

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2966 OF 2018

Motor Industries Company Limited	]	
Plot No. 75, MIDC Estate,	]	
Trimbak Road, Satpur,	]	
Nashik - 422 007.	]	
(Now known as M/s.Bosch Limited)	]	<u>... Petitioner.</u>

Versus

Dnyaneshwar Banduji Bhagyawant	]	
An Indian Inhabitant of Somdip	]	
Soubhagyanagar, Plot No. 6,	]	
Gangapur Road,	]	
Nashik - 422 013.	]	<u>... Respondent.</u>

- Mr.Kiran S. Bapat i/b. M/s. Desai & Desai Associates for the Petitioner.
- Mr.M.V. Thorat for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th DECEMBER, 2018.

ORAL JUDGMENT :-

1] Heard learned counsel for the Petitioner and learned counsel for the Respondent.

2] This Writ Petition takes an exception to the order dated 24/11/2017 passed by the Industrial Court, Nashik, thereby dismissing Revision Application (ULP) No. 86 of 2014 which was preferred by the Petitioner herein under Section 44 of The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, challenging the order on 'Preliminary Issues' dated 25/02/2014 passed by the Ld. First Labour Court, Nashik, in Complaint (ULP) No. 10 of 2017.

3] The Respondent herein was working as an employee with the Petitioner-Company. On 12/09/2005 he was found carrying the articles belonging to the Petitioner-Company. At the gate of the company, he was caught red handed by the security guard in doing so. Hence, he was implicated in the charge of committing the theft of the articles. The independent Enquiry Officer was appointed for conducting the disciplinary enquiry in which the evidence was laid and thereafter the Enquiry Officer held the charge to be proved against the Respondent and submitted his Report accordingly. On the basis of the said Enquiry Report, the Petitioner terminated the service of the Respondent. Hence, being aggrieved thereby, the Respondent had filed the Complaint before the Labour Court. In enquiry of that complaint, in accordance with the settled position of law, the Labour

Court framed the two 'Preliminary Issues' for its consideration. As regards the first preliminary issue, as to, “Does the complainant prove that the enquiry held against him is in utter disregard of the principles of natural justice?”, the Labour Court held that there was proper compliance of the principles of natural justice and hence, the enquiry conducted against the Respondent was declared to be fair and proper.

4] However, as regards the second preliminary issue, as to, “whether the findings of the enquiry officer are perverse?”, the Labour Court held that the findings of the Enquiry Officer are perverse to the extent of charge of theft and placed the case for hearing on remaining issues. The Petitioner-Company has challenged the said order before the Revisional Court and the Revisional Court had also confirmed the said finding and rejected the Revision.

5] While challenging this order of both the Courts below, the submission of learned counsel for the Petitioner-Company is that both the Labour Court and the Revisional Court had exceeded its power beyond the scope of its jurisdiction, under the Judicial Review of the order passed in the Domestic Enquiry. It is submitted that both the Courts below have acted as if it is a criminal case, while deciding the

question, whether the charge of theft levelled against the Respondent-employee is proved beyond reasonable doubt or not. Both of them have made the threadbare discussion as to whether the 'dishonest intention' is proved and for deciding the same, they have also considered as to whether the articles found with the Respondent were having any "salable value" so as to infer any wrongful loss caused to the Petitioner-Company or the Respondent-employee has obtained any wrongful gain. According to learned counsel for the Petitioner, therefore, the impugned judgments and orders of the Courts below cannot be sustainable in law.

6] The learned counsel for the Respondent-employee has tried to support the orders passed by both the Courts below by submitting that there was a probable explanation offered by the Respondent as to why these articles were found in his possession. Hence, necessary inference of dishonest intention was rightly not drawn by the Courts below. Moreover, it is submitted that the Petitioner-Company has also failed to prove that these articles were belonging to the Company. In such circumstances, according to learned counsel for the Respondent, the Labour Court was justified in holding that the findings arrived at by the Enquiry Officer were perverse.

