



2025:DHC:4778



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

*Reserved on: 13th May, 2025.
Pronounced on: 30th May, 2025.*

+ **W.P.(C) 2636/2010 & CM APPL. 7346/2022**

KESHAV CHAND & ORS

.....Petitioner

Through: Mr. Pulkit Prakash, Mr. Arjun Mohan,
Ms. Arushi Sharma, Ms. Ankita Sinha,
Adv.

versus

**M/S ASHOKA GEARS/ M/S ASHOKA MACHINES TOOLS
CORPN & ANR**

.....Respondents

Through: Mr. Ajay Kumar, Mr. R.M. Tiwari,
Adv.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

Factual Background

1. This petition has been filed for setting aside award dated 08th December 2009 (*published on 28th January 2010*) by the *Labour Secretary, Government of NCT of Delhi*.

2. The petition has been filed by 28 petitioners against *M/s Ashoka Gears/Ashoka Machine Tools Corporation (Management)*. The petitioners



2025:DHC:4778



effectively pray for the dispute to be remanded back to the Labour Court for recording evidence of the remaining workmen and for cross-examination of the management witness with directions to pass an award.

3. An *Industrial Dispute No.175/1994* had been referred to the *Labour Court No. IX vide order (passed by the Government of NCT of Delhi)* dated 12th August 1994. The same was disposed of by the impugned award.

4. When the case was taken up before the Labour Court, the Labour Court was situated at *Tis Hazari* and was later on shifted to *Karkardooma*.

5. The workmen appointed one, *Sh. Satya Prakash*, Advocate, as their Authorized Representative ('AR'), to present their case. Since the Labour Court was transferred from *Tis Hazari* to *Karkardooma*, *Sh. Prakash* expressed his inability to pursue to the case at *Karkardooma* and stated that he did not have any junior staff to assist him.

6. The workmen then appointed a alternative AR, *Sh. K.B. Srivastava*, Advocate, who, at the time, utilized the services of his junior, *Sh. Inderjeet Yadav*, to seek pass overs, as may be warranted.

7. *Sh. Srivastava* expressed his inability to continue with the case, presumably on an impression that the Presiding Officer ('PO'), was not hearing the case properly.

8. The workmen approached the previous AR, *Sh. Satya Prakash*, Advocate, whose authorization had not been formally withdrawn and who consented to appear to represent the workmen again.



2025:DHC:4778



9. Since he had dealt with the case file previously, he was a preferred choice.

10. The workmen complain that they have not had fair hearing, since the PO, under this Court's directions to dispose of cases older than fifteen (15) years, expeditiously, *suo moto* took out the case file, on 14th October 2009, at 2:00 P.M., directing service to be effected on the management and the workmen and advanced the date of hearing, from 05th January 2010 to 26th October 2009.

11. The management representative accepted service in the Court itself but the workmen could not be served as they were not present. On 26th October 2009, further directions were issued for service to the workmen; as they could not be served, the date was fixed for 27th October 2009.

12. Since in a one day's time, they could not be served, on 27th October 2009 the next date was fixed for 05th November 2009 and the management was directed to ensure service.

13. On 05th November 2009, the next date was fixed for 20th November 2009 and the same process was repeated on that day as well. The matter was fixed for 25th November 2009 but by 25th November 2009, only 3 workmen had been served, yet, nineteen (19) workmen were present before the Court.

14. The three (3) workmen had informed the other sixteen (16) workmen, who were present, but the PO recorded that nineteen (19) workmen were present "*on behalf of all the workmen*".



15. The workmen only learnt that the presence of nineteen (19) workmen was recorded for all the workmen, after inspecting and going through certified copies of the orders. Forty-four (44) other workmen were party in the Industrial Dispute, having lost their jobs and had to move to their native places, being migrant labourers.

