

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

WRIT PETITION NO.8816 OF 2024

Masina Hospital
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.

....Petitioner

V/S

- 1 Harish Makawana
- 2 Sunil Rane
- 3 Mukesh Devalekar
- 4 Minnat Ansari
- 5 Madhukar Shinde
C/o Sangharsh Sadhana Bldg.
'B' Wing, Second Floor
Room No.216,
Anna Ganpat Pawar Marg,
Byculla, Mumbai – 400 027.
- 6 Mr. Vispi Jokhi,
Medical Director
Masina Hospital,
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.
- 7 The Hon'ble Member
Industrial Court,
New Administrative Building
Opposite Chetna Building
Government Colony
Bandra (E), Mumbai – 400 051.

....Respondents

**WITH
WRIT PETITION NO.8819 OF 2024**

Masina Hospital
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.

....Petitioner

V/S

- 1 Suhas Kisan Pawar
2 Ramesh Aatmaram Sahil
3 Santosh Chattu Sharma
4 Sadhana Jitendra Deolekar
5 Sushila Ambalal Waghela
6 Savita Shivaji More
7 Nayana Ramesh Rathod
8 Kavita Chandrakant Masankar
C/o. Aadarsh Samata Nagar
Behind BMC School
Near Bhaji Market,
Mulund Colony
Mulund (West), Mumbai 400 082.
- 9 Mr. Vispi Jokhi,
Medical Director
Masina Hospital,
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.
- 10 The Hon'ble Member
Industrial Court,
New Administrative Building
Opposite Chetna Building
Government Colony
Bandra (E), Mumbai – 400 051.

....Respondents

**WITH
WRIT PETITION NO.8814 OF 2024**

Masina Hospital
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.

....Petitioner

V/S

- 1 Sanjay Balmiki
2 Babajan Shaikh
3 Shailesh Shinde
C/o. Masina Hospital
Staff quarter Room No.A/9
Sant Savta Marg, Byculla (E)
Mumbai – 400 027.

4 Mr. Vispi Jokhi,
Medical Director
Masina Hospital,
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.

5 The Hon'ble Member
Industrial Court,
New Administrative Building
Opposite Chetna Building
Government Colony
Bandra (E), Mumbai – 400 051.

....Respondents

**WITH
WRIT PETITION NO.8813 OF 2024**

Masina Hospital
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.

....Petitioner

V/S

1 Krishna Shinde

2 Suryakant Shirodkar

3 Shivaji More

C/o. Masina Hospital
Staff quarter Room No.A/9
Sant Savta Marg, Byculla (E)
Mumbai – 400 027.

4 Mr. Vispi Jokhi,
Medical Director
Masina Hospital,
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.

5 The Hon'ble Member
Industrial Court,
New Administrative Building
Opposite Chetna Building
Government Colony
Bandra (E), Mumbai – 400 051.

....Respondents

WITH

WRIT PETITION NO.8817 OF 2024

Masina Hospital
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.

....Petitioner

V/S

- 1 Sharda K. Solanki
- 2 Laxmi Rajkumar Singh
C/o Jay Malahar Apartment
Ganesh Nagar, Diva (E)
Thane – 400 642
- 3 Mr. Vispi Jokhi,
Medical Director
Masina Hospital,
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.
- 4 The Hon'ble Member
Industrial Court,
New Administrative Building
Opposite Chetna Building
Government Colony
Bandra (E), Mumbai – 400 051.

....Respondents

**WITH
WRIT PETITION NO.8821 OF 2024**

Masina Hospital
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.

....Petitioner

V/S

- 1 Meena Kelshikar
- 2 Rupesh Raghunath Mali
C/o. Chawl No.20,
Karmvir Dadasaheb Gaikwad Nagar
Chembur, Mumbai – 400 089.
- 3 Mr. Vispi Jokhi,
Medical Director

Masina Hospital,
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.

- 4 The Hon'ble Member
Industrial Court,
New Administrative Building
Opposite Chetna Building
Government Colony
Bandra (E), Mumbai – 400 051.Respondents

**WITH
WRIT PETITION NO.8797 OF 2024**

Masina Hospital
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.Petitioner

V/S

- 1 Sandeep Ghanekar
2 Subash Gurav
3 Rajendra Borade
C/o. Vithal Krupa, Room No.2.
Sonar Pada, Near Shankar Vidhyalay
Kalyan Shill Road, Dombivali East
Mumbai – 400 672.
- 4 Mr. Vispi Jokhi,
Medical Director
Masina Hospital,
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.
- 5 The Hon'ble Member
Industrial Court,
New Administrative Building
Opposite Chetna Building
Government Colony
Bandra (E), Mumbai – 400 051.Respondents

**WITH
WRIT PETITION NO.8798 OF 2024**

Masina Hospital
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.

....Petitioner

V/S

- 1 Standley Willam Sure
- 2 Mahendra Walmiki
- 3 Hemant Solanki
- 4 Dinesh Chavan
- 5 Prakash Pawar

C/o Masina Hospital
Staff quarter Room No.A/9
Sant Savta Marg, Byculla (E)
Mumbai – 400 027.

- 6 Mr. Vispi Jokhi,
Medical Director
Masina Hospital,
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.

- 7 The Hon'ble Member
Industrial Court,
New Administrative Building
Opposite Chetna Building
Government Colony
Bandra (E), Mumbai – 400 051.

....Respondents

**WITH
WRIT PETITION NO.8820 OF 2024**

Masina Hospital
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.

....Petitioner

V/S

- 1 Satish Kadam
- 2 Ashok Kadam
- 3 Gangaram Barge
C/o Shivganga Housing Society
Near Gokul Banglow, Aajde Pada,
Dombivali (W), 421 209.

4 Mr. Vispi Jokhi,
Medical Director
Masina Hospital,
St. Savta Marg, Mustafa Bazar,
Byculla East, Mumbai 400 027.

5 The Hon'ble Member
Industrial Court,
New Administrative Building
Opposite Chetna Building
Government Colony
Bandra (E), Mumbai – 400 051.

....Respondents

Mr. Sudhir Talsania, Senior Advocate i/b Mr. Pawan Patil *for the Petitioner.*

Mr. L.R. Mohite with Ms. Harshali Mohite *for Respondents.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 17 FEBRUARY 2025.
PRONOUNCED ON : 25 FEBRUARY 2025.

