

Sayali

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

WRIT PETITION NO. 7905 OF 2010

Hindustan Breweries and Bolting Ltd

C-23/24, Wagle Estate, Thane.

... Petitioner

Vs.

Mr. Dilip Pandurang Mhatre,

Maharashtra General Kamgar Union

252, Janata Colony, R.N. Nagarkar Marg,

Ghatkopar (East), Mumbai-400 07

... Respondent

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Mr. Rahul D. Oak, for petitioner.

Mr. Indrajeet R. Kulkarni, for respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 2, 2026.

PRONOUNCED ON : APRIL 9, 2026

JUDGMENT:

1. The present petition is instituted under Articles 226 and 227 of the Constitution of India, invoking the writ jurisdiction of this Court. The petitioner calls in question the legality and correctness of the Judgment and Award Part 1 dated 6 March 2010 rendered by the Labour Court, Thane in Reference (IDA) No. 317 of 2005.

2. The factual matrix giving rise to the present proceedings is set out thus: the petitioner is a Company duly incorporated under the provisions of the Companies Act, 1956, and operates a manufacturing facility situated at Wagle Estate, Thane. The petitioner is engaged in the manufacture of beer and employs approximately 95 permanent workmen for its day to day operations. The workmen employed with the petitioner are members of the Bharatiya Kamgar Sena, and the petitioner, recognizing the right of the workmen to associate with a union of their choice, has entered into a long term settlement dated 4 April 2009 with the said union, which continues to remain in force. Prior thereto, around the year 2003, the Maharashtra General Kamgar Union was actively functioning amongst the workmen, having represented them for over two decades. The petitioner had, in the past, executed both short term and long term settlements with the said union. The respondent workman was employed as a Maintenance Fitter in the Maintenance Department of the petitioner Company and was drawing wages of approximately Rs. 7,000 per month. Owing to the nature of duties in the Maintenance Department, the respondent, along with other workmen in that department, was required to attend duties on Fridays, which otherwise constituted a weekly off for employees in other departments.

3. It is the case of the petitioner that, while the respondent was on duty in the first shift commencing at 7.00 a.m., he approached one Mr. Shambhu Gazak, who was employed as a cook in the

Company canteen, at about 12.20 p.m. The respondent is alleged to have paid a sum of Rs. 200/- to the said cook and compelled him to procure meat from the market and prepare the same in the canteen premises. It is further alleged that upon preparation, the meat was consumed by the respondent along with other persons. The respondent is also stated to have supplied beer from the petitioner's brewery to the said cook, who had procured the meat. It is an admitted position that only vegetarian food was served in the canteen for the employees, and such practice was within the knowledge of the respondent. In view of the aforesaid alleged acts of misconduct, the petitioner issued a charge sheet to the respondent, calling upon him to submit his explanation and informing him that a domestic enquiry would be conducted into the charges. The charge sheet also recorded the appointment of Mr. S.S. Khairnar as the Enquiry Officer to conduct the proceedings.

4. The respondent workman was placed under suspension pending enquiry by letter dated 9 March 2003. The enquiry in respect of the charge sheet dated 6 March 2003 commenced on 8 April 2003 and concluded on 17 March 2004. The proceedings of the enquiry were conducted and recorded in Marathi, in accordance with the preference expressed by the respondent. The respondent was permitted to be represented by Mr. P. S. Sawant, Vice President of the Maharashtra General Kamgar Union. In support of the charges, the management examined Mr. Shambhu Gazak as its first witness. The said witness, Mr. Shambhu Gazak,

was subjected to cross-examination. As he was required to leave for his native place on account of his mother's illness, the petitioner sought permission from the Enquiry Officer to examine Mr. Vijay Kumar Shetty, the Canteen Manager, as its second witness. On that date, being 8 May 2003, the defence representative submitted that in the event the first witness was not made available for further cross-examination, his testimony ought not to be relied upon. The Enquiry Officer, in order to ensure continuity of the proceedings, permitted the examination of the second witness. Accordingly, Mr. Vijay Kumar Shetty was examined in the presence of the respondent and his defence representative, and was thereafter extensively cross-examined. During the course of such cross-examination, the respondent submitted a letter which was taken on record. The respondent and his defence representative thereafter stated that the cross-examination of the second witness stood concluded. Subsequently, the first witness, Mr. Shambhu Gazak, reappeared for further cross-examination, which was duly completed. Upon conclusion of the management evidence, the respondent expressed his desire to file a statement, which was accordingly taken on record, and the matter was then posted for recording the respondent's evidence. The enquiry proceedings, however, came to be adjourned from time to time.

