

(2011) 04 MAD CK 0106

In the Madras High Court

Case No : Writ Petition No. 19001 of 2009

Chidambaram Shipcare Pvt. Ltd.

APPELLANT

Vs

The Presiding Officer and M. Baskar

RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25T, 25U, 2A, 33
Industrial Employment (Standing Orders) Act, 1946 — Section 3, 5
Industrial Employment (Standing Orders) Central Rules, 1946 — Rule 14(4)
Trade Unions Act, 1926 — Section 22

Citation : (2011) WritLR 734

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : Sanjay Mohan, for Ramasubramaniam and Associates, for the Appellant; K.V. Dhanapalan, for Fennwalter Association for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

D. Hariparanthaman, J.—The writ Petitioner is a Shipping Industry. The second Respondent in each of the writ petition was the workman

employed by the writ Petitioner. According to the workmen, there were about 110 permanent workers including staff were employed by the writ

Petitioner. The Socialist Workers Union (Shortly ""the Union"") is the only Trade Union functioning in the writ Petitioner company and all the

permanent workmen were its Members.

2. According to the workmen, the writ Petitioner failed to resolve the dispute relating to revision of wages and other service conditions forcing the

Union to take up the matter before the Conciliation Officer under the Industrial Disputes Act (Shortly ""the Act""). The conciliation ended in failure

resulting in the Government passing an order referring the industrial dispute relating to their charter of demands for adjudication by the first

Respondent - Labour Court. The first Respondent - Labour Court took it on file as I.D. No. 587 of 1995. Ever since the dispute was pending, the

writ Petitioner started victimising the workers for their legitimate trade union activities. 10 workmen were not made permanent though they put in

long years of service. Hence, the Union raised a dispute regarding their permanency and the industrial dispute relating to the permanency is pending

in I.D. No. 472 of 1998 before the first Respondent.

3. In 2002, the writ Petitioner imposed a partial lay off to all the workers and the Union raised an industrial dispute questioning the lay off and

failure report dated 15.12.2003 was submitted as the conciliation ended in failure. In the meantime, 19 permanent workers were terminated on the

ground that Chidambaram Ship Care was closed. According to the workmen, the Management took a dubious stand that there are two industries

namely, Chidambaram Ship Care and Chidambaram Ship Care Pvt. Ltd., and those establishments are different entities. It was a malafide act to

victimise the workmen.

4. According to the workmen, they were not allowed to report duty on 06.02.2004 and the workmen sent telegram to the Management about the

same. The Management put up a notice on 06.02.2004 stating that the workmen indulged in strike. The Union also sent a letter dated 11.02.2004

to the writ Petitioner complaining unfair labour practice and illegal lay off.

5. The Management sent a letter dated 14.02.2004 to the individual workers complaining that the workmen were on strike. In the said letter, it is

also admitted that the Management imposed lay off. The Management sent another letter to the workers on 18.02.2004 stating that they have

suspended the operations carried on by Chidambaram Ship Care from 09.02.2004. According to the Union, the Management was still carrying on

their business with Casual Labourers and the alleged suspension of operation is false.

6. The Union wrote letters dated 16.02.2004, 19.02.2004 and 23.02.2004 to the Labour Department to initiate action against the writ Petitioner

for committing unfair labour practice. While so, according to the Union, the writ Petitioner sought to remove the machineries clandestinely on

26.02.2004 and they apprehended insecurity to their employment and they protested for removing the machineries.

7. On the other hand, it was the claim of the writ Petitioner that the Respondent workmen and others prevented the lorry bearing registration No.

TN01-J 3124 from getting it loaded with the materials and threatened, intimidated and abused the loading workmen in filthy language and further, they obstructed the lorry from proceeding further to go out of the work spot.

8. The alleged incident on 26.02.2004 became the subject matter of charge memo dated 28.02.2004 issued to five workmen, including the four

contesting Respondents involved in the batch of writ petitions. The allegation made therein was that they prevented the loadmen from loading the

materials in the lorry and they abused and intimidated the loadmen and that they prevented the lorry from going outside the factory premises. They

committed misconduct under Clause 16 (j) of the Model Standing Orders.

9. The workmen gave explanation denying the charges. Not satisfied with the explanation, a common enquiry was conducted by an outsider. In the

enquiry, three witnesses were examined on the side of the Management and five witnesses were examined on the side of the workmen. Documents

Exs. M1 to M7 were marked on the side of the Management and Exs.W1 to W17 were marked on the side of the workmen.

10. The Enquiry Officer submitted his report dated 25.08.2004 holding that the charges were established. Based on his findings, the Respondent

workmen herein were dismissed from service by an order dated 20.10.2004. However, proceeding was dropped as against one workman by

name Mr. A. Raju stating that he reached the age of superannuation during the pendency of the disciplinary proceedings. Along with the dismissal

order, the workmen were given one month wages in compliance with Section 33(2)(b) of the Act.

11. Since I.D. No. 587 of 1995 was pending before the first Respondent, the writ Petitioner filed applications in A. Nos. 1 to 4 of 2007

respectively u/s 33(2)(b) of the Act seeking approval of the dismissal order. The Respondent workmen filed counter statement in the approval

applications questioning the validity of the enquiry. It was their case that the enquiry was conducted in violation of principles of natural justice. They

pleaded that though the Presenting Officer of the Management was a Law

Graduate, who was legally trained, the workmen were not permitted to have the assistance of the Officer Bearer of the Union Mr. Dhanapalan, on the ground that he was a practicing Advocate. It was their further case that the Enquiry Officer refused permission to examine Mr. Dhanapalan as a witness in the enquiry on behalf of the workmen. Hence, the enquiry was conducted in violation of principles of natural justice. It was also pleaded that the dismissal was not in accordance with the Model Standing Orders, as the past record was not taken into account as contemplated under the Model Standing Orders while dismissing them from service and hence, the dismissal orders were passed in contravention of Section 33(2)(b) of the Act. It was their further case that the findings of the Enquiry Officer were perverse and that the action of the writ Petitioner amounts to victimisation and the writ Petitioner committed unfair labour practices. Before the first Respondent, both the parties did not let in any oral evidence and only documents Exs.P1 to P51 were marked on the side of the writ Petitioner.