J U D G M E N T :

1) Petitioner-employer has filed the present Petitions challenging the judgments and orders dated 9 January 2024 passed by the Member, Industrial Court, Mumbai, allowing the Revision Applications filed by the Respondent-employees and setting aside the order dated 18 August 2022 passed by Labour Court, by which the Labour Court had held that the enquiry was fair and proper and that the findings of the Enquiry Officer are not perverse. The net result of the impugned orders passed by Industrial Court is that the preliminary issues relating to fairness in the enquiry and perversity in the findings of Enquiry Officer are answered against the Petitioner and in favour of the Respondent-employees.

2) Petitioner is a Charitable Hospital, which is managed by a Trust. The Respondent-employees were employed in Class-IV categories in

the hospital. They were initially represented by Mumbai Labour Union. In the year 2010, some of the workmen in the Petitioner-Hospital joined Maharashtra Navnirman Kamgar Sena (MNKS) resulting in rift between the two Unions. It is the case of the Petitioner that on 9 February 2015, a committee member of MNKS Mr. Rupesh Mali-Wardboy was caught red-handed committing theft and was suspended from work for four days from 11 December 2015 to 15 December 2015. Petitioner-employer alleges that in view of suspension of the said committee member, the Respondent-employees created ruckus in the hospital premises on 11 December 2015 and physically assaulted Mr. Vinayak Kulkarni (Personal and Admin Officer) and Mr. Vidhyadhar H. Nare (Accountant) with iron rods and also hurled abuses and threats to them. It is alleged that Mr. Kulkarni was grievously hurt while Mr. Nare suffered minor injuries and both were required to be hospitalized. An FIR was lodged against 35 workmen involved in the alleged assault on 11 December 2015. Mr. Nare later reported loss of personal cash of Rs.5,000/- and hospital cash of Rs.10,000/-. The Petitioner-employer accordingly suspended the 35 workmen involved in the incident with effect from 15 December 2015 and initiated domestic enquiries against them. Charge-sheets dated 9 February 2016 were issued to them. Petitioner-Hospital nominated enquiry officers to conduct enquiries against the 35 charge-sheeted employees. The enquiry was conducted jointly in groups of workmen by independent enquiry officers. According to the Petitioner-Hospital, the enquiries were conducted after following the principles of natural justice by affording due opportunity of defence to the Respondent-employees. The enquiry officers submitted reports holding that the charges were proved. Enquiry Reports were served on the Respondent-employees calling for their explanation. The Petitioner-Management thereafter imposed the punishment of dismissal on the Respondent-employees.

3) The Respondent-employees filed various complaints of unfair labour practice before Labour Court under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**). Petitioner-Management filed its written statements. The Labour Court framed preliminary Issue No.1 relating to fairness in the enquiry and Issue No.2 about perversity in the findings of Enquiry Officer. It appears that during the course of hearing on the preliminary issues, the concerned Respondent-employees got acquitted in the criminal case vide judgment and order dated 23 October 2019 passed by the Court of Metropolitan Magistrate. After hearing the rival parties, the Labour Court proceeded to answer both the preliminary issues in favour of the Petitioner-Management and against the Respondent-employees holding that the enquiry is fair and proper and that findings of the enquiry officer are not perverse by its orders dated 18 August 2022.

4) The Respondent-employees challenged orders dated 18 August 2022 passed by the Labour Court by filing Revision Applications before the Industrial Court. The Revision Applications have been allowed by the Industrial Court by setting aside the orders on preliminary issues passed by the Labour Court on 18 August 2022. The orders passed by Industrial Court on 9 January 2024 passed in Revision Applications filed by Respondent-employees are subject matter of challenge in the present petitions filed by the Petitioner-employer.

5) I have heard Mr. Talsania, the learned Senior Advocate appearing for the Petitioner-employer, who would submit that the Labour Court had correctly decided both the preliminary issues in favour of the Petitioner-employer and against the Respondent-employees. He would submit that the enquiry has been conducted by affording due opportunity

of defence to the Respondent-employees. He would take me through various findings recorded by the Labour Court to demonstrate as to how the enquiry is conducted by offering due opportunity of defence and how the findings of the enquiry officer are supported by evidence on record. He would then criticize the findings recorded by the Industrial Court to demonstrate as to how the said findings are perverse. He would submit that mere technical violations sought to be highlighted by the Industrial Court could not be the reason for answering the preliminary issue No.1 against the Petitioner-Management. That the Respondent-employees ought to have demonstrated cause of some prejudice to them and in absence of any prejudice being caused, it was impermissible to hold that the domestic enquiry is vitiated. In support, he would rely upon judgment of the Apex Court in ***Chairman, State Bank of India and another vs. M.J. Jains***, 2022 (2) SCC 301. So far as the findings of the Industrial Court on preliminary issue No.2 relating to perversity in the findings are concerned, Mr. Talsania would submit that there is direct evidence available on record in the form of deposition of Mr. Kulkarni and Mr. Nare. That mere acquittal of an employee in domestic enquiry does not automatically render the findings recorded in the domestic enquiry *non-est*. That the employees are otherwise acquitted by giving benefit of doubt and that there is no acquittal. He would therefore submit that the Industrial Court has grossly erred in reversing well-considered decision of the Labour Court and would accordingly pray for setting aside the orders of the Industrial Court.

6) The petitions are opposed by Mr. Mohite, the learned counsel appearing for Respondent-employees. He would submit that the Industrial Court has considered the manner in which the entire enquiry is conducted in gross violation of principles of natural justice. That conduct of entire enquiry is mere formality since the conclusions were premeditated. He

would submit that all the Respondent-employees have been ultimately acquitted in the criminal trial in which they faced same charge and the same evidence was examined. He would therefore submit that due weightage is required to be given to the findings recorded by the Criminal Court and therefore the finding of enquiry officer in domestic enquiry, which are diametrically opposite to the one recorded by the Criminal Court, cannot be allowed to stand. He would submit that no evidence is produced before the enquiry officer about assault committed by use of iron rod. That the photographs do not show presence of iron rod or use of kerosene as falsely alleged in the chargesheet. That the employees were not given due opportunity of defence by not providing them an Advocate once it was found that the Union was not supporting them. That on account of non-provision of an Advocate, Respondents were unable to cross-examine the witnesses being merely Class-IV employees. That they were not paid subsistence allowance or even medical facilities during pendency of the enquiry. He would rely upon judgment of Apex Court in ***Director BCG Vaccine Laboratory, Madras vs. S. Pandian & Ors.***¹ Lastly Mr. Mohite would submit that no prejudice is otherwise caused to the Petitioner-employer on account of passing of impugned orders by the Industrial Court as the Petitioner-employer would have an opportunity of justifying its action by leading evidence before the Labour Court. He would accordingly pray for dismissal of the Petitions.