7] However, it is difficult to accept this submission. It has to be observed that both the Labour Court and the Revisional Court has exceeded beyond their jurisdiction as the scope of Judicial Review is fairly well settled in the judgment of the Hon'ble Apex Court in the case of *B.C. Chaturvedi V/s. Union of India and Others*¹. In para No.12 thereof, it is categorically held that,

*“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of *Evidence Act* nor of proof of fact or*

1 (1995) 6 SCC 749

evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

8] In para No.13 of the said judgment, it was further reiterated that the disciplinary authority is the sole judge of facts and in disciplinary enquiry the, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal.

9] Here in the case, there was sufficient material produced on record before the Enquiry Officer, as Respondent himself has not disputed that he was having possession of the articles like the sponge, knife and M-seal when he was going out of the gate of the Company. It is also not disputed by the Respondent that in his presence his locker was opened and in that locker several articles belonging to the company were found. The Panchanama thereof made, the photographs were also taken out. The only explanation offered by the Respondent is that the articles which were found in the locker were required for the purpose of his job and as regards the articles which he was carrying out of the company were belonging to him and they were necessary for repairing of his car which was parked in the compound.

10] However, as regards the contention that these articles which he was found carrying were belonging to him, it must be stated that he has not made any noting about the said articles when he entered into the company for duty on that day. In his cross-examination, he has categorically admitted that since last 31 years he was doing service in the company and he was knowing the 'Rules and Regulations' of the company. He was also knowing that while entering into the company, if any article from outside is brought, then the

employee has to give the information about the said article to the security guard. The evidence on this aspect of the witness examined on behalf of the Petitioner-Company is also very clear to the effect that the employee entering into the company has to make the noting of the articles which he was carrying with him. In the instant case, admittedly, no such noting was made by the Respondent, when he has entered into the company. He has also not disclosed that he was in possession with these articles when he was leaving the company. Only when the knife was detected in the metal detector and it was found in his possession, he has tried to offer the explanation.

11] As regards the articles found in his locker also, considering the number of such articles and nothing being brought on record to show that these articles were required for the purpose of his job and there was practice of retaining these articles in the personal locker of the employee, it becomes difficult to accept the explanation offered by him. Therefore, the Enquiry Officer has rightly held that the charge of theft is proved, on the preponderance of probability.

12] As regards the observation made by the Labour Court that these articles which he was found carrying were not of “salable value”, the least said is better. Even the observation made by the Revisional

Court that these articles were not having any “market value”, again it has to be stated that the moment it is shown that the articles belonging to the company are being taken away by the employee, then the necessary inference of dishonest intention has to be drawn, even if such articles may not be of any value. The charge of theft *prima-facie* stands proved when the explanation offered by the employee is not found probable.

13] Here in the case, both the Labour Court and the Revisional Court has considered the question whether the said charge of theft is proved beyond reasonable doubt like in a criminal case of theft though they were expected only to consider whether there was sufficient material to show that the Respondent was found carrying out some articles belonging to the Petitioner-company and admittedly there was such material, as the Respondent himself is not disputing that these articles were found in his possession when he was leaving the Petitioner-Company and also in his personal locker.

14] In the light of the same, both the Courts below should have restrained themselves from interfering in the finding recorded by the Enquiry Officer and holding that the said findings are perverse. The view taken by the Enquiry Officer was the only probable view on the

facts of the present case and within the limited scope of judicial review, neither the Labour Court nor the Revisional Court had jurisdiction to interfere with the same. Therefore, the impugned order therefore passed by the Labour Court and confirmed by the Revisional Court needs to be quashed and set-aside.

15] As a result, the Writ Petition is disposed of by passing following order.

- (a) Writ Petition is allowed.
- (b) The impugned order passed by the Labour Court and confirmed by the Revisional Court is quashed and set-aside.
- (c) As a result, the second preliminary issue, as to, “whether the findings of the Enquiry Officer are perverse?”, is answered in negative.

[DR.SHALINI PHANSALKAR-JOSHI, J.]