12. After hearing both sides, the first Respondent passed the common order dated 30.06.2009 in A. Nos. 1 to 4 of 2007 in I.D. No. 587 of 1995 rejecting the approval applications on the ground that enquiry was not conducted fairly. The approval applications were also rejected on other grounds namely the findings of the Enquiry Officer were perverse and that the writ Petitioner was guilty of victimisation and also committed unfair labour practices. Challenging the same, the Petitioner has filed the present writ petitions.

13. Heard the submissions made on either side.

14. The learned Counsel for the Petitioner submitted that there is no certified Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946 and the Model Standing Orders prescribed under the Industrial Employment (Standing Orders) Act, 1946 governed the conditions of service of the workmen employed by the writ Petitioner. The Model Standing Orders do not provide for the assistance of a Lawyer and since the Union leader, whose assistance was sought by the workmen, was a practicing Lawyer, the workmen are not entitled to have the assistance of a Lawyer under the garb of a Trade Union leader. The learned Counsel for the Petitioner also submitted that the findings of the first

Respondent as to victimisation and perversity of the findings of the Enquiry Officer, have no basis. He made elaborate submissions on the merits

(facts) of the case.

15. The learned Counsel for the Petitioner relied on the following decisions in support of his contention that the workmen are not entitled to have

the assistance of a Trade Union leader.

(i) Judgment of the Honourable Apex Court in Biecco Lawrie Ltd. and Another Vs. State of West Bengal and Another,

(ii) Division Bench judgment of this Court in State Bank of India rep. by the Assistant General Manager v. The Presiding Officer, Industrial

Tribunal 2007 (II) LLJ 968.

(iii) Judgment of this Court in S. Muthuraman and Others Vs. The Presiding Officer, Labour Court and The Management of Sree Nithyakalyani

Textiles Ltd.,

(iv) Judgment of the Honourable Apex Court in D.G. Railway Protection Force and Others Vs. K. Raghuram Babu,

(v) Judgment of this Court in S. Singaravelu v. General Manager, Southern Railway in W.P. No. 13196 of 2001 (decided on 13.07.2007)

(vi) Judgment of the Honourable Apex Court in Brooke Bond India (Private) Ltd. v. Subba Raman 1961 (II) LLJ 417

(vii) Judgment of the Honourable Apex Court in Employers Management West Bokaro Colliery of TISCO Ltd. Vs. Concerned Workman, Ram

Pravesh Singh,

(viii) Judgment of the Honourable Apex Court in Syndicate Bank and Others Vs. Venkatesh Gururao Kurati,

(ix) Judgment of the Honourable Apex Court in Harinarayan Srivastav Vs. United Commercial Bank and another,

(x) Judgment of the Honourable Apex Court in Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others,

The learned Counsel for the Petitioner also relied on some judgments in support of his contention that the first Respondent exceeded its

jurisdiction, while dealing with the findings of the Enquiry Officer and as to its findings on victimisation.

16. On the other hand, the learned Counsel for the workmen submitted that there is no infirmity in the findings of the first Respondent that the

enquiry was not conducted fairly and the enquiry was conducted in violation of principles of natural justice. The learned Counsel took me through

the enquiry proceedings and submitted that the Presenting Officer was a Man of Law and therefore, equal opportunity requires that the workmen

should also be permitted to have the assistance of a Trade Union leader or an Advocate of their choice. The learned Counsel further submitted that

there is no prohibition in the Model Standing Orders to have the assistance of a Trade Union leader or an Advocate. According to him, the Model

Standing Orders is silent on the assistance to workmen in the domestic enquiry. It was submitted that the Model Standing Orders is also silent as to

the appointment of Presenting Officer by the writ Petitioner in the domestic enquiry to represent the case of the writ Petitioner. Since they travelled

beyond the Model Standing Orders and had the benefit of a Presenting Officer, that too a Law Graduate, the workmen are also entitled to have

the assistance of a Trade Union Leader or a Lawyer.

17. The learned Counsel for the workmen submitted that when the Presenting Officer of the writ Petitioner Management was a legally trained mind,

even if the Model Standing Orders prohibit assistance of Trade Union leader or an Advocate, the workmen are also entitled to have the assistance

of a Trade Union leader or an Advocate. It was further submitted that the Model Standing Orders is silent as to the appointment of an "outsider" as

the Enquiry Officer and there is no provision providing for an outsider as an Enquiry Officer. If the writ Petitioner had chosen to appoint an

outsider as an Enquiry Officer and also a Presenting Officer with legally trained mind, when there is no provision in the Model Standing Orders, the

same yardstick should be applied in the case of workmen by permitting them to have the assistance of the Office bearer of the Trade Union. The

learned Counsel further submitted that the findings of the first Respondent as to the perversity of the findings of the Enquiry Officer does not suffer

from any infirmity. It was also submitted that it is a clear case of victimisation for trade union activities as almost all the work force were wiped out

during the pendency of the industrial dispute in I.D. No. 587 of 1995 claiming increase in wages and improvement in the conditions of service.

18. The learned Counsel for the workmen submitted that taking into account the scheme of the Industrial Disputes Act, 1947, the Trade Unions

Act, 1926 and the provisions of the Industrial Employment (Standing Orders) Act, 1946, the workmen have absolute right to have the assistance of an Office Bearer of a Trade Union in domestic enquiry.

