

(1991) 03 RAJ CK 0025
In the Rajasthan High Court
Case No : .C.S. A. No. 30 of 1989

Derby Textiles Ltd.

APPELLANT

Vs

Mahamantri, Derby Textiles Karmachari and Shramik Union

RESPONDENT

Date of Decision : 27-03-1991

Acts Referred:

Advocates Act, 1961 — Section 32
Civil Procedure Code, 1908 (CPC) — Order 3 Rule 1
Constitution of India, 1950 — Article 226, 32
Industrial Employment (Standing Orders) Act, 1946 — Section 10, 13(2), 4, 5(2), 6

Citation : (1994) 3 LLJ 528 : (1991) 2 WLN 99 : (1991) 1 WLN 256

Hon'ble Judges : Y.R. Meena, J; Jasraj Chopra, J

Bench : Division Bench

Advocate : M.R. Singhvi, for the Appellant; Mohan Poonamiya, President, Rajasthan Trade Union Centre, for the Respondent

Final Decision : Allowed

Judgement

J.R. Chopra, J.

1 This appeal is directed against the judgment of the learned single judge of this Court dated 4.9.1989 whereby the learned single judge has maintained the award rendered by the Industrial Tribunal & Labour Court, Jodhpur dated 16.6.1989.

2. The facts necessary to be noticed for the disposal of this special appeal briefly stated are : that the labourers of the petitioner-company went on strike on 11.12.1986 and with the intervention of the Labour Commissioner, Govt. of Rajasthan, Jaipur the matter was settled and the strike was called off on 22.4.1987. On 22.4.1987, all the labourers of the petitioner company along with the office bearers of the respondent Union were taken back on duty. However, on the very next day, a chargesheet was served on Shri Jabarsingh, Bhanwarsingh, Ranidansingh, Kanti Prasad, Bhoor Singh, and Markandey on 23.4.1987. A reply was filed by the aforesaid labourers and it was prayed that they should be

allowed to be defended by the Trade Union Leaders Shri Iqbal Singh and Shri Gopikishan. This prayer was rejected by the Management of the petitioner company and, therefore, the aforesaid six labourers refused to participate in the enquiry and the enquiry proceeded ex parte. The services of these six labourers were terminated.

3. An industrial dispute was raised and it was referred to the Industrial Tribunal by an order of the appropriate Govt. dated 17.3.1988. This industrial dispute was raised by the respondent-Union on behalf of aforesaid six labourers. Both the parties filed their claims. The termination was challenged on two grounds; firstly, that in not allowing the respondent-Union's workers to represent the cases of the aforesaid six labourers by Trade Union leaders Shri Iqbal Singh and Shri Gopikishan, who were not employees of the petitioner company, the principles of natural justice have been violated and, secondly that no interim relief was granted to the aforesaid six labourers and, therefore, their termination was wrong. So far as the question of interim relief is concerned, that ground was rejected by the Industrial Tribunal. However, it was held that refusal to grant permission to the respondent Union to represent the cases of the aforesaid six labourers by Trade Union leaders Shri Iqbalsingh and Shri Gopikishan is violative of the principles of natural justice and hence, the enquiry cannot be held to be sustainable. The Tribunal set aside the order of the domestic enquiry and directed that the petitioner-company should produce the documents and affidavits to establish the charges against the labourers before the Court. It was against this order that the petitioner company filed a writ petition before this Court and that writ petition came to be dismissed and hence this special appeal.

4. In this case, the respondent Union is represented by Shri Mohan Poonamiya, President of the Rajasthan Trade Union Centre, to which, the respondent Union is affiliated.

5. Mr. M.R. Singhvi, the learned counsel appearing for the appellant has contended that Shri Mohan Poonamiya has no right to represent the respondent Union. He has submitted that as per s. 30 of the Advocates Act, 1961, it is only an Advocate who can represent a party in the Court. According to him, Shri Mohan Poonamiya, President Rajasthan Trade Union Centre, Jaipur is not an advocate, whose name is entered in the State Roll of the Bar Council of Rajasthan and, therefore, he cannot represent the case of the respondent Union.

6. On the other hand, it was submitted by Shri Mohan Poonamiya that it is open to a person who is party to a proceeding to get himself represented by a non-advocate in a particular instance or case. In support of his submission, he has placed reliance on the decision of their lordships of the Supreme Court in *Harishankar v. Girdharj* AIR 1978 SC-1019 wherein it was observed in para 4 as under:

"A private person, who is not an advocate, has no right to barge into Court and claim to argue for a party. He must get the prior permission of the Court, for

which the motion must come from the party himself."

