

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

**RVW 82 of 2023
With
CAN 1 of 2023
in
WPA 16391 of 2021**

**M/s. Jaya Shree Textiles
Versus
State of West Bengal & Anr.**

For the review applicant : Mr. Soumya Majumder
Mr. Victor Chatterjee
Mr. Kinnor Ghosh

For the respondent workman : Mr. Debopam Ray

Heard on : 14.06.2024, 21.06.2024 & 28.06.2024

Judgment on : 30.09.2024

Raja Basu Chowdhury, J:

1. The instant review has been filed calling in question the judgment and order dated 12th April, 2023 passed in WPA 16391 of 2021 on the ground that the same had been disposed of without hearing the point of validity of the domestic enquiry. As such, the review-applicant has restricted the submissions on the question of validity of the domestic enquiry.

2. According to Mr. Majumder, learned advocate appearing on behalf of the applicant submits that once, the Tribunal had concluded that there was no procedural irregularity in holding the enquiry, the Tribunal ought not to have proceeded further and ought not to have interfered with the conclusion reached in the domestic enquiry. He submits that the Tribunal had in fact exceeded its authority in exploring the scope of the delinquent being afforded with an opportunity to be defended by a lawyer though, the rules governing the enquiry do not mandate the same. According to Mr. Majumder, the Tribunal also overlooked that the management representative was not a legally trained person and the management having not engaged any advocate, there could not have been denial of the principles of natural justice, in not affording the delinquent with an opportunity to defend by a lawyer. It is under such peculiar facts, the enquiry officer had rejected the delinquent's plea to be afforded with an opportunity to defend, by a lawyer. There is no irregularity in such a decision. Having regard to the same, it was not open to the Tribunal to interfere with the decision rendered by the enquiry officer. In support of his contention that there is no absolute right on the part of the delinquent to be represented by a lawyer, he has placed reliance on the following judgments:-

- I. ***Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni & Ors.***, reported in **(1983) 1 SCC 124**;
- II. ***Management of National Seeds Corporation Ltd. v. K.V. Rama Reddy***, reported in **2006 (111) FLR 819**;
- III. ***The Rajasthan Marudhara Gramin Bank (RMGB) & Anr. v. Ramesh Chandra Meena & Anr.***, reported in **2022 LLR 120**.

3. In the light of the above he submits that the decision of the Tribunal cannot be sustained on the ground of interference with the validity of the domestic enquiry and should be set aside.
4. Mr. Ray, learned advocate appearing on behalf of the workman no.2 (delinquent), on the other hand, would submit that in a proceeding relating to challenge to an order passed in a domestic enquiry, the invalidity of the order passed in a domestic enquiry cannot form subject matter of challenge in a writ petition, since, the parties are permitted to adduce fresh evidence to prove the charges. Admittedly, in this case, a serious charge of theft had been leveled against the delinquent. The delinquent had at the very first instance applied to be represented by a lawyer to defend himself. The presenting officer/management representative was holding an LLB degree. Although, the enquiry officer on the basis of the materials adduced had concluded that the presenting

officer was not legally trained and since, according to him the rules did not provide opportunity of legal assistance to the delinquent, legal assistance was denied. The Tribunal, however, by construing the principles laid down in the case of ***Sur Enamel & Stamping Works Ltd. v. The workman***, reported in **1963 (7) FLR 236** had concluded that though there may not be a legal right, but considering allegation that the cable of the company which was allegedly stolen on 3rd November, 2014 and was recovered from the workman on 10th November, 2014 at B. P. Dey Street, Srirampur at about 2.15 p.m., and the leave obtained by the workman on 10th November, 2014 to 30th November, 2014, which was sanctioned on 31st October, 2014 and the factum of non-reporting of theft to the police till the alleged recovery long after the theft, and the mode and manner in which the alleged recovery was made, *inter alia*, including and considering the facts of the case and seriousness of the charge, had concluded that the denial of opportunity to engage a lawyer to defend, particularly when there is no express bar in engaging a lawyer and given the helpless condition of the workman, constitute denial of equal opportunity and hence, violative of the principles of natural justice.

5. Having regard to the same, the tribunal decided to conclude that the workman was denied appropriate opportunity to defend himself and as such, the findings of the enquiry stood vitiated

and having rendered the domestic enquiry invalid, had permitted the management to adduce evidence to prove the charges and to justify the order of dismissal.