7) Rival contentions of parties now fall for my consideration.

8) The Respondent-employees faced grave charges of assaulting Mr. Vinayak Kulkarni with iron rod and pouring upon him kerosene and oil paint. The chargesheet also included allegation of committing assault on

¹ Civil Appeal Nos. 2093-96/1990 decided on 24 April 1996.

Accountant Mr. Nare. The chargesheet alleged that the assault was committed on account of issuance of suspension letter to hospital employee-Mr. Rupesh Mali. The charge-sheet also gives account of abusive language and threats issued to Mr. Kulkarni and Mr. Nare. In addition to domestic enquiry, it appears that FIR was also lodged against the concerned employees. Mr. Kulkarni was apparently treated at JJ Group of Hospitals and was issued an injury certificate showing absence of any external injury. Similar injury certificate was also issued to Mr. Nare. The Respondent-employees were placed under suspension. In the domestic enquiry, the Petitioner-employer examined Mr. Vinayak Kulkarni and Mr. Vidyadhar Nare as its witnesses. However, it appears that the Respondent-employees did not conduct cross-examination of the said two witnesses on the ground that they were not provided with defence representatives. On the strength of evidence of Mr. Kulkarni and Mr. Nare, the charges are held to be proved against the Respondent-employees by the enquiry officers.

9) So far as the preliminary issue No.1 relating to fairness in the enquiry is concerned, the Labour Court recorded following findings:

32. Ld. Advocate for both sides also adduced written argument. I have gone through the written argument and found repetition of oral argument mentioned in written argument. After going through the argument from both sides I have carefully gone through the enquiry papers and other documents available on record and found that while conducting enquiry at initial stage that was conducted in English language with endorsement which reveals that all the contents were explained to the workers in Marathi language. Thereafter, workers made application to conduct enquiry in Marathi language and accordingly enquiry was conducted in Marathi language. Respondents adduced its witness and at that time enquiry officer asked to workers for cross examination which was denied, after closing evidence of respondents, Enquiry officer called workers to adduce evidence, at that time workers were denied to adduce evidence. From the entire papers of enquiry, it appears that time to time workers filed application for getting appointment of advocate on the expenditure of respondents, but from the pleadings of the complainants itself, it appears that till the starting of enquiry they were active members of Maharashtra Nav Nirman Kamgar Sena, and time to time MNKS filed

litigations before Hon'ble Industrial Court and respondents claiming various reliefs for the benefits of workers.

33. On 26/07/2016 MNKS union filed complaint application before Police Commissioner at Fort, Mumbai stating that workers were going to Hunger Strike till death alleging that on 11/12/2015 worker's complained to Byculla Police Station for giving complaint against Mr.Vinayak Kulkarni, Mr.Nare Mr.Santosh Nikam to police did not take serious cognizance. Record shows that previous to 26/07/2016 already departmental enquiry was going on. Ld. Advocate for complainants also produced one letter dated 27/11/2020 to show that workers were not represented by any union which is addressed to Management. I have gone through the letter and found that workers of Masina Hospital sent letter to respondents stating that they were not representing by any union, but as the letter bears date 27/11/2020 that can not be considered to decide the position of workers at the time of carrying departmental enquiry. On the contrary letter MNKS union dtd.26/07/2016 clearly reveals that till 26/07/2016 workers were represented by the MNKS Union and during pendency of enquiry MNKS Union represented workers before Police Commissioner by filing representation regarding to facts involved in departmental enquiry carried by Masina Hospital there is no explanation adduced as to why representative of MNKS union was not represents the workers when,during that period and time the said union represents the workers before other authority by raising same issue. Hence, I do not found substance in the argument of Ld. Advocate Shri Mohite that during period of enquiry workers were not represented by any union, therefore, it is required to Masina Hospital to arrange payment of fees for engaging lawyer for workers to represent their side. Therefore, in my humble opinion decision cited in ***Director BCG Vaccine Laboratory, Madras V/s. S. Pandian & Ors, and Sandvik Asia Ltd. V/s. Sandvik Asia Employees' Union and others***, will not be applicable to the facts of present case.

34. Complainants come with case that they are acquitted in Criminal Case No.575/PW/2016 regarding to same incidence upon which respondents carried departmental enquiry, and the said judgments will be binding and findings of enquiry officer will not be applicable, hence order of dismissal is vitiated decision and liable to set aside. Moreover enquiry officer carried enquiry on the basis of bias decision in favour of respondents. He did not consider the facts that 35 workers can not be able to utter same words on same time. It is the allegations upon workers that 35 workers beaten to employee of respondents that's are Mr. Vinayak Kulkarni and Mr.Nare by iron rod, if in reality such incidence occurred, it will be impossible to relieve them on same day or next day without having any serious injury on their body.

35. I have carefully gone through the judgment passed by Metropolitan Magistrate and found that during discussion the Ld. Metropolitan Magistrate held that, "the prosecution not proved according to provisions of law. On perusal of evidence of prosecution witness there is veriance regarding to number of accused involved in the commission of offence and evidence brought on record by the prosecutor, therefore benefits of doubt is always goes in favour of accused." From the contents of judgement it appears that, the Ld. Metropolitan

Magistrate acquitted the workers by giving benefits of doubt and there is not at all any findings regarding to happening or non happening of the incidence. I have carefully gone through the enquiry papers and found that enquiry officer had considered the contents of CD and gave opportunity to cross examine the witness produced by the Masina hospital. He also narrated contents of proceeding which was carried in English language in Marathi language to workers and there is no complaint found that any worker did not understand the translation of contents in Marathi language of the proceeding which carried in English. Thereafter, proceeding was carried in Marathi language in presence of all workers and time to time gave opportunity to each worker for participating in the enquiry, for cross examination, for adducing evidence, but on each occasion workers denied to carry cross examination and to adduce evidence, therefore I come to the conclusion that enquiry officer carried proper domestic enquiry by giving fair opportunity to the workers, therefore, in my humble opinion decision in **(1)Sur Enamel and Stamping Works (P) Ltd. V/s.Their Workemen AIR 1963 (SC) Page 367,(2)The Chairman, Board of Mining Examinaton and Chief Inspector of Mines and Anr. V/s. Ramjee, AIR 1977 (SC) 965,(3)Ramesh Chand V/s. L.D.Malik & Anr.1986(52)FLR 629,(4)Bank of India V/s. Apurba Kumar Saha III 1995 BC13(SC), (5)State Bank of India and Ors. V/s. Atindra Nath Bhattacharyya and Ors.2019 AIR (SC)4777** will be applicable to the facts of present case.