It was further observed as follows :

"It is open to a person, who is party to a proceeding to get himself represented by a non-advocate in a particular instance or case".

It was submitted by Shri Mohan Poonamiya that in this case, the respondent-Union is representing the cases of labourers and the respondent-Union is affiliated to the Rajasthan Trade Union Centre, Jaipur and, therefore, its President is very much interested in a dispute relating to the labourers, who are the members of its affiliated Union. Moreover, he has submitted that Section 32 of the Advocates Act, 1961 authorises the Court to permit any person, who is not enrolled as an Advocate to appear before it in a particular case. In this case, Shri Mohan Poonamiya, President, Rajasthan Trade Union Centre, Jaipur has already filed an application u/s 32 of the Advocates Act to seek such permission in the instant case and the respondent-Union is affiliated with the Rajasthan Trade Union Centre, Jaipur and, therefore, Shri Mohan Poonamiya, President, Rajasthan Trade Union Centre, Jaipur can very well be permitted to represent the respondent-Union for an effective decision of the matter in dispute. Thus, Shri Mohan Poonamiya, President Rajasthan Trade Union Centre, Jaipur is permitted to appear and argue the case on behalf of respondent No. 1.

7. In this view of the matter, the preliminary objection raised by Mr. M.R. Singhvi, the learned counsel for the appellant stands disposed of accordingly.

8. Mr. M.R. Singhvi, the learned counsel appearing for the appellant has submitted that the appellant M/s. Derby Textiles Limited, Jodhpur has promulgated its own Standing Orders which have been certified by a competent authority. The copy of the Standing Orders has been filed alongwith the certificate that has been issued by the Certifying Officer i.e. Joint Labour Commissioner (Head Quarters), Jaipur. The aforesaid order of the Certifying Officer bearing No. F.7(40) S. O/Shram/83 dated 5.6.1984 clearly shows that the appellant M/s. Derby Textiles Limited, Jodhpur applied for certificate of draft Standing Orders and those draft Standing Orders were sent to Derby Textiles Sramik Congress, a union of workers by the aforesaid name working in that organisation. Both the parties were called for hearing on various dates and the objections filed by the Union were taken into consideration. However, on 12.3.1984, the representatives of the Union have stated that they have no objection and suggestions to make in the draft Standing Orders received by them and it was agreed by both the parties that the draft Standing Orders may be certified keeping in view the provisions of the Industrial Employment (Standing Orders) Act, 1946. Accordingly, those Standing Orders were certified.

9. Section 4 of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as "the Act") provides that Standing Orders shall be certifiable under this Act if (a) provision is made therein for every matter set out in the Schedule which is applicable to the Industrial Establishment; and (b) the

Standing Orders are otherwise in conformity with the provisions of this Act; and it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any Standing Orders. Any person aggrieved by the order of the Certifying Officer u/s 5(2) may file an appeal to the appellate authority u/s 6 of the Act. Such Standing Orders finally certified under the Act cannot be changed without the agreement between the employer and the workmen as per Section 10 of the Act. Section 13(2) of the Act lays down that an employer who does and act in contravention of the Standing Orders finally certified under this Act for this industrial establishment shall be punishable with fine which may extend to one hundred rupees and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues. Thus, the contravention of the Standing Orders certified by the competent authority has been made punishable u/s 13 of the Act.

10. It was argued by Mr. M.R. Singhvi the learned counsel appearing for the appellant that the scheme and object of the Act clearly show that it was not intended by the legislature that different sets of conditions should duty to employees depending on whether a workman was employed before the Standing Orders were certified or after and if the intention was otherwise, it would lead to industrial unrest and not industrial peace, the latter being the principal object of the legislation. He has further submitted that after the amendment of the law in 1956, the Certifying Officer and the appellate authority are duty-bound to examine the question of fairness of the Standing Orders and there can be no justification now not to give effect to the principle of uniformity of conditions of the service, which is clearly contemplated by the provisions of the Act. In this respect, he has placed reliance on a decision of their lordships of the Supreme Court in *United Provinces Electric Supply Co. Ltd. v. T.N. Chatterjee and Ors.*, : 1972) 2 LLJ 9 wherein it was observed as follows:

"The scheme and object of the Act clearly show that it was not intended by the legislature that different sets of conditions should apply to employees depending on whether a workman was employed before the Standing Orders were certified or after. If the intention was otherwise, it would lead to industrial unrest and not industrial peace, the latter being the principal object of the legislation. After the amendment of the law in 1956 the certifying officer and the appellate authority are duty bound to examine the question of fairness of the Standing Orders and there can be no justification now not to give effect to the principle of uniformity of conditions of service which is clearly contemplated by the provisions of the Act".