19. The learned Counsel for the workmen relied on the following judgments in support of his contention:

i) Judgment of the Honourable Apex Court in Chairman and Managing Director, Hindustan Teleprinters Ltd. v. M. Rajan Isaac 2005 (2) LLN

853

ii) Judgment of the Honourable Apex Court in Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others,

iii) Judgment of this Court in K. Kabali Vs. The Assistant Security Commissioner, Railway Protection Force, Southern Railway, Madras 600003

and another,

iv) Division Bench judgment of the Kerala High Court in Union of India (UOI) Vs. Karunakaran Nair,

v) Judgment of the Delhi High Court in Delhi Bottling Co. Pvt. Ltd. Vs. A.N. Tripathi and Others,

vi) Division Bench judgment of the Karnataka High Court in G.V. Aswathanarayana v. Central Bank of India 1993 (1) LLN 689

vii) Division Bench judgment of the Karnataka High Court in A.R. Kavi v. Karnataka Agro Industries Corporation 1993 (1) LLN 691

viii) Judgment of the Bombay High Court in Ram Naresh Tripathi Vs. S.D. Rane and others,

ix) Division Bench judgment of the Bombay High Court in Ghatge Patil Transport Pvt. Ltd. Vs. B.K. Etale and others,

x) Division Bench judgment of the Bombay High Court in Venkatraman Sambamurthy Vs. Union of India and another,

xi) Judgment of the Honourable Apex Court in J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others,

The learned Counsel also relied on some other judgments on merits to sustain the order of the first Respondent on merits and victimisation.

20. I have considered the submissions made on either side and perused the entire materials available on record.

21. The issue arises for consideration in all these writ petitions is whether the employer conducted a fair enquiry complying with the principles of

natural justice and whether the workmen were given equal opportunity in defending them in the enquiry.

22. The workmen have categorically stated in their counter filed before the first Respondent that the enquiry was not held fairly and properly and

that they were not given reasonable opportunity. It was further pleaded that the enquiry was conducted in violation of principles of natural justice.

On seeing the counter statement, the writ Petitioner did not choose to file an application seeking permission to let in evidence, in the event, the first

Respondent comes to the conclusion that the enquiry was not fairly conducted. In those circumstances, the workmen would succeed, if the

preliminary point as to the unfairness of the enquiry, is held in their favour and there is no need to go into the merits of the case and other issues.

23. In this regard, it is relevant to refer the judgment of the Honourable Apex Court in Shambhu Nath Goyal Vs. Bank of Baroda and Others,

wherein, it has been held that in an application filed by the employer u/s 33(2) (b) of the Act seeking approval of dismissal, if the workman

questioned the fairness of the domestic enquiry, that preceded the order of dismissal, in the counter statement filed opposing the approval

application and if the employer failed to file proper application on seeing the counter of workman, seeking opportunity to let in evidence to

substantiate the dismissal order, if the finding on the issue as to fairness of the enquiry was held against them, the Labour Court/Tribunal could

straight away reject the approval application on rendering a finding on the issue relating to fairness of the enquiry against the employer, without

going into merits and other aspects of the matter. This judgment was later approved by the Constitution Bench of the Honourable Apex Court in

Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, . Therefore, if the first Respondent is correct in holding that the

enquiry was not fairly conducted, I need not go into merits of the case and the employer must fail, as the learned Counsel for the writ Petitioner

fairly submitted that they did not file any application seeking opportunity to let in evidence.

24. The first Respondent held that since the workmen were not permitted to have the assistance of the office bearer of their Union, who was a

practicing advocate, when the writ Petitioner had the benefit of law graduate to represent their case in the domestic enquiry, the enquiry was not

fairly conducted. Now, the correctness of the aforesaid conclusion of the first Respondent is the issue that has to be answered.

25. The following passage from the proceedings of the Enquiry Officer is extracted hereunder:

VERNACULAR (TAMIL) PORTION DELETED

The above passage makes it very clear that the Enquiry Officer has recorded that the Presenting Officer is a Man of Law. However, it is held that

the workmen could not bring a Lawyer under the garb of a Trade Union leader, while the Presenting Officer was not a practicing advocate.

26. The aforesaid action of the Enquiry Officer based on which the dismissal order was passed, was not approved by the first Respondent and the

first Respondent held that the enquiry was not a fair enquiry, since the workmen, who were pitted against a legally trained mind in the domestic

enquiry, were not permitted to have the assistance of the office bearer of their Union. In this regard, paras 10 to 12 of the order of the first

Respondent, which is impugned in the present writ petitions, are extracted hereunder:

10. While the Petitioner/management would put forth a plea that in the conduct of the enquiry, principles of natural justice have been followed, that

the enquiry finding was not perverse, that there was no element of victimisation, that other procedural requirements such as payment of one

month's salary after passing of the order of dismissal were met, that the requirement that an approval petition has got to be filed simultaneously has

also been satisfied. The Respondents/workmen would contend that the domestic enquiry itself is vitiated on the ground that they were refused

assistance of an advocate in the conduct of the domestic enquiry even though the management representative S. Govindarajulu was himself a law

graduate, that the trade union leader of the Respondents was not permitted to participate in the domestic enquiry, that the Enquiry Officer did not

permit Thiru. Dhanapalan a trade union leader-cum-advocate to examine himself as a witness.