36. The decision in **Karnataka Power Tansmission Coporation Ltd. Rep. by Managing Director (Admin. And HR) V/s. C. Nagaraju & Anr. 2020 I CLR page 18** will not be applicable to the facts of present case as in that matter acquittal was considered on the ground of prosecution witness turned hostile, and from the facts of the said decision, it is clearly appears that the disciplinary authority is not bound by the judgment of Criminal Court.

37. Therefore, I come to the conclusion that enquiry officer conducted enquiry in fair, legal and proper by giving equal opportunity to both sides. Therefore, I answer issue no.1 in affirmative.

10) The Labour Court thus held that the enquiry was conducted in Marathi language as per the request of the Respondent-employees. It further observed that despite grant of an opportunity to cross-examine the Petitioner-Management witnesses, the employees refused to conduct their cross-examination nor did they lead their own evidence. The Labour Court further held that the demand of the Respondent-employees for provision of services of Advocate at the expenses of the Petitioner-employer was unfounded. It held that Respondent-employees were active members of the

MNKS and that the said Union had filed litigations before the Industrial Court for benefit of the said Respondent-employees. Labour Court also took note of the fact that the said Union has filed complaint before the police threatening hunger strike by the Respondent-workers on 26 July 2016. It held that the enquiry had commenced much before 26 July 2016 showing thereby that the Respondent-employees were well represented by the said Union. Thus, the very pretext of non-representation by Union cited by the Respondent-employees for engagement of Advocate at expenditure of the employer is found to be false by the Labour Court. The Labour Court observed that the Union was conveniently representing the Respondent-employees by giving notice of hunger strike and deliberately shied away from defending them before the enquiry officer.

11) The Industrial Court has however recorded following findings for holding the enquiry to be unfair:

38. It appears that, Ld. Labour Court failed to consider that, enquiry officer on the very first day of enquiry i.e. on 22.03.2016 started to conduct enquiry without giving opportunity to revision petitioners for filing of their reply/representation to charge-sheet. The said action of enquiry officer is in violation of the principal of natural justice but Ld. Labour Court failed to consider the same. So, also enquiry officer without the consent of revision petitioners on his own accord taken the decision of conducting enquiry of all delinquents/revision petitioners jointly without explaining the procedure about conducting the said enquiry. The enquiry officer is not empowered to adopt the procedure of copy-paste without giving opportunity of cross examination to each delinquent/revision petitioners. The aforesaid conduct of the enquiry officer clearly shows that he was acting with bias mind in the interest of management of respondent hospital. But the Ld. Labour Court failed to consider the aforesaid conduct of enquiry officer. So also, the enquiry officer failed to understand the procedure of enquiry to delinquents/revision petitioners in the language which understand to them as well as in enquiry report nowhere mentioned that enquiry proceeding which started on 22.03.2016 has explained to delinquents/revision petitioners. The said aspects are also not considered by Ld. Labour Court while passing impugned order. Ld. Labour Court failed to consider that, enquiry officer is not taken cognizance of the letter/application of revision petitioners dated 31.03.2016 in respect of requesting to issue show cause notice in Marathi language due to they are not understanding anything. The said aspect is also not considered by Ld. Labour Court while passing the impugned order.

39. Further, appears that, enquiry officer on 05.04.2016 conducted enquiry in absence of one of the revision petitioner namely Sushila Ambalal Waghela inspite of her letter dated 05.04.2016 which is vide Exh. 26. So also, enquiry officer not providing enquiry proceeding of the said day to said Smt. Waghela, though, it is obligatory on the part of the enquiry officer. On the contrary, enquiry officer adjourned the enquiry proceeding on the ground of giving opportunity to management representative (MR) for submitting reply to Exh. 11 dated 31.03.2016. The said conduct of the enquiry officer shows that, enquiry officer violated principal of natural justice and conducted enquiry in collusion with management of respondent Hospital.

40. Further, appears that, on 19.04.2016, enquiry officer conducted enquiry in absence of Santosh Chottu Sharma and Savita Shivaji More who are revision petitioners and even not supplied enquiry proceeding of that day to said Sharma and More. The said conduct of the enquiry officer also shows that he violated the principal of natural justice and conducted enquiry in collusion with management of respondent Hospital. The enquiry officer gave whatever reasoning in respect of conducting enquiry jointly is not proper and contrary to the provisions of law. The enquiry officer while giving decision on Exh. 11's application observed that, he has given sufficient opportunity to revision petitioners to engage defence representative which can be their collogue, office bearer of the union. But mentioned contrary statement of management representative (MR) by stating that management representative has given no objection for engaging advocate. The above-mentioned irregularity/ illegalities which appears from enquiry report are not considered by Ld. Labour Court while passing impugned order.

41. Again it appears that, learned labour court while passing impugned order fails to consider that, concern employees / revision petitioner are though member of MNS (Union). But the said union is not supporting to revision petitioners on any counts. Hence in view of guidelines and observation of Hon'ble Supreme Court and Hon'ble Bombay High court. Which laid down in the judgment of **Director, BCG Vaccine vs. S Pandian and others reported in 1996 II LLJ 634 (SC), Sandvik Asia Ltd. vs. Sandvik Asia Employees Union and Others reported in 2002 I CLR 99 (Bombay HC)**, failed to observe that, enquiry officer committed error while rejecting application of revision petitioners for appointing defence Counsels on behalf of them and the cost of said counsels bears by management of respondent hospital. Because revision petitioner are/were class IV employees/workmen and they are/were under suspension while enquiry is going on. As well as revision petitioner are not having any other source of income.

