

(1999) 12 MAD CK 0052

In the Madras High Court

Case No : Writ Petition No. 19611 of 1999 and W.M.P. No's. 28769 and 28770 of 1999

Alexander Leonard G.

APPELLANT

Vs

Anglo French Textiles and Another

RESPONDENT

Date of Decision : 17-12-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2002) 4 LLJ 392

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—The petitioner prays for the issue of a writ of certiorarified mandamus calling for the records relating to the enquiry proceedings denying the assistance of an advocate pursuant to charge-sheet No. PTC/A-O/04/charge/03/99/296, dated October 25, 1999, on the file of the second respondent, quash the same and consequently direct the respondents to permit the petitioner to engage an advocate to appeal for him in the departmental proceedings initiated against him with respect to the said charge-sheet issued by the first respondent.

2. This Court directed learned counsel for the petitioner to serve a copy of the writ petition, supporting affidavit and typed set of papers on the standing counsel for the respondents. Accordingly, Mr. K.S. Ahamed, learned counsel appeared for the respondent and also filed his counter. With the consent of counsel for either side, the writ petition itself is taken up for final disposal as the only contention that arises for consideration being, whether the petitioner should be permitted to engage an advocate in the departmental enquiry or whether he should be satisfied with the permission granted to have the assistance of a co-employee ?

3. Mr. R. Subramaniam, learned counsel for the petitioner referring to the facts contended that this is a fit case where this Court should interfere with the

impugned proceedings, set aside the order passed by the respondent declining to grant permission to have the assistance of a legal practitioner. According to learned counsel, the presenting officer appointed by the respondent is a well experienced, equipped and qualified law graduate and, therefore, the petitioner should be permitted to have the assistance of a legal practitioner.

4. Per contra, Mr. K.S. Ahamed, learned counsel for the respondent contended that the petitioner himself is well-versed as he is a graduate and a supervisor with rich experience and it is not as if the charges are intricate or it involves complicated questions of law or fact and, therefore, the order of rejection passed by the respondent is not liable to be interfered with.

5. Mr. K.S. Ahamed, relied upon the decision of this Court in W. P. No. 12305 of: 1997 wherein K. SAMPATH J., had taken the view on the facts of the said case held as there are no complicated questions involved, the petitioner therein being a graduate besides an M.B.A., and holding very responsible post in the administration that the charges are being simple in nature, held that there is absolutely no justification for granting permission to the delinquent official to seek the assistance of a legal practitioner in the domestic enquiry. This judgment is being relied upon by Mr. K.S. Ahamed, learned counsel for the respondent, heavily.

6. Per contra, Mr. R. Subramaniam, learned counsel for the petitioner referred to the order of P. SATHASIVAM, J., in K. Kabali v. Assistant Security Commissioner, Railway Protection Force, Southern Railway 1999 III LLJ 1427 (Mad) in support of his contention as well as the decision of the Apex Court in Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, and Union of India (UOI) Vs. Karunakaran Nair, in support of his contention. Learned counsel also relied upon a decision of this Court in M. Babu Vs. The Joint Zonal Manager -cum- Disciplinary Authority Southern Zone, Bank of India, Zonal Office Southern Zone, Chennai-86, .

In the present case, the charges framed against the petitioner read thus:

"2. As per records you have committed the following irregularities as supervisor in the purchase Section:

(i) In the purchase order No. GA 36801-15, dated June 18, 1999, the order was issued for the purchase of 45 metres of 3/20 multi-standard wire from Shri Balamurugan, Pondicherry, at the rate of Rs. 262.50 per metre when the actual price was Rs. 6.50 per metre only.

(ii) In the purchase order No. 3719-15, dated July 24, 1999, the purchase order was issued for ten numbers of push button for LR speed frame to Sovereign Electro Electronics, Coimbatore, at the rate of Rs. 2,028, when the actual price was Rs. 195 only.

(iii) In the purchase order No. 36556-15, dated June 1, 1999, the purchase order was issued for CA3-16.22, Lakshmi 222B coil at the rate of Rs. 1,252 per unit

instead of Rs. 626 per unit.

(iv) In the purchase order No. 35609 dated February 6, 1999, and letter No: AJSP:PUR:99, dated October 15, 1999, the order was issued for four sets of bearings ZKL 121 1K with Indian Sleeve H211 at the rate of Rs. 1,352 per set instead of Rs. 325 per set and an excess payment was also made for Rs. 4,272.32.

(v) That the above-said acts of yours in the capacity of supervisor of purchase Section are grave irregularities and negligence in work and failure in ensuring proper care in preparing the purchase order which resulted in loss to the mills. Such behaviour is very unbecoming on your part harming the interest of the mill and also its reputation, fraud and dishonest in connection with the business. Therefore, you are liable for severe disciplinary action and you are hereby charged for having committed act of negligence in work as detailed in standing order 24(d) and 25(m). Further, your action/omission has aided and abetted the commission of misappropriation of funds of the mills. You have acted in negligent manner subversive to discipline and sincerity of duty."