5. The respondent thereafter sought permission to examine himself, which was granted. The respondent entered the witness box and his evidence was recorded by the Enquiry Officer. Upon conclusion of his examination in chief, he was cross-examined by

the management representative. The respondent thereafter stated that he had no further evidence to adduce, and the enquiry was accordingly concluded. Upon conclusion of the enquiry, the Enquiry Officer submitted his report and findings, holding that the charges levelled against the respondent stood proved. A show cause notice dated 13 April 2004, along with a copy of the enquiry report, was issued to the respondent. After considering the matter, the petitioner imposed the punishment of dismissal from service with effect from 12 May 2004. The respondent thereafter raised an industrial dispute under Sections 10(1) and 12(5) of the Industrial Disputes Act, 1947. Upon failure of conciliation, the dispute was referred for adjudication to the Labour Court, Thane, being Reference (IDA) No. 317 of 2005. The respondent filed his statement of claim, and the petitioner filed its written statement. The respondent led evidence by way of affidavit and was subjected to cross-examination by the petitioner. The respondent advanced oral submissions, while the petitioner filed written arguments along with authorities relied upon. The Labour Court, Thane thereafter passed Part-I Award, holding that the enquiry conducted against the respondent was not fair and proper and that the findings recorded by the Enquiry Officer were perverse. Being aggrieved by the said Part-I Award, the petitioner has preferred the present petition.

6. Mr. Rahul Oak, learned counsel appearing for the petitioner, submitted that the Labour Court, Thane, erred in holding that the domestic enquiry was not fair and proper. According to him, the

Labour Court, having rejected the contention that there was any irregularity in offering Mr. Shambhu Gazak for cross-examination after the evidence of Mr. Vijay Kumar Shetty was recorded, and having also negated the preliminary objections, could not have arrived at a contrary conclusion on the fairness of the enquiry. It was further contended that despite independently appreciating the evidence on record and recording a finding that the charges contained in the charge sheet dated 6 March 2003 stood proved, the Labour Court fell into error in concluding that there existed a real likelihood of bias merely on the basis of an application submitted by the respondent workman alleging that the Enquiry Officer and the Management Representative were suggesting answers and that the answers were not being correctly recorded.

7. Learned counsel further submitted that the Labour Court failed to properly appreciate the document at Exhibit 39/17 in the enquiry proceedings, which was the application submitted by the respondent workman. It was pointed out that the said application pertained only to the enquiry proceedings dated 23 June 2003, and that the answers recorded on that date were duly signed by all persons present, including the defence representative as well as the respondent workman. It was further submitted that even the answer to the last question, in respect of which grievance was raised in Exhibit 39/17, had been correctly recorded and was, in fact, consistent with what was stated in the said application.

8. It was contended that a mere vague suspicion cannot constitute a valid ground to infer bias. According to the petitioner,

the Labour Court ought to have appreciated that once it was established that the answers were correctly recorded, as reflected in Exhibit 39/17, there could be no reasonable apprehension of bias. In the absence of any cogent material to substantiate such an allegation, the plea of bias against the Enquiry Officer was wholly untenable and ought to have been rejected. Learned counsel further submitted that the oral evidence on record clearly demonstrated that the respondent workman had admitted that the evidence of all the witnesses examined in the enquiry was correctly recorded in accordance with the answers given by them. In view of such admission, it was urged that the Labour Court ought to have held that the material on record completely negated the allegation of bias or any grievance as sought to be raised in Exhibit 39/17 of the enquiry proceedings.

9. It was further submitted that the Labour Court, having itself undertaken an independent assessment of the evidence and having concluded that the charges levelled in the charge sheet dated 6 March 2003 were duly proved, could not have simultaneously held that the enquiry was vitiated on account of bias or that the findings of the Enquiry Officer were perverse. Such findings, it was contended, were inherently inconsistent and mutually destructive. On these grounds, it was prayed that the present petition be allowed.