42. Again appears that, on 19.04.2016, revision petitioners submitted one application alongwith copy of judgment of Hon'ble Supreme Court which decided on 24.04.1996 for requesting the enquiry officer to issue direction to the management of respondent Hospital for continuing medical facilities. As well as in view of another application on same day vide Exh.30, revision petitioners requested to conduct enquiries of revision petitioners individually. But enquiry officer while conducting enquiry stated that, he has no jurisdiction to decide the issue of continuing medical facilities on basis of submission of management representative (MR) of

respondent Hospital. The said conclusion of enquiry officer shows that, he was acting as an agent of the management of respondent Hospital and in the interest of management without bothering to put-up the said issue before management for consideration even on humanitarian ground. Because, it is a legal right of revision petitioner to enjoy existing medical facilities which are available to them as they were only kept under suspension and employer-employee relationship is in existence. So also, management of respondent Hospital failed to pay subsistence allowance to revision petitioners. But, the Ld. Labour Court while passing impugned order failed to consider above mentioned bias conduct of the enquiry officer which gave benefit to management of respondent Hospital. The enquiry officer on application of revision petitioners vide Exh. 30 gave whatever reasoning is illegal. Again enquiry officer on 28.11.2016 conducted the enquiry in absence of one of the revision petitioner namely Sadhna Dewlekar, but recorded in the proceeding all the delinquents were present. The application vide Exh. 42 dated 28.04.2016 of the revision petitioner in respect of changing the enquiry officer, enquiry officer conducted the enquiry with predetermined manner and conducted enquiry by using his personal knowledge and information in respect of revision petitioners. The above mentioned lacuna which appears in enquiry report are not considered by Ld. Labour Court while passing impugned order.

43. Further, carefully gone through the enquiry report, it appears that, on 28.04.2016, enquiry officer failed to direct respondent hospital for providing medical facilities to father of Ms. Kavita Mansavkar who suffering from heart problem and cancer decease. The letter of said Kavita is at Exh. 45. The said application of Ms. Kavita rejected by enquiry officer without referring it to the management of respondent's hospital. So also, enquiry officer has not supplied copies of enquiry proceeding to revision petitioners which is held on 28.04.2016. The enquiry officer rejected the application dated 28.04.2016 of revision petitioners which is vide Exh. 44 for demanding CCTV footage of respondent hospital in respect of enquiry conducted on certain dates and time. The enquiry officer on 08.06.2016, taken on record certain documents produced by the management, but in enquiry report nowhere mentioned that the copies of said documents have been supplied to the revision petitioners as well as not provide that documents to the revision petitioners. On the contrary, recorded the evidence of witness of management without supplying copies of said documents which are vide Exh. 62 & 63. So also, completed the testimony of the witnesses of management of the Respondent Hospital only mentioning that revisions petitioners refused/declined to conduct the cross examination of concerned witnesses. Thus, in view of above method/conduct of enquiry officer appears that, though enquiry officer given opportunity to revision petitioner for conducting cross examination of concern witnesses, then also appears that the said enquiry proceeding is going on ex-parte. The aforesaid conduct of the enquiry officer disclose that, he had violated principal of natural justices and acted in collusion with management of respondent Hospital. The above-mentioned irregularities/error or illegalities which committed by the enquiry officer while conducting the enquiry are not considered by Ld. Labour Court while passing impugned order.

12) The first reason recorded by the Industrial Court for setting aside the orders passed by Labour Court is commencement of enquiry without giving an opportunity to the Respondent-employees for filing their reply/representation to the chargesheet. In the case of Sanjay Balmiki and others (Writ Petition No.8814 of 2024), the Industrial Court held the first date of enquiry was 22 March 2016. However, the chargesheet was issued to the concerned Respondent-employees on 9 February 2016. Thus, sufficient opportunity was provided for filing reply to the chargesheet. Perusal of the enquiry proceedings would indicate that what was done on 22 March 2016 was only preliminary enquiry. The finding of the Industrial Court about failure to grant an opportunity to file Reply/representation is thus perverse.

13) The second reason recorded by the Industrial Court for setting aside Labour Court's orders is joint conduct of enquiry and the Industrial Court has criticized the Enquiry Officer for adopting copy-paste proceeding without giving an opportunity of cross-examination to each delinquent employees. Here the issues of conduct of joint enquiry and grant of opportunity of cross-examination are mixed up by the Industrial Court. I do not see any prohibition on the part of an employer to conduct joint enquiry, if the charges and evidence is similar. Mere conduct of joint enquiry does not mean that opportunity of cross-examination is denied to the concerned employees. Therefore, the finding that the Enquiry Officer was acting with bias in his mind, merely because joint inquiry is conducted, is totally unsustainable and perverse.

14) The next reason cited by the Industrial Court is about non-conduct of enquiry in the language understood by the Respondent-

employees. However, Labour Court has recorded a finding of fact that the enquiry was conducted in Marathi language but proceedings were recorded in English. In the light of the position that the Respondent-employees refused to cross-examine the witnesses despite affording an opportunity to do so would indicate that the allegation of maintaining proceeding of an enquiry in English language has otherwise not caused any prejudice to the Respondent-employees.

15) The Industrial Court has further held that the enquiry was conducted in absence of some of the employees. However, what must be borne in mind is the fact that all the Respondent-employees have refused to avail opportunity of cross-examining the witnesses by citing the pretext of lack of representation by the Union. Therefore, mere absence of one of the delinquent employees during the course of conduct of joint enquiry has not really caused any prejudice to the Respondent-employees.

16) Another reason cited by the Industrial Court for holding enquiry to be unfair is denial of medical facility to the Respondent-employees during the conduct of enquiry. I fail to understand as to how the Enquiry Officer was supposed to ensure extension of medical facilities to the delinquent employees or their family members. Extension of medical facilities has absolutely nothing to do with the conduct of enquiry or grant of opportunity of defence to the Respondent-employees.

17) In my view, the reasons recorded by the Industrial Court for setting aside the findings of Labour Court on preliminary issue No.1 are clearly perverse and unsustainable. The Petitioner-employer has afforded due opportunity of defence to the Respondent-employees, who apparently collectively decided not to cross-examine the witnesses by citing false

pretext of lack of representation by Union, when in fact the very same Union was representing them by issuing threats of hunger strike. The expectation of the Respondent-employees for provision of representation by practicing advocate at the costs of Petitioner-employer was clearly unwarranted. It was the responsibility of the Respondent-employees to arrange the services of the defence representative. Some of the Respondent-employees were office bearers of the concerned Union, at whose behest and instigation, apparently the entire episode has taken place. It is therefore unbelievable that the Union did not provide for defence representative for defending the Respondent-employees in the enquiry. In any case, whether the Union of Respondent-employees provided services of defence assistant to them or not, it was their own responsibility to ensure that they are duly represented by the defence representatives. It is not the responsibility of the Petitioner-Management to provide services of practicing advocate to the delinquent employees. It is also not a matter of coincidence that none of the 35 employees were unable to arrange services of defence representative for conducting cross-examination of Petitioner-Management witnesses. In my view therefore, it was a deliberate and conscious call taken by all the delinquent employees not to cross-examine the witnesses possibly for creating a ground for challenging enquiry proceedings before the Labour Court. Once it is held that opportunity of cross-examination was deliberately and consciously not availed by the delinquent employees, all technical pleas of non-payment of subsistence of allowance, non-extension of medical facilities, absence of some of the delinquent employees in joint enquiries, commencement of enquiry on the first date etc. become meaningless. Far from cause of any prejudice to the Respondent-employees, this appears to be a deliberate ploy by them to create a ground for challenging the enquiry before the Labour Court by not participating in the cross-examination process.