7. On the face of the said charges and in particular the imputations as well as irregularities alleged, it cannot be said that the charges are so simple in nature and the charges do involve to a certain extent complicated questions of law. The petitioner though he is a commerce graduate, it cannot be assumed that he is in a position to defend himself effectively as certain intricate questions of law also arise.

8. The respondent while considering the request of the petitioner for permission to have the assistance of a legal practitioner the respondent had merely proceeded on the basis that the standing orders do not provide for the same and had not considered whether the charges or the irregularities or the imputations are intricate or complicated and that aspect of the matter had not been gone into by the enquiry officer. Though the imputations may appear to be simple, but it involves questions of law and intricate questions as the charges border, as to whether the decision taken is bona fide or in the interest of the administration or it is an abuse of power for any other ulterior purpose. These aspects definitely warrant legal assistance.

9. That apart, the presenting officer appointed by the respondent is a labour officer having law graduation and he is also well trained in such disciplinary proceedings. It is, therefore, obvious that the writ petitioner had been pitted against a well trained and legally qualified presenting officer. This material aspect has been lost sight of by the respondents.

10. The entire case-law on the subject has been analysed by me in M. Babu Vs. The Joint Zonal Manager -cum- Disciplinary Authority Southern Zone, Bank of India, Zonal Office Southern Zone, Chennai-86, :

"15. In Board of Trustees, Port of Bombay v. D. R. Nadkarani (supra) their

Lordships of the Apex Court had occasion to examine a case where in a disciplinary enquiry of a domestic tribunal, the employer appoints presenting officer-cum-prosecuting officer who is legally trained to represent the employer, denial of a request of the delinquent employee, seeking permission to appear and defend himself through a legal practitioner, and held that the denial would vitiate the enquiry on the ground that the delinquent employee had not been afforded a reasonable opportunity to defend himself, thereby violating one of the essential principles of natural justice.

"16. In the said case, the employer had appointed a legal practitioner as the presenting-cum-prosecuting officer in the domestic enquiry and the demand of the workman to have the assistance of a legal practitioner was denied. The said denial was challenged and the Apex Court in that context upheld the claim of the worker to have the assistance of a legal practitioner as the employer has appointed lawyer as presenting-cum-prosecuting officer and the delinquent employee was pitted against legally trained personnel. In that context, while holding that the employer had acted unfairly and decision being unjust ordered that the workman shall have the assistance of a legal practitioner. In that context, it has been held thus:

"Even in a domestic enquiry there can be very serious charges, and an adverse verdict may completely destroy the future of the delinquent employee. The adverse verdict may so stigmatise him that his future would be bleak and his reputation and livelihood would be at stake. Such an enquiry is generally treated as a managerial function and the enquiry officer is more often a man of the establishment. Ordinarily he combines the role of a presenting-cum-prosecuting officer and an enquiry officer, a judge and a prosecutor rolled into one. In the past, it could be said that there was an informal atmosphere before such a domestic tribunal and that strict rules of evidence and pitfalls of procedural law did not hamstring the enquiry by such a domestic tribunal. We have moved far away from this stage. The situation is where the employer has on his pay-rolls labour officers, legal advisers-lawyers in the garb of employees and they are appointed presenting-cum-prosecuting officers and the delinquent employee pitted against such legally trained personnel has to defend himself. Now, if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the enquiry officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner. Why do we say so? Let us recall the nature of enquiry, who held it, where it is held and what is the atmosphere? Domestic enquiry is claimed to be a managerial function. A man of the establishment dons the robe of a judge. It is held in the establishment office or a part of it. Can it even be compared to the adjudication by an impartial arbitrator or a Court presided over by an unbiased judge ? The enquiry officer combines the judge and prosecutor rolled into one.

Witnesses are generally employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehensions. Add to these uneven scales, the weight of legally trained minds on behalf of employer simultaneously denying that opportunity to delinquent employee. The weighed scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer enjoys. Justice must not only be done, but must seem to be done is not an euphemism for Courts alone, it applies with equal vigour and rigour to all those who must be responsible for fair play in action. And a quasi-judicial Tribunal cannot view the matter with equanimity on inequality of representation. This Court in *Madhav Hayawadanrao Hoskot Vs. State of Maharashtra*, clearly ruled that in criminal trial where prosecution is in the hands of public prosecutor, accused, for adequate representation, must have legal aid at State cost. This will apply mutatis mutandis to the present situation.

"17. It was further held that when the rules are silent, there cannot be bar for granting permission to engage legal practitioner to defend the delinquent. In that respect, the apex Court further held thus :

"More so in absence of rules, the chairman of the appellant was not precluded from granting a request because the rules did not enact an inhibition. Therefore, apart from general propositions, in the facts of this case, this enquiry would be a one-sided enquiry weighed against the delinquent officer and would result in denial of reasonable opportunity to defend himself."