11. As to the request of the workmen to avail the assistance of an advocate in the domestic enquiry, reliance is placed on 2005(2)L.L.N.853

(Chairman and Managing Director, Hindustan Tele printers Limited, Chennai and M. Rajan Isaac) a Division Bench judgment of our High Court. It

has been strikingly observed in the said judgment that ordinarily the principles of natural justice do not postulate a right to be represented or

assisted by a lawyer in the departmental proceedings. But there is an exception and if the delinquent officer or the workman as the case maybe is

pitted against a legally trained person in the departmental enquiry and the delinquent officer or the workman is not that much familiar with the legal

procedures involved in the departmental enquiry, justice would require that the officer or workman who has no legal background is represented

through a lawyer. It has further been observed that in the absence of such expertise by the officer, the denial of assistance of a legally trained

person would render the disciplinary proceedings vitiated. The principle in the said decision has already been dealt with elaborated and laid down

in (1) Union of India (UOI) Vs. Karunakaran Nair, (2) Venkatraman Sambamurthy Vs. Union of India and another, (3) J.K. Aggarwal Vs.

Haryana Seeds Development Corporation Ltd. and others, (4) 1993 I LLN 689 (Karnataka High Court (G.V. Aswathanarayana and Central

Bank of India and Ors. (5) 1999 I CTC 450 Madras High Court. A close reading of the postulates evolved by the superior courts would only

show that when a workman is pitted against a legally trained person, it is more in the nature of fight between two unequals and law disapproves

such a placement of the worker as against the management represented by a legally trained person. A pertinent reference may be made at this

juncture to a decision of Hon"ble Supreme Court of India reported in 2008(3) L.L.N.60 (SC). It has been held that there is no vested right to

claim assistance of a counsel or any other person and when the rules permit only restricted or controlled assistance, no principle of justice is

isolated. May be that denial of right to claim assistance of a counsel may not be violative of the principles of natural justice, but in the event of the

workman being confronted by the management with a legally trained person, per force, the workman has got to be extended the facility of a lawyer

or legally trained person so that ends of justice are better served. In the case at hand the grievance of the Respondents is that the assistance of a

lawyer has been denied to them, when the representative of the management was a law graduate in his own right and this circumstance would

vitate the enquiry. The Management representative by name Govindarajulu being a law graduate, has necessarily to be credited with knowledge of

law and procedure. It may be that he might be in the H.R.D. Section of the Petitioner management, but still having been possessed of a degree in

law. It would not be in the fitness of things to treat him not as a legally trained person, notwithstanding the fact that he has not been enrolled as an

advocate. If so, the refusal on the part of the Enquiry Officer in affording an opportunity to the Respondents to engage a lawyer of their choice so

as to assist them in the enquiry, in the context of the management being represented by a legally trained person could amount to disregard of

principles of natural justice, for after all to presume a law graduate as not one legally trained would be an anathema.

12. There are no standing orders intended to be applicable to the workmen. If so, the model standing orders will have to be taken into account.

The model standing orders do not provide for extending the facility of a lawyer. But the principles that emerge from the decisions of the superior

courts would lay down candidly the principles governing the conduct of domestic enquiries and it would be quite clear that when the management is

represented by a legally trained person, the worker has to be extended the facility of a legally trained person. Obviously, in this case, the worker

having been refused permission in this behalf, I am of the view that this state of affairs would only vitiate the enquiry.

27. The first Respondent - Labour Court categorically held that by refusing permission of the office bearer of the Trade Union, the workmen were

denied equal opportunity, when they were pitted against a Presenting Officer, who was a legally trained person.

28. It is not in dispute that the request of the workmen to have the assistance of an office bearer of the Trade Union was declined on the ground

that the office bearer, whose assistance was sought, is a practicing advocate. It is also not in dispute that the writ Petitioner/Management was

represented in the enquiry by a Presenting Officer, who was a Man of law. Further, the Presenting Officer worked in various establishments as

Manager (HRD & IR) for nine years and had been working as Manager (HRD & IR) in the writ Petitioner company for the past five years. As a

Manager dealing with Human Resources and Industrial Relations, he should have acquired rich experience in dealing with disciplinary matters.

Being a Law Graduate with such vast experience dealing with industrial relations, he is certainly a legally trained mind and therefore, workmen also

should be provided the assistance of their Union leader, even if the leader is a practicing advocate.

29. The various judgments relied on by the learned Counsel for the Petitioner in support of his contention that the workmen are not entitled to have

the assistance of the Office bearers of the Trade Union, are not applicable to the facts of this case.

30. In the judgment of the Honourable Apex Court in *Biecco Lawrie Ltd. and Another Vs. State of West Bengal and Another*, , the dispute

relating to non employment of a workman was referred to adjudication by Industrial Tribunal in West Bengal. The Tribunal held that the domestic

enquiry was conducted in violation of principles of natural justice. After holding so, the employer let in evidence and the workman let in contra

evidence. The aforesaid facts are culled out from the following passage in para 5 of the judgment.

5 ...the dispute was referred u/s 7A of the Industrial Disputes Act on 2nd of April 1987 by the Labour Department, Government of West Bengal

to the Vth Industrial Tribunal, West Bengal for adjudication. Both the parties filed their written statements presenting their cases before the Tribunal

and on 9th of October, 1990 the Tribunal held that the inquiry conducted by Mr. P.K. Mukherjee, the Inquiry Officer, was in violation of the

principles of natural justice and accordingly the matter was heard afresh on merits. The witnesses of the Appellants were examined and cross

examined. The Respondent was also examined and cross examined....

Initially, the Tribunal held against the workman both on the fairness of the enquiry and also on merits, based on the fresh evidence let in before the

Tribunal. The workman took up the matter before the High Court and the matter was remanded to the Tribunal. On remand, the Tribunal held in

favour of the workman. The award of the Tribunal was challenged by the employer. The learned single Judge confirmed the award and the Division

Bench also confirmed the order of the learned single Judge. The matter was taken to the Honourable Apex Court and the Apex Court reversed all

the judgments and restored the earlier findings of the Tribunal. In my view, the said judgment is of no use, since the enquiry was set aside and

parties let in fresh evidence before the Tribunal.