18) It is well settled principle of law that mere breach of principles of natural justice, do not *ipso facto* vitiate a domestic enquiry. Reliance by Mr. Talsania on judgment of the Apex Court in ***State Chairman, State Bank of India and another vs. M.J. James***² is apposite in which it is held in paragraphs 23 and 29 to 31 as under:

23. Now, we need to advert our attention on the aspect of the choice of representation in domestic inquiry. Both sides rely on the dictum of this Court in *Crescent Dyes & Chemicals Ltd. v. Ram Naresh Tripathi* [*Crescent Dyes & Chemicals Ltd. v. Ram Naresh Tripathi*, (1993) 2 SCC 115 : 1993 SCC (L&S) 360] and *National Seeds Corpn. Ltd. v. K.V. Rama Reddy* [*National Seeds Corpn. Ltd. v. K.V. Rama Reddy*, (2006) 11 SCC 645 : (2007) 1 SCC (L&S) 512] which hold that the right to be represented by a third person in domestic inquiries/tribunals is based upon the precept that it is not desirable to restrict right of representation by a counsel or agent of one's choice. The ratio does not tantamount to acceptance of the proposition that such a right is an element of principles of natural justice, and its denial would immediately invalidate the inquiry. Representations are often restricted by a law, such as under Section 36 of the Industrial Disputes Act, 1947, as also by Certified Standing Orders.

29. Legal position on the importance to show prejudice to get relief is also required to be stated. In *State Bank of Patiala v. S.K. Sharma* [*State Bank of Patiala v. S.K. Sharma*, (1996) 3 SCC 364] a Division Bench of this Court distinguished between “adequate opportunity” and “no opportunity at all” and held that the prejudice exception operates more specifically in the latter case. This judgment also speaks of procedural and substantive provisions of law embodying the principles of natural justice which, when infringed, must lead to prejudice being caused to the litigant in order to afford him relief. The principle was expressed in the following words : (SCC p. 389, para 32)

“32. Now, coming back to the illustration given by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counterproductive exercise.”

30. Earlier decision in *M.C. Mehta v. Union of India* [*M.C. Mehta v. Union of India*, (1999) 6 SCC 237] examined the expression “admitted and undisputable facts”, as also divergence of legal opinion on whether it is necessary to show

2 (2022) 2 SCC 301

“slight proof” or “real likelihood of prejudice”; or legal effect of “an open and shut case”, with reference to the observations in *S.L. Kapoor v. Jagmohan* [S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379] and elucidates in the following words : (*M.C. Mehta case* [*M.C. Mehta v. Union of India*, (1999) 6 SCC 237], SCC pp. 245-47, paras 22-23)

“22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of “real substance” or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See *Malloch v. Aberdeen Corpn.* [*Malloch v. Aberdeen Corpn.*, (1971) 1 WLR 1578 (HL)] . (per Lord Reid and Lord Wilberforce), *Glynn v. Keele University* [*Glynn v. Keele University*, (1971) 1 WLR 487], *Cinnamond v. British Airports Authority* [*Cinnamond v. British Airports Authority*, (1980) 1 WLR 582 (CA)] where such a view has been held. The latest addition to this view is *R. v. Ealing Magistrates’ Court, ex p Fannaran* [*R. v. Ealing Magistrates’ court, ex p Fannaran*, (1996) 8 Admn LR 351] (Admn LR at p. 358) (see *de Smith*, Suppl. p. 89) (1998) where Straughton, L.J. held that there must be “demonstrable beyond doubt” that the result would have been different. Lord Woolf in *Lloyd v. McMahon* [*Lloyd v. McMahon*, 1987 AC 625 : (1987) 2 WLR 821 (HL)] (WLR at p. 862) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in *McCarthy v. Grant* [*McCarthy v. Grant*, 1959 NZLR 1014] however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is “real likelihood — not certainty — of prejudice”. On the other hand, *Garner Administrative Law* (8th Edn., 1996, pp. 271-72) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from *Ridge v. Baldwin* [*Ridge v. Baldwin*, 1964 AC 40 : (1963) 2 WLR 935 (HL)] , Megarry, J. in *John v. Rees* [*John v. Rees*, 1970 Ch 345 : (1969) 2 WLR 1294] stating that there are always “open and shut cases” and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J. has said that the “useless formality theory” is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that “convenience and justice are often not on speaking terms”. More recently Lord Bingham has deprecated the “useless formality” theory in *R. v. Chief Constable of the Thames Valley Police Forces, ex p Cotton* [*R. v. Chief Constable of the Thames Valley Police Forces, ex p Cotton*, 1990 IRLR 344] by giving six reasons. (See also his article “Should Public Law Remedies be Discretionary?” 1991 PL, p. 64.) A detailed and emphatic criticism of the “useless formality theory” has been made much earlier in “Natural Justice, Substance or Shadow” by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that *Malloch* [*Malloch v. Aberdeen Corpn.*, (1971) 1 WLR 1578 (HL)] and *Glynn* [*Glynn v. Keele University*, (1971) 1 WLR 487] were wrongly decided. Foulkes (*Administrative Law*, 8th Edn., 1996, p. 323), Craig (*Administrative Law*, 3rd Edn., p. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. de Smith (5th Edn., 1994, Paras 10.031 to 10.036) says courts have not yet

committed themselves to any one view though discretion is always with the court. Wade (*Administrative Law*, 5th Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a “real likelihood” of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are *not* all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their “discretion”, refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala v. S.K. Sharma* [*State Bank of Patiala v. S.K. Sharma*, (1996) 3 SCC 364] , *Rajendra Singh v. State of M.P.* [*Rajendra Singh v. State of M.P.*, (1996) 5 SCC 460] that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

23. We do not propose to express any opinion on the correctness or otherwise of the “useless formality” theory and leave the matter for decision in an appropriate case, inasmuch as, in the case before us, “admitted and indisputable” facts show that grant of a writ will be in vain as pointed [*S.L. Kapoor v. Jagmohan*, (1980) 4 SCC 379] out by Chinnappa Reddy, J.”