Submissions on behalf of petitioners

16. In these circumstances, was a remand being sought. Counsel for the petitioner drew attention of this Court to the following aspects, in particular:

- (i) There were sixty-three (63) workmen in the original list when the Industrial Dispute was referred.
- (ii) On 25th November 2009, it was noted by the PO that some of the petitioners were appearing “*on behalf of all the contesting workmen with ARW Sh. Inderjeet Yadav*”. On that date it was further recorded that “*both sides have been served regarding preponed date in this matter*”. Directions were made for a day-to-day hearing, till final disposal on merits, since it was an old case pertaining to the year 1994 and directions had been received from the High Court to hear these cases on top priority. Accordingly, WW-23 and WW-24 were cross-examined by the management’s counsel on 26th November 2009.
- (iii) On 01st December 2009, it was reiterated by the PO that the High Court is constantly monitoring the progress of old cases and that’s



2025:DHC:4778



why the case had been fixed to be heard on a day-to-day basis. It was further recorded that “As revealed from judicial file, *Sh. Inderjeet Yadav, Sh. K.B. Srivastava and Sh. Satya Prakash* respectively have appeared in this case as authorized representatives of the contesting workmen from time to time. Out of these 3 authorized representatives of the workmen, at least one of them can manage to appear on each date from 04th December 2009 onwards. At least one of them can make adjustment of his cases in other courts for this purpose on each date of hearing, if need be”.

- (iv) On 04th December 2009, WW-14 was cross-examined and discharged. *Sh. Satya Prakash*, AR for the workers, submitted an application before the Court for withdrawal of his authority and his request was allowed. It was noted that the application had been filed on the ground that the Court had made allegations against *Sh. Satya Prakash*, when the counsel for the management shouted at him; due to this reason he sought to withdraw from the case. The PO noted that the cross-examination of WW-14 was conducted smoothly and there was no shouting from any side. Liberty was given to *Sh. Satya Prakash* to withdraw from the case. At that stage, some workmen whose cross-examination had not been conducted, were present. The workers refused to present themselves for the cross-examinations. It was further submitted by the workmen (*orally*) that, " *they would not produce any other*



2025:DHC:4778



workman for deposition in this matter and this court is at liberty to close remaining evidence of the workmen side, if so thought fit". Yet again, the Court recorded that it is one of the oldest twenty (20) cases pending with the Court and there are directions to decide old cases by the High Court and due to this reason the case was fixed for a day-to-day hearing. The PO then went on to record, "*as the remaining workmen are not interested to produce themselves for their cross-examinations by or on behalf of the management, the remaining evidence of the workmen side is hereby closed and more so when this case is very old*". The matter was fixed for 05th December 2009 for further proceedings.

- (v) On 05th December 2009, MW-1 and MW-2 were examined and discharged. The workers' representative was not present. However, some workmen were present in Court. MW-1 and MW-2 were not cross-examined and the PO noted that the evidence remained un-rebutted and unchallenged. An application had been moved by the management's representative for summoning of certain official witnesses. The PO noted that there was no valid and justified reason for summoning of these witnesses, as mentioned in the application. Since the matter was very old (*pertaining to 1994*), allowing the application would unnecessarily delay the disposal of this case on merits. The management's representative then submitted that he does not want to produce any other witness and the remaining evidence of the



management was also closed. The matter was fixed for final arguments on 07th December 2009 and it was noted that it would be taken on a day-to-day basis.

- (vi) On 07th December 2009, an application was moved by the workmen to *stay* further proceedings of the case, on the ground that, "*they have no faith in this Court and that they have already filed transfer application in this matter*". The PO noted that he has not received any transfer orders and since it is one of the oldest twenty (20) cases and there are directions from the High Court to decide such cases, he was not allowing the application. Part-final arguments were heard on that day.
- (vii) On 08th December 2009, further arguments were addressed on behalf of the management. There was one workman *Sh. Dineshwar Singh*, on behalf of all the contesting workmen. He stated that he was "*not interested to submit any final arguments on behalf of the contesting workmen*". *Sh. Dineshwar Singh* also submitted that, he was not interested to file any written synopsis of final arguments, either on his own behalf or on behalf of the remaining contesting workmen. *Sh. Dineshwar Singh* as well as the management's representative submitted that "*this Court is at liberty to pass the award on the basis of material already on record as well as by taking into consideration the oral final arguments on the management side*".