31. The Division Bench judgment of this Court in *State Bank of India rep. by The*

Assistant General Manager v. The Presiding Officer, Industrial

Tribunal 2007 (II) LLJ 968 relied on by the learned Counsel for the Petitioner relates to the dismissal of an employee of the Bank who was

charged for misappropriation. The Tribunal held that the Enquiry Officer and the Presenting Officer were not legally trained persons and therefore,

the workman could not insist for the assistance of a Lawyer. The Tribunal recorded a finding that the enquiry proceedings was fair and proper.

However, as the enquiry was conducted *ex parte*, in order to give a fair opportunity to the workman, the Tribunal held that the findings of the

enquiry officer is vitiated. A Division Bench of this Court went into detail and found that the workman was given a lot of opportunities and in spite

of the same, he remained *ex parte* and therefore, the Tribunal was not correct in holding that the findings of the *ex parte* enquiry was perverse. In

fact, as stated above, the Tribunal held that the enquiry was conducted fairly and properly and that the workman could not insist for the assistance

of a Lawyer, since the Bank was not represented by a legally trained mind in the enquiry. Hence, in my view, the said judgment is of no use to the

case on hand. However, para 14 of the judgment relies on an another Division Bench judgment of this Court which is in favour of the workman

and the same is extracted hereunder:

14. The other decision cited by the learned Counsel for the writ Petitioner is Chairman and Managing Director, Hindustan Teleprinters Ltd. Vs. M.

Rajan Isaac, , wherein the Division Bench of this Court has held, 12. The general rule is that in the absence of rules an employee has no right to

seek for assistance of a lawyer in the departmental enquiry. Ordinarily the principles of natural justice do not postulate a right to be represented or

assisted by a lawyer in the departmental proceedings. But there is an exception and the question would be different if the delinquent officer or the

workman, as the case may be; is pitted against a legally trained person in the departmental enquiry and the delinquent officer or the workman is not

that much familiar with the legal procedures involved in the departmental enquiry. When a presenting officer is stated to be a man of law, justice

would require that the officer or workman who has no legal background is represented through a lawyer. Though the quasi-judicial authorities

holding domestic enquiries are not governed by strict and technical rules of

evidence, yet they are governed by the rule of equity and natural justice

and they must act in fairness. This concept is to ensure that there is no failure of justice.

The aforesaid judgment reported in 2005 (2) LCJ 610 was relied on by the first Respondent to render its findings.

32. In the judgment of this Court in *S. Muthuraman v. The Presiding Officer, Labour Court and The Management of Sree Nithyakalyani Textiles*

Ltd. 2003 (III) LLJ 52 relied on by the writ Petitioner, the workmen were denied the assistance of an Advocate or a Trade Union leader on the

ground that the Standing Orders do not provide for the same and that the Management was not represented by a legally trained mind. At this

juncture, it is relevant to extract para 8 of the said judgment .

8. In this case, the management was not represented by legally trained persons. So, the question of ensuring the balancing of the scales by allowing

the workmen to have the assistance of legally trained persons did not arise.

However, it has been held in para 14 of the said judgment that that if one of the parties had the benefit of legal assistance, the other party should

also have the same benefit. In this regard, para 14 of the said judgment is extracted hereunder, which is in favour of the workmen.

14. Unless there are compelling reasons, the need to provide legal assistance to one of the parties when the other party had the benefit of such

assistance being a fundamental matter, the Courts have held that notwithstanding the absence of a provision for granting such assistance in the

standing orders, the larger requirements of fairness mandates that management who want to have the benefit of the assistance of such legally trained

persons must recognise a similar right in the delinquent workmen against whose conduct the enquiry is being held. Where, however, in the domestic

enquiry, the management merely participate through its own officers who are not legally trained, workmen cannot assert a right to be represented

through another, unless the standing orders provide for the same, or the Enquiry Officer permits such assistance.

In para 13 of the said judgment, the Court also felt that it is desirable that the delinquent workman should be permitted to have the assistance of the

office bearer of the Trade Union or its member during the domestic enquiry. However, what is desirable is not always mandated by law. In this

regard, para 13 of the said judgment is extracted hereunder:

13. It is eminently desirable that a delinquent workman be permitted to have the service of a co-worker or, the Office bearer of the trade union of

which he is a member, at the domestic enquiry. What is desirable is, however, not always what is mandated by law. Statutory provisions are not to

be re-written and requirements which are not part of the statute, read into the same.

This Court also noted in para 9 of the said judgment that the Model Standing Orders framed by the Central Government provides for the

assistance of an office bearer of the Trade Union and the same is extracted hereunder:

9 ...Although the model standing orders prescribed under the Central Rules provide for representation of the delinquent workman by an office

bearer of a trade union of which that workman is a member, similar provision is not made in the model standing orders under the State Rules.

Thus, the judgments relied on by the writ Petitioner, far from helping them, supports the conclusion of the first Respondent.

33. In the judgment of the Honourable Apex Court in D.G. Railway Protection Force and Ors. v. K. Raghuram Babu 2008 (4) SCC 406 relied

on by the writ Petitioner, it has been held that there is no vested or absolute right to any charge sheeted employee to represent either through a

counsel or through any other person, unless the statute or rules provides for such a right. It was not the case where the Department was

represented by a legally trained person. Hence, the said judgment is of no use.

34. This Court in the judgment in S. Singaravelu v. General Manager, Southern Railway in W.P. No. 13196 of 2001 (decided on 13.07.2007) has

held that the Management was not represented by a Man of Law and the CBI Inspector could not be termed as a legally trained person. In the

said context, it was held that the employee was not entitled to have the assistance of a Lawyer. Hence, the said judgment is not applicable to the

case on hand. In fact, para 14 of the said judgment is in favour of the workmen, wherein it has been held that when the Management availed the

services of the Presenting Officer, who is a legally qualified person, the workmen is entitled to have the assistance of a Lawyer. In this regard, para

14 is extracted hereunder:

14. In the case of Indian Airlines Corporation v. N. Sundaram 1992 (II) L.L.N. 811, the Division Bench of this Court while dealing with Indian

Airlines Employees Standing Orders (Regulations) Concerning Discipline and Appeals, had to deal with Standing Order 32, which reads as

follows:

An employee may be permitted, if he so desires, to have, under his own arrangements, the assistance of a "friend" during the course of the enquiry.