(emphasis in original)

31. In *State of U.P. v. Sudhir Kumar Singh* [*State of U.P. v. Sudhir Kumar Singh*, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847] referring to the aforesaid cases and several other decisions of this Court, the law was crystallised as under : (SCC para 42)

“42. An analysis of the aforesaid judgments thus reveals:

42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

19) I am therefore of the view that the findings recorded by the Industrial Court on preliminary issue No.1 relating to fairness in the enquiry are clearly unsustainable and liable to be set aside.

20) Coming to issue No.2 relating to perversity in the findings of Enquiry Officer, the Industrial Court has recorded following findings:

44. Then appears that, in discharge summary of Mr. Vinayak Arvind Kulkarni, shows injury to said Vinayak to his head, chest and ear but in charge-sheet shown the injuries to said Vinayak Kulkarni on back, abdomen, ear and eyes. The said controversy clearly shows that the injuries of said Vinayak Kulkarni are false and bogus. So also, in the said discharge summary of Mr. Vinayak mentioned that he is not facing, omitting or other problem as per CT Scan of said Vinayak, no where shown any abnormality about brain. The said Kulkarni was discharged on 12.12.2015. Thus, in view of said discharge summary appears that, the allegations made in the charge-sheet that the injury caused on back abdomen and assaulted with iron rode and pour kerosene and oil paint are prima facie false and bogus. The said Kulkarni was simply admitted for a day. Really, if there would have be assault by iron rode and pouring kerosene and oil paint, it would not have been possible to discharge said Kulkarni in a day. Then as per the discharge summary of Mr. Vidyadhar H. Nare, appears that in the said discharge summary shown injury to said Vidyadhar to abdomen and nowhere it has been mentioned about the injury on head and back. But in charge-sheet shown injury to Vidyadhar Nare on head and back, the said Nare discharged on the same day. The Ld. Labour Court while passing impugned order failed to consider the above-mentioned controversies about the injuries which appears to Vinayak Kulkarni and Vidyadhar Nare. Thus, the Ld. Labour Court while passing impugned order failed to determined the above mentioned illegalities, irregularities and violation of principal of natural justice which committed/ appears after carefully gone thorough the enquiry report of enquiry officer. Hence, the Ld. Labour Court held that, the enquiry conducted by the enquiry officer is fair and proper is not legal, proper and

acceptable as per the provisions of law and to the mind of any prudent man or judicial mind.

45. The enquiry officer has held that, all revision petitioners/ delinquents are guilty of charges under clause 24(a), 24(d), 24(k) & 24(r) of standing orders though there are no any allegations in the charge-sheet about the misconduct as stated in the above-mentioned clauses of standing orders. The said observation of enquiry officer appears in collusion with management of respondent hospital only with intention to give opportunity to management of respondent Hospital to victimized the revision petitioners/ delinquents. Thus, the finding which are given by the enquiry officers, is perverse then also Ld. Labour Court while passing impugned order held that, in the reasoning and finding of enquiry officer not appears any perversity is not legal and proper.

46. Then after carefully perusal of enquiry report it appears that enquiry officer relied upon C.D. and Photographs which were vide Exh. 62, 63, 65,66,67, 68, 69, 70, 71 & 72. But the C.D. produced by respondent Hospital during enquiry proceedings contained only slide shows of photographs and not a motion pictures showing how the alleged incidents taking place. Then, after perusal of photographs, appears that, the allegations levelled against revision petitioners/delinquents are false and bogus. So, also does not disclose individual act of delinquents/revisions petitioners. Thus, Ld. Labour Court while passing the impugned order failed to consider above mentioned perversity which appears in the reasoning and findings of the enquiry officer. So also not considered the findings which are given by the enquiry officer is based on assumption and presumption. As well as not considered that enquiry officer failed to consider that, for the same incident registered which crime number against delinquents/revision petitioners for the offence punishable under Section 143, 146, 323, 324, 504, 506(ii) read with Section 34 and 149 of Indian Fennel Code. In the said criminal case concerned Metropolitan Magistrate, Mazgaon (Sewree) acquitted all the accuses of that crime who were/ are delinquents in the enquiry conducted by the enquiry officer. It is settled law that, if there are similar charges in the criminal case as in departmental enquiry and if delinquents are honorarily acquitted on merits. The weight has to be given to the findings of Metropolitan Magistrate and not to the finding of enquiry officer which is quasi judicial proceeding. But Ld. Labour Court while passing impugned order failed to considering the aforesaid perversity which appears in the reasoning and finding of the enquiry officer.

21) In my view, the Industrial Court has clearly erred in disbelieving the deposition of Mr. Vinayak Kulkarni and Mr. Nare, who are examined in the domestic enquiry. The Industrial Court has also unnecessarily gone into the seriousness of injuries caused to Mr. Kulkarni ignoring specific deposition given by him before the Enquiry Officer that he

was in fact assaulted. In domestic enquiry, the test of proving charge is preponderance of probability. There is unchallenged testimony of Mr. Vinayak Kulkarni and Mr. Nare that they were assaulted abused and threatened. The delinquent employees have not cross-examined the said two witnesses. Their testimonies have gone unchallenged. It is therefore inconceivable that the findings of the Enquiry Officer *qua* the charges of assault, abuse and threats can be said to be perverse. In my view, there is sufficient evidence on record to bring home charges against the Respondent-employees.

22) It would be apposite to refer to few judgments on the issue of nature of evidence needed to bring home the charges in domestic inquiries. In *Kuldeep Singh V/s. Commissioner of Police and Others*³ it is held as under:

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. **But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.**

(emphasis added)

23) In *State of Haryana Versus. Rattan Singh*⁴ it is held as under:

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence

3 (1999) 2 SCC 10

4 (1977) 2 SCC 491

of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. **The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record.** We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

(emphasis supplied)

24) Applying the principles enunciated in various judgments of the Apex Court on the standard of proof required in a domestic inquiry, can it be said in the present case, that there is absolutely no evidence to prove the charges? The answer to the question, to my mind, appears to be emphatic in the negative. There is evidence of two witnesses who have been assaulted and the case does not involve the eventuality of total absence of evidence for the Industrial Court to hold that the findings of the enquiry officer are perverse.