(viii) The award was then published and passed on 08th December 2009. It was noted in para 6 of the award that only 28 workers have been examined-in-chief and cross-examined and only their testimonies would be taken into consideration and would be discussed for deciding the case on merits. It was further noted that arguments were only heard on behalf of the management's representative, since the workmen, despite opportunity, had not made their submissions. The award then decided and the following issues were been framed

- “1. Whether the reference is bad for preliminary objection no. 1 & 2 of the written statement of the mgt. no. 1?*
- 2. Whether the claim of the workmen mentioned at preliminary objection no. 4 of the written statement of management no. 1 has already been settled?*
- 3. Whether the services of the workmen mentioned at preliminary objection no. 7 of the written statement of management no. 1, were discharged simplicitor?*
- 4. Whether the claim has been signed and verified properly?*
- 5. Whether the claim of workmen mentioned at preliminary objection no. 4 of the written statement of management no. II has already been settled?*
- 6. Whether the services of the workmen have been terminated illegally and/or unjustifiably?*
- 7. Whether the services of Sh. Keshav Chand were terminated and discharged simplicitor as mentioned in*



2025:DHC:4778



preliminary objection no. 4 of written statement of management no. II?

8. *Whether the workers mentioned in preliminary objection no. 6 of written statement of management no. II are daily wagers? If so, to what effect?*

9. *Whether there was relationship of employer and employees between the persons mentioned in preliminary objection no. 7 of written statement of management no. II?*

10. *Relief.”*

- (ix) Issue Nos. 1, 2, 3, 5, 7, 8 & 9 were all decided against the workmen and in favor of the management. Issue no.4 was also decided against the workmen; Issue no. 6 was also decided against the workmen and Issue no.10 was also decided against the workmen. The award was effectively passed against the workmen and in favor of the management.

Submissions on behalf of respondent

17. The management's counsel effectively represented that *Sh. K.B. Srivastava*, had not withdrawn his *vakalatnama* and there was no prayer that they were not represented. Sixteen (16) years were taken to lead evidence i.e. from 1993 to 2009 and the matter had been fixed on a day-to-day basis. The award had been given on merits and there were evidences of some other workers. The petitioners have not challenged the award on merits and have only sought remand. Further relief has been sought, to set aside order dated 01st December 2009 and subsequent proceedings which closed the evidence of the workmen and cross-examination of the management's witnesses.



Analysis

18. From a perusal of the sequence of events, it is apparent that on 25th November 2009, when, after notices had been served to some workmen, only sixteen (16) workmen were present. The PO had noted that such 16 workmen were present “*on behalf of all the contesting workmen*” with ARW *Sh. Inderjeet Yadav*. Originally, since the date was fixed for 05th January 2010 by order dated 14th October 2009, the dates in the interregnum i.e. from 20th November 2009 onwards, before the Court, were expedited dates, in the background of old cases’ disposal (*on directions of this Court*), and therefore, had been kept on a day-to-day basis, by the PO. This aspect has been reiterated in every order noted above, since 25th November 2009.

19. On 26th November 2009, WW-23 and WW-24 were recalled for cross-examination and discharged after completion of their cross-examinations. The PO noted “*It is the last and the final opportunity for entire remaining WE on the next date. Let the entire remaining witnesses of workmen side be produced for the cross-examinations on the next date itself*”. This observation itself, made on 26th November 2009, just a week after the expedited hearings had begun from 20th November 2009 onwards, was a bit harsh, considering that 63 workmen were in question, as per the reference. It would have been difficult for the workmen, to cobble together all these workers, in order to give their perspectives or in fact, give an authority, and present themselves for recording of evidence.