Such a "friend" must be an employee of the corporation. No outside representation shall be permitted in any circumstances.

In that case, one Assistant Manager (Personnel) who was a legally qualified and well trained in disciplinary proceedings, was availed by the

Management as a Presenting Officer. When the delinquent has requested for representation through a lawyer, that was rejected. It was in those

circumstances observed that, "the Corporation did have the services of a legally qualified and trained person, who had considerable experience in

the conduct of disciplinary proceedings." The Division Bench has further held that the delinquent therein was in a disadvantageous position while

meeting such a Presenting Officer, who was well qualified, and held that the delinquent was entitled for relief. However, on the factual situation in

this case, I do not think that the said judgment has any application since the Presenting Officer appointed in the present case is not a legal

practitioner or legally qualified person and he was a C.B.I. Inspector.

35. In the judgment of the Honourable Apex Court in Brooke Bond India (Private) Ltd. v. Subba Raman 1961 (II) LLJ 417 relied on by the writ

Petitioner, the workman remained *exparte* on the ground that he was not permitted to have the assistance of an outsider to defend him in the

enquiry. It was not the case that the Management was represented by a legally trained mind. Hence, the same is not applicable to the case on

hand. In fact, the following passage indicates that had the workman wanted representation from the Trade Union, the Court could have considered

differently.

...Neither of them apparently wanted to be represented by somebody from the union....

36. In my view, none of the judgments relied on by the learned Counsel for the Petitioner laid down that when the employer is represented by a

Presenting Officer, who is a Law Graduate, even then the workmen could be denied the assistance of a Lawyer or a Trade Union leader. Just

because the Trade Union leader happened to be a practicing advocate, the Enquiry Officer was not correct in rejecting his representation in the

enquiry, particularly, when the Presenting Officer is a legally trained person. Hence, I do not find any infirmity in the findings of the first Respondent

in holding that the enquiry was not conducted fairly.

37. The judgments relied on by the learned Counsel for the workmen supports the proposition that whenever the Management is represented by a

Man of Law, the workmen should also be permitted to have assistance of an advocate irrespective of the fact whether the Standing Orders

provides for assistance of a Lawyer or not. Those judgments are considered hereunder.

38. In the First Bench judgment of this Court relied on by the learned Counsel for the workmen in Chairman and Managing Director, Hindustan

Teleprinters Ltd. v. M. Rajan Isaac 2005 (2) L.L.N. 853, it has been categorically held that if the workman was pitted against a legally trained

person in the domestic enquiry, he is entitled to have the assistance of a legally trained person. In this regard, para 14 of the said judgment is

extracted hereunder:

14. From the above rival stand, it is clear that the averment of the Respondent that the presenting officer was a legally trained person was not

denied by the Appellant, except saying that the Respondent was denied the assistance of a legal practitioner as the rules do not provide for the

same. The Supreme Court in Mintu Bhakta v. State of West Bengal (1973) 4 SCC 85, has held that ""a vague answer is neither a proper nor an

adequate reply in disproof of the specific allegation and therefore the allegation remains unanswered and must consequently be accepted in the

absence of any cogent reply"". In the absence of specific denial, the claim of the Respondent that he was pitted against a legally trained person who

is familiar with the procedures of the domestic enquiry including the legal consequences thereof should be accepted. In the absence of such

expertise by the officer, the denial of assistance of a legally trained person would render the disciplinary proceedings vitiated....

39. Likewise, in the judgment of the Honourable Apex Court in The Board of

Trustees of The Port of Bombay v. Dilipkumar Raghavendranath

Nadkarni and Ors. 1983 (I) LLJ 1, the following passage from para 11 supports the order of the first Respondent.

11 ...In our view we have reached a stage in our onward march to fair play in action that wherein an enquiry before a Domestic Tribunal the

delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner refusal to grant this request

would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated. This view has

been taken by a learned single Judge and while dismissing the appeal in limine approved by the Division Bench of the High Court commends to us.

Therefore, this appeal is liable to be dismissed.

40. This Court followed the aforesaid judgment of the Honourable Apex Court in its judgment in K. Kabali v. The Assistant Security

Commissioner, Railway Protection Force, Southern Railway 1999 (1) CTC 450 and held that the enquiry was vitiated, taking note of the fact that

the employer was represented by a legally trained person, while the employee was not given a similar opportunity.

41. The Division Bench judgment of the Kerala High Court in Union of India v. Karunakaran Nair 1986 (1) LLJ 124 held that when a

Government employee is pitted against a legally trained mind in the departmental enquiry, he is entitled to have the assistance of a lawyer.

42. The Delhi High Court in its judgment in Delhi Bottling Co. Pvt. Ltd. v. A.N. Tripathi and Ors. 1994 (1) LLJ 1207 took note of Rule 14(4)(ba)

of the Model Standing Orders framed by the Central Government under the Industrial Employment (Standing Orders) Central Rules, 1946 that

provides for assistance of an officer Bearer of the Union and when the same was declined, the Court held that the enquiry was vitiated.

43. In the Division Bench judgment of the Karnataka High Court in G.V. Aswathanarayana v. Central Bank of India 1993 (I) LLN 689, even

when the employer was not represented by a legally trained person, taking into account the complicated facts and law involved, it has been held

that the workman is entitled to have the assistance of a legal practitioner.

