

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

Judgment Reserved on: September 07, 2015

% *Judgment Delivered on: September 11, 2015*

+ **LPA 504/2010**

TAJ MAHAL HOTEL

..... Appellant

Represented by: Mr.Vinay Bhasin, Sr.Advocate
instructed by Ms.Poonam Das,
Advocate.

versus

INDUSTRIAL TRIBUNAL I AND ORS

GOVT OF NCT OF DELHI AND ORS.

..... Respondents

Represented by: Mr.Harvinder Singh and
Ms.Sidhi Goyal, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. An inquiry was instituted against respondent Nos.2 to 6 being B.S.Rawat, Rambir, Shankar Lal, Ram Phool and Mukesh Shakun on the allegations that they collected mob of employees outside the cafeteria, started shouting slogans, abusing the officers of the Hotel in most filthy language. Despite persuasion by the Security Manager they did not leave the cafeteria rather in a most rude and impertinent manner bluntly told that the workers would not leave the place unless the notice put up on the notice board pertaining to settlement dated October 26, 1991 was not withdrawn immediately and the settlement is not given effect. The above named officers along with 30-40 employees charged into the personal office of the Assistant Personnel Manager and demanded his explanation. Despite the

Assistant Personnel Manager politely explaining the settlement entered into between Union being fair and just and nothing wrong noted therein the respondent Nos.2 to 6 and others abused him and stated that unless the notice of implementation of the settlement was withdrawn they would resort to violence, beat the employees who signed the declaration and accepted the same. Thereafter they gave highly inflammatory speeches to the workmen not to accept the settlement and threatened that person responsible for settlement would not be spared, would be beaten up, a lesson of their life would be taught to them and exhorted the mob to resort to violence and beat the employees. At about 2.30 PM when Diwan Singh Rawat was explaining the implications of the settlement the respondent Nos.2 to 6 snatched papers from him and attempted to assault him and thereafter in a procession went to the public area where the entry of the employees other than on duty was restricted. The respondents physically snatched papers from the female employees and hit them, forced their entry in the health club and threatened Ms Rafia Azmat of dire consequences for having signed the settlement. Again at 4.00 PM they collected as a mob and made highly inflammatory speeches instigating to violence.

2. The inquiry was conducted by the Inquiry Officer Shri Alok Bhasin who held the charges to be proved. An application under Section 33 (2) (b) of the Industrial Disputes Act, 1947 (in short 'the ID Act') was filed before the Industrial Tribunal seeking approval for the dismissal of the respondent Nos.2 to 6. The only ground taken by the respondent Nos.2 to 6 to challenge the inquiry was that the Inquiry Officer Alok Bhasin was biased and thus it was not a fair and proper inquiry. Vide the order dated March 06, 2000 the inquiry was held to be not legally valid and vitiated as the same

was not conducted by an unbiased and impartial person. However, liberty was granted to the management to prove the charge against the workmen in Court.

3. Challenging the order dated March 06, 2000 the management filed a writ petition before this Court which was dismissed by the impugned order dated May 14, 2010. The learned Single Judge noted that a lawyer advising the employer on ways, means and procedure for terminating the services of an employee has to make a choice. Either he can remain such advisor and assist the client in successfully dismissing/punishing the employee or he has to let that the function be performed by another and in which case he is entitled to act as an Inquiry Officer, however, he cannot be both. In the present case the lawyer/legal advisor having performed both the functions, the inquiry was held to be a nullity or *coram non judice*. Hence the present appeal.

4. The case of respondent Nos.2 to 6 before the Tribunal and the learned Single Judge was that the inquiry was conducted by Alok Bhasin who had conducted about fifty inquiries on behalf of the management against the workers in which he had given findings against the workers and in favour of the management. Alok Bhasin had also been appearing in conciliation proceedings before the authorities under the Shops and Establishment Act, Labour Courts, Industrial Tribunal representing the management and was a regular consultant and advocate of the management thus cannot be expected to be an unbiased person. From the letter of authority dated November 20, 1995 duly signed by the General Manager of the management authorizing S.K. Bhasin, Alok Bhasin and Amit Bhasin to represent the management in the industrial dispute with respondents No.2 to 6 was accepted and filed by

Alok Bhasin immediately after conducting the inquiry.

5. Alok Bhasin MW-1 was cross-examined who admitted that he was an advocate associated with M/s Bhasin and Bhasin Company of Advocates and that he had signed letter of authority on behalf of the management in the industrial dispute after he had conducted the inquiry.

6. Learned counsel for respondent No. 2 to 6 at the outset fairly submits that by merely being a lawyer of the management no bias can be attributed as even a paid employee of the company can be nominated/appointed as an inquiry officer. The case of respondent Nos.2 to 6 is that after holding an inquiry on the allegations as noted above Alok Bhasin filed a letter of authority to appear for the management before the Industrial Tribunal in proceedings concerning the enquiry held by him. Thus it has to be seen whether this act itself would be sufficient to constitute bias and unfairness.

7. Learned counsel for the respondent Nos.2 to 6 has relied upon the decisions reported as AIR 1993 SC 2155 Rattan Lal Sharma vs.Managing Committee, Dr.Hari Ram (Co-ed) Higher Secondary School & Ors., (2001) 1 SCC 182 Kumaon Mandal Vikas Nigam Ltd. Vs.Girja Shankar Pant and others, (2004) LLR 461 M/s Luxco Electronics (Paper Cone) vs.P.O., Industrial Tribunal-I, Allahabad and ors., (2006) LLR 548 Indian Refrigeration Industries vs.Ram Rattan Sharma & Ors., ILR (2006) I Delhi 403 The Managing Committee, Vidya Bhawan Mahavidyalaya (Secondary School) vs.Diectorate of Education & Ors., (2008) III CLR 96 Cantonment Executive Officer & Anr.vs.Vijay D.Wani & Ors., (2009) 2 SCC 541 Union of India and ors.vs.Prakash Kumar Tandon and (2010) 2 SCC 772 State of Uttar Pradesh & Ors.vs.Saroj Kumar Sinha.

