

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

23 WRIT PETITION NO.698 OF 2023

SITARAM LONDEO KHUNE
VERSUS
NHK AUTOMOTIVE COMPONENTS INDIA PVT LTD THROUGH ITS
VICE PRESIDENT SANJAY BANSALAND ANOTHER

Mr. Yatin I. Thole, Advocate for the Petitioner.
Mr. B.R. Kawre, Advocate for sole-Respondents.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : FEBRUARY 09, 2023.

PER COURT :

1. Heard.
2. By this petition, the challenge is to the order 15.12.2022 passed by the Industrial Tribunal in complaint ULP No. 108 of 2022 whereby the application below Exh.U-2 seeking to keep in abeyance the enquiry proceeding during the pendency of the complaint came to be rejected.
3. The facts of this case are, the Petitioner herein was in the employment of the Respondent-company since the year 1996. It is the case of the Petitioner in the complaint of unfair labour practice that in the service tenure of approximately 25 years there has been no complaints as against the Petitioner. In the year 2021, some of the workmen including the Petitioner made a complaint

against the company to the Statutory Authorities, which resulted in certain action being initiated against the company, and in retaliation, the Petitioner was issued a transfer order, transferring the Petitioner from factory to the Godown. It is the case of the Petitioner that in furtherance of the vindictive action, the Respondent-company has issued a suspension order dated 8th August, 2022, alleging that there are reports of certain complaints of serious nature which amounts to major misconduct and the show-cause notice called upon the Petitioner to submit his explanation within 48 hours of the receipt of the show-cause notice.

4. By letter of 10th October, 2022, the Petitioner requested the company to furnish copies of the alleged complaints and also called upon the company to intimate him the name and designation of the person issuing the show cause notice, as the show-cause notice was issued under the signature of the authorized signatory. It is the case of the Petitioner that as the information was not supplied, no reply came to be filed to the show-cause notice. On 15th November, 2022, the Petitioner was issued charge-sheet laying down the substance of charge and directing the Petitioner to appear before the Inquiry officer named therein on 15th November, 2022. By a communication dated 15th November, 2022, the Petitioner replied to the charge-sheet reiterating his contentions that as no documents referred in the show-cause notice of 10th October, 2022 is provided, Petitioner is unable to reply to the charge-sheet and to adjourn enquiry by period of 15 days.

5. The Petitioner initiated complaint ULP No.108 of 2022, invoking the provisions of Section 26 and 28 read with Item 9 of Schedule IV of the MRTU and PULP Act, 1971, seeking direction to quash and set aside the suspension order dated 8th August, 2022, show-cause notice dated 7th October, 2022 and charge-sheet-cum-enquiry notice dated 7th November, 2022. In the complaint an application for interim relief came to be filed below Exh.U-2 and reiterating the submissions made in the complaint, sought to keep in abeyance the enquiry proceeding during the pendency of the complaint. The respondent-company filed its reply to the interim application opposing the interim relief sought by the Petitioner asserting its right to initiate disciplinary enquiry against erring workmen. It was also pointed out that Petitioner had failed to file his reply to the show-cause notice and insisting for disclosure of the names of witnesses and that the copies of all documents will be furnished to the Petitioner at the appropriate time.

6. Heard learned counsels appearing for the parties.

7. At the first hearing of the petition, this Court had put a query to the Petitioner as to how the complaint seeking to quash and set aside the suspension order, show-cause notice and chargesheet-cum-enquiry was maintainable under the provision of Item 9 Schedule IV of MRTU and PULP Act. Learned counsel for the Petitioner submits that the respondent-company is governed by the Model Standing Orders (MSO) which constitutes a contract between the employer and employee and breach of Model Standing

Orders amounts to an unfair labour practice within the meaning of Item 9 of Schedule IV. In particular he referred to the Model Standing Orders 25(4). In support of his submission, he relies upon the decision of the Apex Court in the case of ***S.G. Chemicals and Dyes Trading Employees' Union vs. S.G. Chemicals and Dyes Trading Limited and Another***, reported in ***(1986) 2 SCC 624***, which dealt with the scope of Item 9 of Schedule IV. He would contend that as there is violation of the principles of natural justice, the same amounts to violation of law and as such, an unfair labour practice within the meaning of Item 9 of Schedule IV. He would further submit that it is evident from the conduct of the respondent-company that the vindictive action has been instituted as the petitioner has lodged complaint with the statutory authority, which resulted in action being taken against the company. He would further submit that in response to the show-cause notice, the petitioner has sought certain documents as to the show-cause notice specifically referred to certain complaints and as such he was entitled to those documents before a reply could be filed to the show-cause notice. He further submits that the charge-sheet which was issued on 7th November, 2022 did not give any opportunity to furnish his reply and the enquiry was scheduled on 15th November, 2022. He relies on the decision of the Apex Court in the case of ***State of Punjab vs. VK. Khanna and others***, reported in ***2001 SCC (L&S) 1010***. In the case of ***VK. Khana (supra)***, the Apex Court has observed that it is well settled in service jurisprudence that the authority concerned has to apply its mind upon receipt of the reply

to the charge-sheet or show-cause, as the case may be, as to whether a further inquiry is required to be called for.