44. In the judgment in Ghatge Patil Transport Pvt. Ltd. v. B.K. Etale and Ors. 1984 (II) LLJ 121, in para 6, a Division Bench of the Bombay High

Court has held as follows:

6 ...As held by the Supreme Court in the latest case i.e. The Board of Trustees of the Port of Bombay V. Dilipkumar Nadkarni (Supra), apart

from the provisions of laws, it is one of the basic principles of natural justice that the inquiry should be fair and impartial. Even if there is no

provision in the Standing Order or in law, wherein an inquiry before the domestic Tribunal the delinquent officer is pitted against a legally trained

mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request

to defend himself and the essential principles of natural justice would be violated....

45. In the judgment in Ram Naresh Tripathi Vs. S.D. Rane and others, , the Bombay High Court held that as per item 1(f) of Schedule IV of the

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, not permitting the Office Bearer of a Trade

Union to which a workman is a member, amounts to violation of principles of natural justice. Item 1(f) of Schedule IV of the Maharashtra

Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 states that it is unfair labour practice on the part of an employer

to discharge or dismiss an employee in utter disregard of the principles of natural justice in the conduct of domestic enquiry.

46. Now the aforesaid provisions in the IV Schedule of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices

Act, 1971 relating to unfair labour practices is incorporated in the Fifth Schedule of the Industrial Disputes Act. Clause 5(f) of the Fifth Schedule of

Industrial Disputes Act is the replica of Clause 1(f) of IV Schedule of the Maharashtra Recognition of Trade Unions and Prevention of Unfair

Labour Practices Act, 1971. Clause 5(f) of the Fifth Schedule of the Industrial Disputes Act states that it is an unfair labour practice, if a workman

is discharged or dismissed in utter disregard of the principles of natural justice in the conduct of domestic enquiry.

47. The Honourable Apex Court in its judgment in Colour-Chem Limited Vs. A.L. Alaspurkar and Others, held that the provisions of the Fifth

Schedule of the Industrial Disputes Act are replica of unfair labour practices as defined under the Maharashtra Recognition of Trade Unions and

Prevention of Unfair Labour Practices Act, 1971. In this regard, the relevant passage from para 12 of the said judgment is extracted hereunder:

12 ...The present Act tried to codify unfair labour practices on the part of the employer by enacting the Act in 1972 and even the Industrial

Disputes Act being the Central Act also followed the Maharashtra Act and taking a leaf from the book of the Maharashtra Legislature, Parliament

introduced the concept of unfair labour practices by inserting Chapter V-C by Act 46 of 1982 w.e.f. 21-8-1984. Sections 25T and 25U of the

Industrial Disputes Act deal with "Prohibition of unfair labour practice" and "Penalty for committing unfair labour practices" respectively. The term

"unfair labour practice" was defined by the Industrial Disputes Act by inserting Section 2(ra) with effect from the very same date, i.e., 21-8-1984

by the very same Act, i.e., Act 46 of 1982 to mean, "any of the practices specified in the Fifth Schedule". The Fifth Schedule of the Industrial

Disputes Act, which saw the light of day pursuant to the very same Amending Act, deals with "unfair labour practices" which are a mirror image

and a replica of the unfair labour practices contemplated and codified by the present Maharashtra Act. But apart from these subsequent statutory

provisions which tried to codify unfair labour practices on the part of the employers, the basic concept of victimisation as laid down by this Court in

Hind Construction case¹ holds the field and is not whittled down by any subsequent statutory enactments. Not only is it not given a go-by but it is

reiterated by the present Act by enacting Clause (a) of Item 1 of Schedule IV of the Act meaning thereby any discharge or dismissal of an

employee by way of victimisation would be unfair labour practice.

48. Under such circumstances, I am of the view that non permitting the office bearer of a trade union to which the workman is a Member in the

domestic enquiry, amounts to violation of principles of natural justice and amounts to unfair labour practices as per Clause 5(f) of the Fifth

Schedule of the Industrial Disputes Act, in view of the judgment of the Honourable Apex Court in Colour-Chem case (cited supra).

49. In the present case, the workmen are in a better footing and that they should have been permitted to have the assistance of the office bearer of

the Trade Union in the domestic enquiry, irrespective of the fact whether the office bearer is an advocate or not, when the writ Petitioner was

represented by a legally trained mind in the domestic enquiry. Thus, I am inclined to confirm the order of the first Respondent that the enquiry was not held fairly by the writ Petitioner. The order of the first Respondent could be sustained on yet another ground also, that is, in my view, denying the workmen to examine Mr. Dhanapalan, an office bearer of the Trade Union as a witness in the domestic enquiry amounts to denial of opportunity and in violation of principles of natural justice. The reason for not permitting Mr. Dhanapalan to be examined as workmen witness was that he was not an eye-witness to the incident. But the letter written by Mr. Dhanapalan was heavily relied on by the Enquiry Officer to hold the charges proved.

50. Unfair labour practice is codified by the Parliament by Act 46 of 1982. The term unfair labour practice was defined by the Industrial Disputes

Act, by inserting Section 2(ra), with effect from 21.08.1984, by the Act 46 of 1982. As per the definition, unfair labour practices means "any of

the practices specified in the Fifth Schedule" of the Industrial Disputes Act. As stated above, Clause 5(f) of the Fifth Schedule of the Industrial

Disputes Act states that to discharge or dismiss the workman in utter disregard of principles of natural justice in the conduct of domestic enquiry or

undue est is a unfair labour practice. After codification of the unfair labour practices in the Industrial Disputes Act, following the Maharashtra Act,

as stated above, it is incumbent on the employer to permit the assistance of an office bearer of a Trade Union in the domestic enquiry, to which the

workman is a member, if the workman so desires, otherwise, the conduct of the employer amounts to unfair labour practice and the said action

amounts to disregarding principles of natural justice as per the codification of unfair labour practices, more particularly, in the light of the Fifth

Schedule of the Industrial Disputes Act and in the light of the judgment of the Bombay High Court in Ram Naresh Tripathi's case (cited supra) and

the judgment of the Honourable Apex Court in Colour Chem's case (cited supra).

