

D.K. Yadav v. J.M.A. Industries Ltd.,

(1993) 3 SCC 259

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The law regarding voluntary abandonment of service has finally been settled; a domestic enquiry is required to be held. Principles of natural justice have been extended to apply to all acts which give rise to civil consequences, in the instant case, industrial relations and misconduct in employment. A fall-out of this decision is the extension of the principles underlying Articles 14 and 21 to employment in private firms, companies and organisations, beyond the confines of Article 12.

Introduction

A three-judge Bench of the Supreme Court comprising of Kuldip Singh, V. Ramaswami and K. Ramaswamy JJ. has, in the case of *D.K. Yadav v. JMA Industries Ltd.*¹ delivered a judgement of considerable importance which extends the application of principles of natural justice beyond the realm of quasi-judicial and administrative action to hitherto neglected areas in the field of industrial disputes and labour relations.

The Background of the Case

The respondent, a private industrial concern, informed the appellant, a worker on the rolls of the concern, that he had wilfully absented himself from duty for more than eight days without leave or prior information or permission from the management and therefore was deemed to have left the service of the company of his own account and lost his lien on his appointment.

This action of the management was based on clause 13 (2) (iv) of the Certified Standing Orders of the Industrial Concern which stipulates that if a workman remains absent without sanction of leave or beyond the period of leave originally granted or subsequently extended, the employee loses his lien on employment unless he returns to duty within eight calendar days of the commencement of the absence or the expiry of leave.

At this stage it would be pertinent to examine the legal status of these Certificate Standing Orders. A statutory mandate has been imposed on the owners of industrial establishments employing 100 or more workmen to formulate standing orders in compliance with the Industrial Employment (Standing Orders) Act, 1946. This law was enacted with the objective of

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introducing a certainty in the service conditions of workmen by placing a responsibility on the employer to stipulate the terms and conditions of employment in the form of Standing Orders.

The impugned action of the management was therefore, in conformity with Clause 13(2) (iv) of the Certified Standing Orders.

The Main Issue and the Reasoning Employed by the Court.

The principal issue considered by the Court was whether the impugned action was violative of the principles of natural justice.

The Court, speaking through K. Ramaswamy J., then proceeded to examine all the leading cases on the issue and stated that the basic principles of natural justice are that in every case the person concerned should have a reasonable opportunity of presenting his case and the authority should act in a fair, just and impartial manner. The Court stated that principles of natural justice apply unless a particular statute or statutory rules or orders having statutory flavour exclude the application of natural justice expressly or by necessary implication.

The Court also stated that the duty to give a reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action.²

"Punitive or damaging action" which, necessitates observances of principles of natural justice has been liberally construed by the judiciary so as to include any action bearing civil consequences.³ The term "civil consequences" has been given a beneficial interpretation and has been held by a Constitution Bench to cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages.⁴ Reiterating these principles, the Supreme Court proceeded to hold that since the principles of natural justice are inherent in the guarantee of equality of Art. 14 any procedure prescribed by a Statute, or Statutory orders affecting the civil rights or resulting in civil consequences will have to comply with Art. 14.

The Court then proceeded to examine the validity of the impugned action in the light of Art. 21 and observed that the right to life guaranteed by Art. 21 includes, the right to livelihood.⁵ The order of termination of service of an employee or workman visits with civil consequences of jeopardising not only

2 In *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262, a Constitution Bench held that there was no distinction between a quasi-judicial and an administrative function for the purposes of observance of natural justice.

3 In *State of Orissa v. Binapani Devi*, (1967) 2 SCR 625, the Supreme Court held that even an administrative order which involves civil consequences must be made consistently with rules of natural justice.

4 *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405.

5 In *DTC v. DTC Mazdoor Congress*, 1991 Supp (1) SCC 600, the Supreme Court held that the right to public employment and its concomitant right to livelihood were protected by Arts. 14 and 21.

his livelihood but also that of his dependants. Thus the Court categorically held that before taking any action putting an end to the tenure of an employee, fair-play requires that a reasonable opportunity to put forth his case be given and a domestic enquiry conducted in compliance with the principles of natural justice.

In this manner the Court stipulated that principles of natural justice would have to be read into Clause 13(2) (iv) of the Standing Orders in order to fulfil the requirement of just and fair procedure prescribed by Arts. 14 and 21.

Incidental observations that are of tremendous significance

The appellant raised an alternative argument to the effect that the definition of retrenchment in sec. 2 (oo) of the Industrial Disputes Act, 1947 is a comprehensive one intended to cover any action of the management to terminate the employment of an employee. To support this contention, the decision in *Punjab Land Development & Reclamation Corporation Ltd. v. Presiding Officer, Labour Court*⁶ was cited where it was held that the definition of retrenchment in sec. 2 (oo) means the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section. Such an interpretation would benefit the workers because in every case of termination of employment the benefit under sec. 25F would accrue to them and it would not be open to the management to deny the workers the benefits of the said section on the ground that certain forms of termination of employment do not amount to retrenchment.

The Court examined this proposition in some detail and also referred to a number of decisions delivered by the Supreme Court on previous occasions with respect to this issue and in conclusion stated that there was considerable force in the argument.

However, the Court decided not to rest its conclusion on this aspect as in its considered view, it could be decided on the issue of violation of natural justice. Nevertheless, the observation is of tremendous significance as the Court has *sub-silentio* conceded that, in the event that such a contention is raised before it in future, it would be inclined favourably towards it and such an interpretation would go a long way in strengthening the case of the workers in their unequal struggle with the management.

The relief granted by the Court

The Court turned its attention to this aspect after dealing with all the above mentioned legal principles. It noted that the management did not conduct any domestic enquiry nor gave the appellant any opportunity to put forth his case. The Court then stated that the appellant was equally to blame for the impugned action and under these circumstances, the Court held that 50 per cent of the back wages would meet the ends of justice.

It is submitted that this is a line of reasoning that defies logic-the appellant had contested the basic facts as alleged by the management; it was his case that he had been prevented from being allowed to work. The Court has itself observed that there was no domestic enquiry. In the light of this fact, it becomes difficult to understand how the Court arrived at the conclusion that "the appellant was equally to blame for the impugned action".

It is submitted that the Court should have, in the proper course of things, ordered that a domestic inquiry be held to ascertain the facts and pending such an inquiry, it should have awarded reinstatement in service and 100% back wages to the appellant.

Repercussions of this ruling

Extension of the principles of natural justice to all authorities widening the application of fundamental rights beyond "other authorities" in Art.12.

This case has, because of the liberal outlook employed by the judges deciding it, the potential to bring about far reaching consequences. This is because it seeks to extend the application of principles of natural justice far beyond the confines of quasi-judicial and administrative actions.

To establish that the principles of natural justice have been violated, all that a person has to prove, as per this ruling, is that the order which affected his rights under Art. 14 gave rise to civil consequences and his case can be further strengthened if he can establish that his right to means of livelihood under Art. 21 is also affected. Since virtually every aspect of civil life is covered by these broad guidelines, it would be safe to declare that the principles of natural justice must be complied with in every walk of civil life and that *every authority* which by its orders affects the rights of citizens *must* follow principles of natural justice while conducting its proceedings.