10. Per contra, Mr. Indrajeet Kulkarni, learned counsel appearing for the respondent, placing reliance upon the decision in *State of U.P. vs. Ravi Prakash Singh*, 2025 SCC OnLine SC 891, submitted

that in the absence of examination of material witnesses to prove the documents and substantiate the charges levelled against the respondent, the Labour Court was justified in holding, under Part I, that the enquiry was not fair and proper. It was further contended that the person who had issued the charge sheet was not examined, and in such circumstances, the charge sheet by itself could not form the basis for sustaining the findings of the enquiry in favour of the management.

11. Inviting attention to the contents of the charge sheet, learned counsel submitted that the allegations against the respondent included that he had compelled the canteen cook to procure meat from the market and that both the cook and the respondent had consumed non-vegetarian food within the canteen premises, despite being aware that only vegetarian food was permitted. It was submitted that in the absence of any cogent evidence to establish the element of coercion or force upon the cook, the charge as framed could not have been held to be proved. On this basis, it was contended that the conclusion reached by the Labour Court that the enquiry was not fair and proper does not warrant interference.

REASONS AND ANALYSIS:

12. I have carefully considered what both sides have argued. I have also gone through the enquiry papers, the statements recorded, and the documents which are placed on record. At this stage, the Court is not required to decide everything finally. The

issue is limited but still important. The Court has to see whether the Labour Court was correct in saying that the enquiry was not fair and proper and that the findings of the Enquiry Officer were perverse. For deciding this, the Court has to examine whether any real harm or prejudice was caused to the respondent workman. It must also be seen whether the manner in which the enquiry was conducted was so unfair that it affected the defence of the workman. Further, the Court must check whether the conclusion of the Labour Court is supported by the material available or whether it is only based on assumptions. These aspects are required to be seen together and not in isolation.

13. The petitioner has pointed out one important aspect which cannot be ignored. The Labour Court itself has looked into the evidence and has recorded a finding that the charges mentioned in the charge sheet dated 6 March 2003 are proved. Once the Labour Court accepts that the material supports the charges, then it becomes difficult to accept that the same enquiry is unfair. Both things cannot easily stand together. If the evidence is reliable enough to prove the charges, then normally it also shows that the enquiry process has some level of fairness. The allegation of bias cannot be accepted only because it is raised. There must be some solid material. Bias cannot be based on doubt or feeling. There must be some clear indication that the Enquiry Officer acted in a one-sided manner or that the workman was not given proper chance. In the present case, such strong material is not seen from the record.

14. The main complaint of the respondent is based on Exhibit 39/17. When this document is properly seen, it becomes clear that it relates only to one particular date, that is 23 June 2003. It does not cover the entire enquiry. Further, the answers which were recorded on that day were signed by all persons present. This includes the respondent himself and also his defence representative. This is a very important circumstance. When a person signs a recorded statement, it normally means that he accepts what is written at that time. Later on, it becomes difficult to say that the answers were not correctly recorded, unless there is strong proof to show otherwise. In the present case, no such strong proof is shown. The complaint remains only at the level of allegation. Therefore, the possibility of manipulation as alleged does not get support from the record.

15. The Labour Court appears to have given too much importance to the mere filing of this application. Filing of a complaint during enquiry is not unusual. But that alone cannot prove bias. The law requires something more definite. There must be reasonable ground to believe that the officer conducting the enquiry was not acting fairly. Here, the respondent has not shown that any question was wrongly framed or that he was stopped from asking questions in cross-examination. There is no material to show that any document was denied to him. On the contrary, the record shows that the respondent took part in the enquiry, cross examined witnesses, and signed the proceedings. This shows active participation. It does not show exclusion or unfairness. Therefore,

the conclusion of bias drawn only from the application does not appear to be justified.

16. Another aspect which is strongly relied upon by the petitioner is regarding the witness Mr. Shambhu Gazak. It is seen from the record that this witness could not remain present on one date due to personal difficulty. Because of that, the management examined another witness, Mr. Vijay Kumar Shetty. However, later on, Mr. Shambhu Gazak again appeared and his further cross-examination was completed. This shows that the respondent was not deprived of his right to cross-examine the witness. The Enquiry Officer allowed the proceedings to continue so that there is no delay, but at the same time ensured that the opportunity of cross-examination is not taken away. This shows a balanced approach. In practical, some adjustments are required in enquiry proceedings. If ultimately opportunity is given, then such adjustment does not make the enquiry unfair. No prejudice is shown to have been caused because of this sequence of events.