2025:DHC:4778



20. On 01st December 2009, WW-27 was recalled for cross-examination and discharged. Yet again the PO noted “*now to come up for cross-examinations of entire remaining workmen who have not been cross-examined so far on 04th December 2009 from 12 noon onwards*”. It was further stated “*It is also made clear to the workmen side that they have to produce entire remaining workmen for their cross-examinations at their own cost and responsibility w.e.f. 04th December 2009 onwards*”. *Sh. Satya Prakash* submitted on that day, that it was difficult for him to come on a day-to-day basis, because his cases were fixed in other Courts. In this context, the PO mentioned that there were three persons who had been representing the workers i.e. *Sh. Satya Prakash, Sh. K.B. Srivastava* and *Sh. Inderjeet Yadav* and one of them could easily be present, on the dates of hearing.

21. On 04th December 2009, possibly frustrated by the express and rushed manner in which the PO was conducting the examination, *Sh. Satya Prakash* submitted his application for discharge, which was accepted. Thereafter, the PO noted “*As the remaining workmen are not interested to produce themselves for their cross-examinations by or on behalf of the management, the remaining evidence of the workmen side is hereby closed and more so when this case is very old*”.

22. Thereafter, when the management’s witness was examined on 05th December 2009, there was no representative of the workmen to cross-examine the management’s witnesses, and therefore, the PO recorded that the management’s witness testimonies were completely un rebutted and



2025:DHC:4778



unchallenged. The arguments were proceeded thereafter, and only *Sh. Dineshwar Singh*, who was present on behalf of the workers, mentioned that he was not interested in filing any documents on behalf of the workmen and was not inclined to file any synopsis.

23. By this time, it seems from the record, that the workmen were exhausted from attempting to collect together and represent themselves, considering that *Sh. Satya Prakash* had decided to withdraw and the earlier lawyers *Sh. K.B. Srivastava* and *Sh. Inderjeet Yadav*, were not in the picture. As a result, neither the evidence of the other workers could be recorded nor could they cross-examine the management's witness nor could they address arguments in any manner. The impugned award, was therefore, passed on the basis of unrebutted evidence of the management and assessment on merits, without any arguments on behalf of the workers.

24. This, in the opinion of the Court, was seriously prejudicial to the workmen and a violation of the fundamental principle of *audi alteram partem*.

25. Whatever the situation might be, before the PO, who was possibly attempting to expedite the matter in order to dispose of the same (*considering it was one of the oldest cases*) in no circumstances can the protection and benefit of the principles of natural justice be denied to any of the parties.

26. In order to appreciate the aspects of natural justice, contravened in the record of proceedings, under examination before this Court, the decision of the



Supreme Court in *SBI v. M.J. James*, (2022) 2 SCC 301, may be adverted to, where the Court encapsulated the law on the issue, as under:

“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.”

.....

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.”

(emphasis added)

27. The way the matter proceeded ahead, bears out that the workers could not cobble together and collect their resources, either in the terms of the rest of the workers or in terms of proper authority for a new lawyer. The lawyer engaged previously also, in frustration possibly, discharged himself, knowing that he was not able to appear for the workers on a day-to-day basis.



2025:DHC:4778



28. Today what is before the Court, is the sequence of events, as evident from the order-sheets. While the PO's attempt to push the parties to close the matter is appreciated, the Court cannot countenance the lack of final representation by the workers, both in terms of evidence and in terms of arguments.

29. Accordingly, the relief sought by the workers is, therefore, accepted and the matter is remanded back to the *Labour Court, Karkardooma Courts*, to rehear the matter from its stage, as on 4th December 2009.

30. Notices be issued by the Labour Court, to the workmen, in order to ensure that they are represented through a lawyer in that regard.

31. The Labour Court will be of course entitled to expedite the matter considering that there are number of workmen involved and may dispose of the matter within a period of one year. This would be enough time for them to make sure that no party is prejudiced, including the workmen.

32. The petition is, therefore, disposed of. Pending applications, if any, are rendered infructuous.

33. Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)
JUDGE**

MAY 30, 2025/MK