6. He submits that there is no irregularity in the order. In support of his contention, he has placed reliance on the following judgments: -

- I. ***Board of Trustees of Port of Bombay*** (supra);
- II. ***Professor Ramesh Chandra v. University of Delhi & Ors.***, reported in **2015 SCC OnLine SC 103**;
- III. ***J. K. Aggarwal v. Haryana Seeds Development Corporation Ltd. & Ors.***, reported in **(1991) 2 SCC 283**.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record. Although, in a review petition there is no scope for reconsideration of an order, however, since, the matter on the validity of the domestic enquiry was not elaborately dealt with in the judgment, the same has been viewed from the stand point of the applicant as also the workman to ascertain whether the matter merits review. I find that, admittedly, a charge of theft of cable was leveled against the workman. The cable appears to have been stolen from the company on 3rd November, 2014 and allegedly recovered from the possession of the delinquent on 10th November, 2014 at B. P. Dey Street, Srirampur at about 2.15 p.m. According to the workman,

on the said date, he went to his native village with his wife. In support of his case, a railway ticket had been produced. Admittedly, the workman had taken leave from 10th November, 2014 to 30th November, 2014, which was sanctioned on 31st October, 2014. Admittedly in this case, no FIR was lodged regarding the alleged theft of cable from the company on 3rd November, 2014. No explanation is also found on the record. Having regard thereto, the case made out by the management that the delinquent was allegedly caught red handed with the stolen cable at about 2.15 p.m. does not fit with the attending circumstances. Further, the management version proceeds with, Rakesh Kumar Singh, the Administrative Manager after ascertaining that the delinquent was carrying the stolen cable, himself proceeded to recover the same without giving any information to the police station. Record would reveal that the learned Tribunal had taken note of the aforesaid fact, as well as the fact that the presenting officer happened to be a Senior Officer of the IR Department and as such was well versed with labour and industrial laws. The delinquent also produced the bio-data of the presenting officer demonstrating that the presenting officer was a law graduate and had consequently, sought for permission to engage a lawyer to defend himself. The enquiry officer appears to have rejected the submission of the delinquent on the ground that the original certificate was not produced. The

enquiry officer did not call for the records of the company to ascertain whether the presenting officer was a law graduate. The Tribunal came to a finding that the charge against the delinquent was not trivial in nature as regards breach of discipline but the same was a serious charge of theft of company's property. Although, on the basis of the enquiry report, the delinquent was held guilty and was dismissed from service, it would appear that the delinquent all along pleaded innocence claiming he had been falsely implicated. It appears that Mr. Majumder by placing reliance on the judgments delivered in the case of **Board of Trustees** (supra) and **Management of National Seeds Corporation** (supra) has attempted to claim that there is no absolute right available to a delinquent to be represented by a lawyer and since, the presenting officer was neither a lawyer nor a legally trained person, it cannot be said that there has been denial of natural justice in not permitting the delinquent to be represented by a lawyer. I, however, find that the Tribunal on the basis of materials on record had concluded the presenting officer to be well versed with labour and industrial law and having regard to the attending circumstances including non-reporting of theft and the alleged recovery of the cable from the delinquent and the seriousness of the charge had concluded that non-granting of opportunity to the delinquent to be represented by a lawyer constituted denial of reasonable opportunity to defend,

consequentially resulting in violation of principles of natural justice. The aforesaid view in fact finds support from the judgment delivered in the case of **Board of Trustees** (supra).

8. The judgment delivered in the case of **Management of National Seeds Corporation** (supra) proceeds on an entirely different premise. In such case Rule 31.7 of the Rules applicable to the National Seeds Corporation (Conduct, Discipline and Appeal) Rules, 1992 was taken into consideration which categorically restricted engagement of legal practitioner by a delinquent unless the presenting officer appointed by the disciplinary authority is a legal practitioner. In the case at hand, the facts are different and there is no such embargo. The aforesaid judgment is thus distinguishable on facts. The judgment relied on in the case of **The Rajasthan Marudhara Gramin Bank** (supra) is also distinguishable on facts. In such case, a similar regulation was available. The said judgment does not assist the review applicant. Admittedly, in this case a view has been taken by the Tribunal on the basis of materials on record. The same does not appear to be perverse. Further, simply because a different view is possible, this Court cannot be called upon to substitute the view taken by the Tribunal. Originally, this Court by its order dated 12th April, 2023 had concluded that there is no irregularity in the findings arrived at by the Tribunal that the domestic enquiry held in this case to be invalid.

Admittedly, the Tribunal has given opportunity to the applicant to adduce evidence to justify the order of dismissal. It must be noted that ordinarily, when an order is passed by a Court, the same is final unless, the Court considers the same is required to be recalled either to meet the ends of justice or for any other sufficient reason. Having regard to the same this Court does not find any reason to review its earlier judgment. No case for review has been made out. The review application being RVW 82 of 2023 along with the connected application being CAN 1 of 2023, are accordingly dismissed. Considering the long pendency of the proceeding before the Tribunal, it is expected that the Tribunal shall take to expeditious steps to dispose the same, preferably within six months from the date of communication of the order.

9. There shall be no order as to cost.

10. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

Later:

11. Mr. Chatterjee, learned Advocate representing the applicant prays for stay of operation of the judgment and order.

12. Mr. Ray learned advocate representing the workman opposes such prayer.
13. Having heard the advocates and having considered the same, the prayer for stay is refused.

(Raja Basu Chowdhury, J.)