17. The argument of the respondent that the person who issued the charge sheet was not examined also requires consideration. It is true that a charge sheet by itself is not proof. But in this case, the enquiry did not depend only on the charge sheet. Witnesses were examined. Their evidence was recorded. The respondent cross-examined them. The respondent was also given chance to give his own evidence. Therefore, the case of the management was supported by oral evidence and not merely by the charge sheet. In such situation, non examination of the person issuing the charge

sheet does not make the enquiry invalid. What is important is whether the facts were proved through evidence. The record shows that such evidence was brought and tested.

18. The respondent has also argued that the allegation of forcing the cook to bring meat is not properly proved. This argument goes more towards the strength of the charge. It may have some relevance at a later stage when the Court examines whether the punishment is justified. The Court is only examining whether the enquiry was fair. A domestic enquiry is not like a criminal trial where strict proof is required in a particular manner. The standard is of fairness and reasonable opportunity. If the workman is heard, if evidence is recorded, and if the conclusion is based on some material, then the enquiry is generally treated as proper. Here, these basic requirements appear to have been satisfied. Therefore, merely because the respondent feels that one part of the charge is not strongly proved, the entire enquiry cannot be said to be unfair.

19. I also find it difficult to accept the conclusion of the Labour Court that there was real likelihood of bias. The record shows that the answers were signed. The respondent was present. His representative was present. If there was any serious issue about wrong recording, it could have been raised immediately and correction could have been insisted upon at that time. The record does not show that such insistence was made and refused. Instead, the proceedings continued normally. Witnesses were examined further. Cross-examination took place. In such a situation, a later complaint appears more like dissatisfaction rather than proof of

bias. Dissatisfaction alone is not enough in law.

20. The approach of the Labour Court also shows some inconsistency. On one side, it says the enquiry is not fair. On the other side, it examines the evidence and says the charges are proved. These two findings do not go well together. If the enquiry is really unfair, then the evidence recorded in such enquiry becomes doubtful. But if the evidence is good enough to prove the charges, then it indicates that the enquiry process was not defective in the manner stated. Both findings together create confusion and weaken the reasoning of the Labour Court. A clear and consistent approach is expected, especially when serious consequences, like dismissal are involved.

21. It is true that every workman must get fair treatment in a domestic enquiry. This is a basic requirement of law. But fairness must be seen from actual facts. It cannot be assumed. In the present case, the respondent knew the charges against him. He participated in the enquiry. He had assistance of a representative. He cross-examined the witnesses. He also gave his own evidence. There is nothing to show that he was prevented from placing his defence. There is also nothing to show that the Enquiry Officer acted in a one-sided manner. The allegation of bias is not supported by clear material. It remains only a statement without proof.

22. For all these reasons, I am of the view that the Labour Court was not correct in holding that the enquiry was unfair and that the

findings were perverse. The conclusion of the Labour Court does not properly match with the record. The enquiry appears to have been conducted in a fair manner and the respondent was given reasonable opportunity to defend himself. Therefore, the finding of the Labour Court on this issue cannot be sustained. The challenge raised by the petitioner deserves to be accepted.

23. In view of the foregoing discussion and reasons recorded hereinabove, the following order is passed:

- (i) The writ petition is allowed;
- (ii) The impugned Part I Award passed by the Labour Court, Thane in Reference (IDA) No. 317 of 2005, holding that the domestic enquiry is not fair and proper and that the findings of the Enquiry Officer are perverse, is hereby quashed and set aside;
- (iii) It is held that the domestic enquiry conducted against the respondent workman is fair and proper and in accordance with law;
- (iv) The Reference (IDA) No. 317 of 2005 is restored to the file of the Labour Court, Thane for adjudication on merits in accordance with law, on the basis that the enquiry stands upheld;
- (v) The Labour Court shall proceed with the Reference expeditiously and preferably within a period of six months from the date of receipt of this order;

(vi) Rule is made absolute in the above terms. No order as to costs.

(AMIT BORKAR, J.)