25) Coming to the issue of acquittal of the Respondent- employees in the criminal case, it is well established principle of law that the purpose of conduct of criminal prosecution and domestic enquiry are entirely different. Domestic Enquiry is held to instilling a sense of discipline at the work place whereas criminal prosecution is conducted for punishing an accused for the crime that he has committed. The test of proof in the criminal prosecution is proof beyond reasonable doubt, whereas charges in the domestic enquiry are to be proved on the test of preponderance of probability. In criminal case, charges need to be proved beyond reasonable

doubt whereas in domestic enquiry, presence of some evidence, however compendious if may be, is sufficient to bring home the charges. Perusal of the judgment of the Metropolitan Magistrate dated 23 October 2019 would indicate that the Respondent-employees are given benefit of doubt. The prosecution was unable to prove before the Magistrate that Mr. Kulkarni was assaulted by use of iron rod. The Criminal Court has placed weightage on absence of injuries in the injury certificate issued by J.J. Group of Hospitals. The Magistrate has refused to look into the video recording recorded on the Compact Disc (CD) as the same was not proved by the prosecution according to provisions of law. The Magistrate has disbelieved the *panchnama* relating to seizure of clothes and other articles. In my view therefore, the standard of proof applied by the Magistrate while acquitting the Respondent-employees cannot be applied in a domestic enquiry. There is direct evidence before the Enquiry Officer in the form of testimony of Mr. Kulkarni and Mr. Nare. The employees took a calculated risk of not conducting their cross-examinations. In my view therefore, it would be too dangerous to discard the entire evidence available before the Enquiry Officer only on account of acquittal of the Respondent-employees in the criminal prosecution.

26) The Apex Court in *Union of India and others vs Dalbir Singh*⁵, has held in paras-24, 25 and 28 as under :

24. This Court in *Ajit Kumar Nag v. Indian Oil Corpn. Ltd.* [*Ajit Kumar Nag v. Indian Oil Corpn. Ltd.*, (2005) 7 SCC 764 : 2005 SCC (L&S) 1020] held that the degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”. It was held as under : (SCC p. 776, para 11)

5 (2021) 11 SCC 321

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. *The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”.* Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order [*Ajit Kumar Nag v. Indian Oil Corpn. Ltd.*, 2004 SCC OnLine Cal 59] dismissing him from service deserves to be quashed and set aside.”

(emphasis supplied)

25. This Court in *Noida Entrepreneurs Assn. v. Noida* [*Noida Entrepreneurs Assn. v. Noida*, (2007) 10 SCC 385 : (2008) 1 SCC (Cri) 792 : (2008) 1 SCC (L&S) 672] held that the criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public, whereas, the departmental enquiry is to maintain discipline in the service and efficiency of public service. It was held as under : (SCC p. 392, para 11)

“11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See *Tata Cellular v. Union of India* [*Tata Cellular v. Union of India*, (1994) 6 SCC 651] and *Teri Oat Estates (P) Ltd. v. State (UT of Chandigarh)* [*Teri Oat Estates (P) Ltd. v. State (UT of Chandigarh)*, (2004) 2 SCC 130] .] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to *Kendriya Vidyalaya Sangathan v. T. Srinivas* [*Kendriya Vidyalaya Sangathan v. T. Srinivas*, (2004) 7 SCC 442 : 2004 SCC (L&S) 1011] , *Hindustan Petroleum Corpn. Ltd. v. Sarvesh*

Berry [Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry, (2005) 10 SCC 471 : 2005 SCC (Cri) 1605] and *Uttaranchal RTC v. Mansaram Nainwal [Uttaranchal RTC v. Mansaram Nainwal, (2006) 6 SCC 366 : 2006 SCC (L&S) 1341]* .

‘8. ... The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in the criminal cases against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When the trial for a criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act, 1872 [in short “the Evidence Act”]. The converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. ... Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.’ [Ed. : As observed in *A.P. SRTC v. Mohd. Yousuf Miya*, (1997) 2 SCC 699, pp. 704-05, para 8.] ”

28. The burden of proof in the departmental proceedings is not of beyond reasonable doubt as is the principle in the criminal trial but probabilities of the misconduct. The delinquent such as the writ petitioner could examine himself to rebut the allegations of misconduct including use of personal weapon. In fact, the reliance of the writ petitioner is upon a communication dated 1-5-2014 made to the Commandant through the enquiry officer. He has stated that he has not fired on higher officers and that he was out of camp at the alleged time of incident. Therefore, a false case has been made against him. His further stand is that it was a terrorist attack and terrorists have fired on the camp. None of the departmental witnesses have been even suggested about any terrorist attack or that the writ petitioner was out of camp. Constable D.K. Mishra had immobilised the writ petitioner whereas all other witnesses have seen the writ petitioner being immobilised and being removed to quarter guard. PW 5 Brij Kishore Singh deposed that 3-4 soldiers had taken the self-loading rifle (“SLR”) of the writ petitioner in their possession. Therefore, the allegations in the charge-sheet dated

25-2-2013 that the writ petitioner has fired from the official weapon is a reliable finding returned by the departmental authorities on the basis of evidence placed before them. It is not a case of no evidence, which alone would warrant interference by the High Court in exercise of power of judicial review. It is not the case of the writ petitioner that there was any infraction of any rule or regulations or the violation of the principles of natural justice. The best available evidence had been produced by the appellants in the course of enquiry conducted after long lapse of time.

27) I am therefore of the view that even the findings recorded by the Industrial Court on Issue No. 2 of perversity are clearly unsustainable.

28) Reliance by Mr. Mohite on judgment of the Apex Court in ***Director BCG Vaccine Laboratory, Madras*** (supra) does not make the case of Respondent-employees any better. The Petitioner-Management representative was not a practicing advocate or a legally trained mind and therefore Respondent-employees were otherwise not entitled to engage services of practicing advocate. It is not that Respondent-employees suggested name of any practicing advocate but vaguely demanded that the Petitioner-employer must provide Advocate at the cost of the Petitioner-employer. This is something which is inconceivable in a domestic enquiry. Therefore, the order passed by the Apex Court in ***Director, BCG Vaccine Laboratory, Madras*** (supra) does not really assist the case of Respondent-employees.

29) After considering the overall conspectus of the case, I am of the view that the impugned orders passed by the Industrial Court on 9 January 2024 are unsustainable and liable to be set aside.

30) The petitions accordingly succeed. Orders dated 19 January 2024 passed by Industrial Court are set aside and the orders passed by the

Labour Court on 18 August 2022 are upheld. The Labour Court shall however proceed to answer the balance issues considering the role attributed to each of the Respondent-employees.

31) With the above directions, all the Petitions are **allowed and disposed of**. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

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