residing in Uttar Pradesh and working in Shahdara, Delhi and thus ought not to have had any objection to the inquiry at Faridabad border;
- iv. the findings of the Industrial Adjudicator of the domestic inquiry having been conducted in accordance with principles of natural justice and in a fair manner are

findings of fact, non interfereable in exercise of powers of judicial review unless shown to be perverse.

10. From the arguments raised only two questions need to be determined by this Court. Firstly, whether the view taken by the Industrial Adjudicator as to the place of inquiry and secondly whether the denial of representation to the petitioner workmen through a Union representative instead of through an employee of the respondent employer has resulted in any error in the finding as to the validity of the inquiry.

11. The counsel for the petitioners workmen has argued that owing to the imminent threat of closure of the industry and disturbed conditions prevailing in the factory premises, none of their colleagues were willing to represent them in the inquiry proceedings and they could only fall back on the Union representative in this regard being themselves incompetent to defend the inquiry;

12. As aforesaid, it has been found by the Industrial Adjudicator that the non-participation by the petitioners workmen in the domestic inquiry was not owing to the place of inquiry being at Faridabad but owing to the petitioners workmen having been refused representation through the Union representative. A perusal of the depositions before the Industrial Adjudicator

also supports the said fact. It is not the case of the petitioners workmen that they at any point of time expressed reservation as to participation in the inquiry owing to being held at Faridabad or faced any difficulty therein. Thus the said argument, on facts is of no avail. The only thing which thus needs to be adjudicated is whether refusal of participation through the Union representative was bad.

13. The counsel for the respondent employer has along with his written submissions filed copies of following judgments:-

A. ***Crescent Dyes & Chemicals Ltd. V. Ram Naresh Tripathi*** 1993 LLR 97 where the Supreme Court held the provision in the standing orders permitting the employee to be represented in the domestic inquiry only by a colleague or a workman working in the same department as himself as not violative of the principles of natural justice. It was held that a delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right and the rule of natural justice in so far as delinquent's right of hearing is

concerned cannot and does not extend to a right to be represented through counsel or agent.

B. *S.L.Tagra v. New India Assurance Co. Ltd.* 1998 LLR 327 where a Division Bench of this Court also held that a delinquent has no right to be represented through counsel or agent unless law specifically conferred such right.

14. Notice in this regard may also be taken of *Bhagat Ram v. State of Himachal Pradesh* (1983) 2 SCC 442. It was held that where case against the workman is handled by trained prosecutor, the same by itself is a good ground for allowing the workman to engage legal practitioner to defend him lest the scales would be weighed against him. It was held that refusal to grant such request would be violative of the principles of natural justice. I have wondered whether owing to the IO in the present case being an Advocate, any case of denial of natural justice for the reason of refusal to the petitioners workmen of participation through Union representative is made out. I am however not able to justify the same in the facts of the present case. The petitioners workmen as aforesaid utterly failed to participate in the domestic inquiry. They did not need such assistance in filing their reply before the IO or in filing their affidavits by way of evidence. Legal

assistance if at all was required by them only for cross examination of the witnesses of the employer. The entire conduct of the petitioners workmen in the present case is indicative of their intent not to participate in the inquiry proceedings and it appears that only the excuse of having not been allowed participation through the Union representative is being used. I am thus unable to find any error in the orders of the Industrial Adjudicator on this count also.

15. Mention may also be made of the *Dunlop Rubber Co. v. Workmen* AIR 1965 SC 1392 also laying down that there is no right of representation through Union as such unless the company by its standing orders recognizes such right and refusal to allow representation by Union does not vitiate the proceedings.

16. The Supreme Court in *The Management of National Seeds Corporation Ltd. v. K.V. Rama Reddy* (2006) 11 SCC 645 also reiterated that the law in this country does not concede an absolute right of representation to an employee in domestic enquires as part of his right to be heard and there is no right of representation by somebody else unless the rules or regulations and standing orders if any specifically recognize such a right and provide for such representation.

17. Accordingly no error is found in the orders/award of the Industrial Adjudicator impugned in these petitions and the petitions are dismissed. No order as to costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 3, 2011

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(corrected and released on 10th January, 2012).