8. In Rattan Lal Sharma (Supra) a witness in the inquiry was also made

a member of the inquiry committee, hence the Supreme Court held that principles of natural justice were violated. It was held that one of the cardinal principles of natural justice is “*Nemo debet esse judex in propria cause*” that is no man shall be a judge in his own cause. Noting the decision reported in JT 1988 (4) SC 730 Secretary to Government, Transport Department vs. Munuswamy on the facts of the case Supreme Court held that a predisposition to decide for or against one party without proper regard to the true merits of the dispute is bias.

9. In Kumaon Mandal Vikas Nigam (Supra) discussing its earlier decisions Supreme Court held that bias must be determined on the facts and circumstances of the individual case, existence of a real danger would be sufficient to vitiate the administrative action but fanciful allegations of bias made to avoid a particular court, tribunal or authority would not be seen.

10. In Saroj Kumar Sinha (supra) the Supreme Court held that the inquiry officer acting in quasi judicial authority is in the position of an independent judicial interpreter and is not supposed to be the representative of the department/disciplinary authority/government and must be wholly unbiased.

11. In M/s Luxco Electronics (supra) the Allahabad High Court set aside the inquiry for the reason that the son of the inquiry officer had been representing the management and it was held that such a person cannot perform as an Inquiry Officer.

12. The Division Bench of this Court in Ram Rattan Sharma (Supra) held that if the Inquiry Officer himself appears as an advocate for the management in a reference against termination of service based on inquiry which he held, this obviously would show bias.

13. The contention of the learned counsel for the management is that

respondent Nos.2 to 6 did not object to the appointment of the advocate as the Inquiry Officer at any time during the inquiry proceedings and participated in the inquiry without any protest thus they would be deemed to have waived of their right to object to the appointment of the Inquiry Officer after the inquiry was concluded on the plea that the Inquiry Officer was biased. It is urged that besides citing the catena of decisions as noted above learned counsel for the respondent Nos.2 to 6 has not been able to point out any proceeding during the inquiry wherein they objected to the appointment of the Inquiry Officer or demonstrated his bias. As a matter of fact there is no challenge to the fairness of the inquiry on any ground whatsoever except on the ground that the Inquiry Officer had appeared for the management in number of cases and after the inquiry, filed a letter of authority before the Industrial Tribunal. Reliance is placed on decisions reported as (2008) 7 SCC 639 H.V.Nirmala vs.Karnataka State Financial Corporation & Ors., (1976) 3 SCC 585 G.Sarana vs. University of Lucknow and Ors. and (2009) 10 SCC 32 Biecco Lawrie Limited & Anr.vs.State of West Bengal & Anr.

14. In the decision H.V.Nirmala (supra) the Supreme Court held that the objection to the appointment of the Inquiry Officer not being raised during the inquiry proceedings, the charged employee is deemed to have waived of the objection. Having participated in the inquiry proceedings without any demurer whatsoever witnesses having been cross-examined, the charged officer cannot revert back and allege that prejudice has been caused by the reason of appointment of a legal advisor as an Inquiry Officer.

15. The decision in G.Sarana (supra) relied upon by the learned counsel for the appellant is not applicable to the facts of the case.

16. In the decision Biecco Lawrie Limited (supra) the Supreme Court held

that conducting of the domestic inquiry by company's lawyer cannot be considered as being biased and partisan. In that case the charged officer admitted the charge however explained it that his behaviour was due to mental sickness and thus the stand of the appellant management that the workmen having participated in the inquiry proceedings without any demurer they were estopped from pleading bias was upheld.

17. The contention of learned counsel for the management deserves to be rejected for the reason that during inquiry respondent Nos.2 to 6 were not aware that the Inquiry Officer himself would represent the management in the proceedings to follow and thus could not have objected during the inquiry proceedings. Further even before the proceedings could be initiated before the Tribunal when the inquiry report was supplied Respondent Nos.2 to 6 elaborated the bias of the Inquiry Officer vide their letter dated August 06, 1994 highlighting the sequence of events and the evidence in favour of respondent Nos.2 to 6 having been ignored by the Inquiry Officer in the inquiry report. It was pointed out that from the evidence of the witnesses no violence has been proved, important witness like Dewan Singh Rawat was not examined and the conclusion drawn by the Inquiry Officer was only from the statements of the interested witnesses of the management.

18. Principles of natural justice are not only required to be followed during the proceedings but should be evidently apparent from the inquiry report as well. The allegation of bias of respondent Nos.2 to 6 against the Inquiry Officer further stood fortified when the letter of authority was filed by the Inquiry Officer in the proceedings against the respondent Nos.2 to 6 before the Tribunal. As laid down in the catena of decisions and as noted above the respondent Nos.2 to 6 have been able to demonstrate the

likelihood of bias or bona fide suspicion of bias and thus the inquiry stood vitiated as held by the learned Single Judge.

19. Concurring with the view expressed by the learned Single Judge, we dismiss the appeal.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 11, 2015
‘vn’