51. Therefore, even if the certified Standing Orders/Model Standing Orders do not provide for the assistance of an office bearer of a Trade Union

in the domestic enquiry, the employer is bound to provide assistance of an office bearer of a Trade Union in the domestic enquiry, to which the

workman belongs to, in view of the codification of unfair labour practices under

the Industrial Disputes Act and in particular, Clause 5(f) of the Fifth Schedule of the Industrial Disputes Act.

52. At this juncture, it is relevant to take note of the fact that while prescribing Model Standing Orders under the Industrial Employment (Standing Orders) Act and the Rules framed thereunder, the Central Government being the appropriate Government has provided in Rule 14(4) (ba) of the Industrial Employment (Standing Orders) Central Rules 1946, for the assistance of an office bearer of a Trade Union in the domestic enquiries. In this regard, Rule 14(4)(ba) of the Industrial Employment (Standing Orders) Central Rules 1946, is extracted hereunder:

In the inquiry, the workman shall be entitled to appear in person or to be represented by an office bearer of a trade union of which he is a member.

53. It is also relevant to take note of the observations made by this Court in S. Muthuraman's case (cited supra) that it is eminently desirable that a delinquent workman should be permitted to have the assistance of the office bearer of the Trade Union, to which he is a member. The same is extracted in para 32 of this judgment. The said judgment was rendered even without taking note of Fifth Schedule of the Industrial Disputes Act.

54. As rightly contended by the learned Counsel for the workmen, taking into account the Scheme of the Industrial Disputes Act, the Trade Unions Act enabling "outsiders" as "office bearers" of the Trade union u/s 22 of the Trade Unions Act 1926 and the Scheme of the Industrial Employment (Standing Orders) Act, the workman is entitled to have the assistance of the office bearer of the Trade Union in the domestic enquiry.

55. The Scheme of the Industrial Disputes Act provides utmost importance to the Trade Unions. In fact, it contemplates the industrial dispute u/s 2(K) of the Act, being the dispute raised by the body of workmen, namely Trade Union. The Act originally enacted did not provide for individual workman to raise an industrial dispute even in the case of non-employment of an individual workman. Section 2-A of the Industrial Disputes Act making dispute relating to dismissal /termination of individual as deeming industrial dispute, was introduced at a later point of time. The Act provides for resolving disputes by way of settlement or adjudication. In both the cases, Trade Unions assume the most important part. The Act recognizes the settlement being signed only by the Trade Union in the case of

conditions of service of workman. The Act contemplates collective bargaining. In fact, Section 36 of the Act provides right of Trade Union to represent in the conciliation proceedings and before the Labour Courts/Industrial Tribunals. Whenever the employer proposes to bring change in the conditions of service, Section 9-A of the Industrial Disputes Act read with the Rules framed thereunder contemplates providing of notice to the Union. Whenever the workmen go on strike, the Trade Union should issue notice as per the conditions of service and in the case of public utility service, it is a must for issuing notice on strike by the Unions.

Section 33 of the Act provides protection to the office bearer of the Trade Union from being victimised by the employer, while disputes are pending adjudication or conciliation. Thus, the Scheme of the Act provides a pivotal role for Trade Unions.

56. In 1984, as stated above, unfair labour practice is defined and certain practices of the Trade Unions are now codified as unfair labour practices, while certain practices of employers are codified as unfair labour practices. The Act prohibits unfair labour practices being committed by employer or Trade Union. Thus, the Scheme of the Industrial Disputes Act and more particularly, after codification of unfair labour practices and in particular, Clause 5(f) of Fifth Schedule of the Industrial Disputes Act, it is incumbent on the employer to provide the assistance of an office bearer of the Trade Union in the domestic enquiry to which the workman is a member. Therefore, the Central Government has made it as conditions of service by incorporating the same in Rule 14(4)(ba) in the Model Standing Orders framed by them, as stated above. It is relevant that Section 3 of the Standing Orders Act read with Section 5 make it mandatory that when the employer submits draft Standing Orders for certification, the Certifying Officer shall forward a copy thereof to the Trade Unions and to hear the Trade Unions in the certification proceedings. Thus, the Trade Union is given a right to be heard, while framing the conditions of service of the workmen. While submitting draft standing orders, Section 3 of the Standing Orders Act contemplates that the draft standing orders shall be in conformity with the Model Standing Orders. Section 4 of the Act makes it clear that it is the duty of the Certifying Officer to adjudicate on reasonableness of the provisions of the Standing Orders. Hence, while

certifying any standing orders, the Certifying Officer, taking into account the above principles, should ensure that the workman is given assistance

by the office bearer of the Trade Union in the domestic enquiry, to which the workman is a member.

57. Therefore, I am of the considered opinion that the Government of Tamil Nadu also should make a provision in the Model Standing Orders, as

has been made by the Central Government in the Model Standing Orders framed by them in Rule 14(4)(ba) of the Industrial Employment

(Standing Orders) Central Rules 1946, taking into account the Scheme of the Industrial Disputes Act, the Trade Unions Act and the Standing

Orders Act and more particularly, the codification of unfair labour practices in the year 1984 in the Industrial Disputes Act, as stated above.

58. With these observations, all these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

59. The Registry is directed to circulate this judgment to the Secretary to Government, Labour and Employment Department, Government of Tamil

Nadu, for being circulated to the Certifying Officers under the Standing Orders Act and for incorporating necessary provision in the Model

Standing Orders as per Rule 14(4)(ba) of the Industrial Employment (Standing Orders) Central Rules 1946.