"18. In *J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others*, , after analysing the case law the Apex Court, held thus:

It would appear that in the inquiry, the respondent-corporation was represented by its personnel and administration manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to entail a dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reason of the appellant being pitted against a presenting officer who is trained in law. Legal adviser and a lawyer are for this purpose somewhat liberally construed and must include "whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser". In the last analysis, a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner" which was kept open in *Board of Trustees, Port of Bombay v. Dilipkumar* (supra).

"19. In *Laxmi Shankar Pandey Vs. Union of India and others*, , it was emphasised by the Apex Court that in all such cases domestic enquiries must be conducted in accordance with the principles of natural justice and that a reasonable opportunity to deny the guilt and to cross-examine the witness produced and examined should be given. Their Lordships of the Apex Court held thus:

"Therefore, according to learned counsel for the petitioner, the impugned order of dismissal should be quashed as there is a clear violation of his fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India. In this context, he relied on decisions of this Court in *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, ; *State of Uttar Pradesh Vs. Om Prakash Gupta*, , *State Bank of India Vs. R.K. Jain and Others*, , and *State of Andhra Pradesh and Others Vs. Chitra Venkata Rao*, . In all these cases it is laid down that such enquiries must be conducted in accordance with the principles of natural justice and that a reasonable opportunity to deny the guilt and to cross-examine the witnesses produced and examined, should be given and that the enquiry should be consistent with the rules of natural justice and in conformity with the statutory rules prescribing the mode of enquiry."

"20. In *Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi*, , A.M. aHMADI, J. as he then was, speaking for the Bench held thus:

"From the above decisions of the English Courts it seems clear to us that the right to be represented by a counsel or agent of one's own choice is not an absolute right and can be controlled, restricted or regulated by law, rules and regulations. However, if the charge is of a serious and complex nature, the delinquent's request to be represented through a counsel or an agent could be conceded.

The law in India also does not concede an absolute right of representation as an aspect of the right to be heard, one of the elements of principle of natural justice. It has been ruled by this Court in (i) *N. Kalindi v. Tata Locomotive and Engineering Ltd.*, 1960 18 FJR 124, (ii) *Brooke Bond India (P.) Ltd. v. Subba Raman (S.)*, 1961 20 FJR 424 and (iii) *Dunlop Rubber Co. v. Their Workmen*, 1965 27 FJR 321, that there is no right to representation as such unless the company by its standing orders recognises such a right."

"21. In a catena of decisions the apex Court had laid down that legal assistance by the defence is a sine qua non and denial if any would amount to denial of reasonable opportunity in a case where the employer is represented by legally trained officer or a legally trained mind or a legal practitioner.

"22. In *Board of Trustees, Port of Bombay v. N.D. Nadkarni*, (supra); *Dunlop Rubber Co. v. Workmen*, (supra); *Kalindi v. Tata Locomotive and Engineering Co. Ltd.*, (supra); *C.L. Subramaniam Vs. Collector of Customs, Cochin*, ; *H.C. Sarin Vs. Union of India (UOI) and Others*, the emphasis was that when a presenting officer or the prosecuting agency is a legally trained personnel, there is every

justification to permit the delinquent employee to have the assistance of legal practitioner. In all these cases so far referred and other cases, the Apex Court and the other Courts have proceeded on the premises that there is no impropriety or illegality in the employer appointing a legally trained person as the presenting officer before the domestic enquiry officer.

"23. It is to be pointed out that in a catena of decisions referred above, it is evident the Supreme Court held that though ordinarily the Courts should discourage the involvement of a legal practitioner in domestic enquiries in order to avoid delay and complexities, none the less, the Court cannot ignore that in exceptional cases a representation by a lawyer is necessary as in some cases there may be failure of the enquiry itself and denial of a proper and effective defence."

11. In the light of the above catena of decisions on the facts of the case, this Court is of the considered view that the impugned proceedings is liable to be quashed and the petitioner should be permitted to have the assistance of a legal practitioner. No other point has been argued by learned counsel for the petitioner.

12. In the circumstances, the writ petition is allowed and the impugned order is quashed and the respondent is directed to permit the petitioner to have the assistance of a legal practitioner of his choice. However, it is made clear that there shall be no attempt on the part of the writ petitioner to delay the domestic enquiry proceedings on the premise or ground that his advocate could not be present or could not appear on any particular date.

13. It is incumbent on the part of the writ petitioner to be present with his legal practitioner on the date and the time fixed by the respondent. In the event of the writ petitioner or his counsel persistently attempts to delay or postpone the enquiry proceedings, the petitioner will forfeit his right to have the assistance of a legal practitioner and he has to , appear in person and defend himself with the assistance of another co-employee.

14. Consequently, W.M. Ps. are dismissed. The parties shall bear their respective costs in this writ petition.