8. Per contra, learned counsel for the Respondent submits that adequate opportunity was given by show-cause notice dated 7th October, 2022, which was not replied by the Petitioner on the ground of alleged non-supply of documents. He would further submit that after a period of almost one month, the chargesheet came to be issued and there is no necessity of seeking a reply to the charge-sheet when the Petitioner has failed to avail the opportunity given for reply to the show-cause notice. He would further submit that after participating in the enquiry on 15th November, 2022, the Petitioner has sought an adjournment to file the complaint. He would further submit that all the documents have been supplied during the proceedings before the Industrial Court, the submission which has been disputed by the learned counsel appearing for the Petitioner.

9. Considered the rival submissions which are advanced at the bar.

10. At the outset this Court has posed a question to the petitioner as regards the time being granted for filing to the reply to the charge-sheet to which the learned counsel for the Petitioner submitted that the complaint is required to be decided as there is unfair labour practice and as such the interim relief is required to be granted and the enquiry to be kept in abeyance pending the

adjudication of the complaint.

11. A perusal of the show-cause notice shows that the notice sets out the misconduct and that there were certain complaints of serious nature and by reason of which the Petitioner was put under the suspension and an opportunity was given to furnish reply to the show-cause notice within a period of 48 hours. The Petitioner instead of filing his reply to the show-cause notice under protest has chosen not to respond to the show-cause notice on the alleged ground that the complaints which are received against him ought to be furnished by him and in the absence of these documents the Petitioner is not able to reply to the show-cause notice. The show-cause notice which is at page 65 spells out the nature of misconduct which is alleged and in such an event, in my opinion, the Petitioner ought to have replied to the charges of misconduct which are enumerated in the show-cause notice. As far as the documents which are referred in the show-cause notice are concerned, in event of non-supply of the documents based on which the enquiry is initiated, the same would be against the principles of natural justice, which stand could have been taken by the Petitioner while challenging the findings of the Enquiry Officer if held against him. At the stage of issuance of the show-cause notice, the Petitioner was required to be reply to the show-cause notice on the basis of the misconduct which had been spelled out in the show-cause notice and by registering his protest to the non-supply of the documents, which has not been done in the present

case. Even after the charge-sheet has been filed the Petitioner has chosen not to reply to the charge-sheet notice. There is not even a formal reply denying the charges set out in the charge-sheet notice and instead the Petitioner is harping on the non-supply of documents which have been referred to cursorily in the show-cause notice and in the charge-sheet. The Petitioner has instituted the complaint before the Industrial Court under the provisions of Item 9 of Schedule IV. Although the provisions of the Model Standing Orders constitute a contract between the Petitioner and the company, from the material on record, it is not shown as to how there is breach of Model Standing Orders 25(4), when in the present case admittedly a show-cause notice and charge-sheet was issued to the Petitioner before initiating the departmental inquiry.

12. I do not find any dispute with the proposition that the principles of natural justice is required to be followed by giving a chance to the employee to submit his reply to the show-cause notice and the charge-sheet. In the present case, this Court was inclined to grant time to the Petitioner to submit reply to the charge-sheet considering the submissions made by the learned counsel for the Respondent that all the documents were furnished at the time of hearing before the Industrial Court. However, the Petitioner has declined to avail this opportunity and instead insists in keeping in abeyance of departmental inquiry. The decision of this Court in the case of *Vinod Pattar vs. M/s. EIH Ltd. and Others*, in *Writ Petition (L) No.29586 of 2021*, applies squarely in the facts of

this case. This Court has set out that the departmental enquiry cannot be stifled or stalled at every stage and the law obligates that the departmental enquiry should be taken to its logical end, and an employee is sufficiently protected in the departmental enquiry by virtue of the principles of natural justice and if the enquiry is conducted in violation of such principles, the Court can vitiate the enquiry and the findings of the Enquiry Officer and in which case, the workman would be subjected to a *de novo* enquiry before the Court and a Judge would assume the role of an enquiry officer.

13. It is a settled that the proceedings in nature of departmental enquiry are not to be lightly interfered with, as the same is a matter of disciplinary action between the employer and the employee and in the present case, in spite of an opportunity being offered to the Petitioner to file his reply to the charge-sheet and participate in the departmental inquiry, the petitioner is adamant in his stand that the departmental enquiry be kept in abeyance till the decision in his complaint of unfair labour practice. The complaint of unfair labour practice under Item 9 seeks the relief of quashing and setting aside the suspension order, show-cause notice and the chargesheet-cum-enquiry on the basis of bias, which can be demonstrated in the departmental enquiry and on the basis of non-supply of documents which will also result in the vitiation of the enquiry if held against the Petitioner. For the said reasons, departmental enquiry cannot be stalled and the Petitioner cannot refuse to participate in the disciplinary inquiry. There are

adequate safeguards in event there is violation of principles of natural justice in as much the inquiry in such event stands vitiated and the proceedings will be conducted *de-novo*. The allegation of violation of principles of natural justice cannot be pressed into service for purpose of keeping in abeyance the departmental enquiry at the interim stage.

14. I am thus not inclined to interfere with the impugned order rejecting the application for interim relief. There is no merit in the writ petition. Writ petition stands dismissed.

(SHARMILA U. DESHMUKH, J.)