This authority decides two points : firstly that the Standing Orders acquire the statutory character, which bind all workmen whether they joined the Organisation prior to the certifying of the Standing Orders and thereafter and, secondly that once the Standing Orders are certified by the competent authority, it will be presumed that these Standing Orders are fair and reasonable because it is the

duty of the Certifying Officer and the appellate authority to adjudicate upon the fairness or reasonableness of the provisions of the Standing Orders.

11. While placing reliance on a decision of the Allahabad High Court in *W.I. Match Cd. v. Rameshwar*, 1971 LIC 1447, it was argued by Mr. Singhvi that after the Standing Orders were certified, they acquire the statutory force and hence, they become statutory terms of employment between the industrial employer and his employees. In this respect, Mr. Singhvi further placed reliance on a decision of their lordships of the Supreme Court in *W.I. Match Co. v. Workmen* 1973 SCC (L & S) 531 (which appears to be appellate judgment of *I. Match Co.'s case* 1971 LIC 1447, wherein it has been observed that as long as the Standing Order is in force, it is binding on the company as well as the workmen. To uphold the special agreement would mean giving a go-by to the Act's principle of three party participation in the settlement of terms of employment. So the inconsistent part of the special agreement is ineffective and unenforceable.

It was further observed as follows:

"The terms of employment specified in the Standing Order would prevail over the corresponding terms, in the service in existence on the enforcement of the Standing Order. While the Standing Orders are in force, it is not permissible to the employer to seek statutory modification of them so that there may be one set of Standing Orders for some employees and another set for the rest of the employees".

In *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd.*, : 1984 (2) LLJ 223 it was held by their lordships of the Supreme Court that certified Standing Orders become statutory conditions of service and any other rules framed by a company for the employees get incorporated in the statutory conditions of service. If any provision of such rules read with Standing Orders confer absolute and unfettered discretion on the employer to allow or disallow rightful claim of employees, that would be unfair and unreasonable as also arbitrary and subject to test of Article 14. It was further observed as follows:

"The Standing Orders Act endeavoured the imposition of a statutory contract of service between two parties unequal to negotiate, on the footing of equality. The Standing Orders certified under the Act become part of the statutory terms and conditions of service between the employer and his employee and they govern the relationship between the parties. A fact of collective bargaining is that any settlement arrived at between the parties would be treated as incorporated in the contract of service of each employee governed by the settlement. A presumption of more or less systematic translation of the results of collective bargaining into individual contracts is created where these results are in practice operative and effective in controlling the terms on which employment takes place. As such Certified Standing Orders which statutorily prescribe the conditions of service shall be deemed to be incorporated in the contract of employment of each employee with his employer".

A Division Bench of this Court in *S. Ghosh and Others Vs. Dulia and Others*, has held that the Standing Orders framed in accordance with the Industrial Employment (Standing Orders) Act had the force of law.

12. It is, therefore, clear from the aforesaid authorities that the Standing Orders are binding on the employer as well as employees and the Standing Orders certified under the Act become part of the statutory terms and conditions of service between the employer and his employees and they govern the relationship between the parties. In this case, the Standing Orders do exist and they have been certified by the Certifying Officer.

13. Sub-clause (i) of Clause 29 of the Standing Orders of M/s. Derby Textiles Limited, Jodhpur reads as follows:

"29. Procedure for dealing with cases for misconduct :

(i) If a misconduct or misconducts are alleged against a workman, the management, before taking any action against him held an enquiry by any Officer appointed for the purpose. He shall be given a chargesheet, clearly setting forth the charges or allegations against him and requiring him to explain. He will be informed in writing about the appointment of Enquiry Officer and time and place for the enquiry. Subsequent dates if required for enquiry will be fixed by the Enquiry Officer. Workman will be given full opportunity to explain his conduct and produce his defence before the Enquiry Officer. He will be allowed to seek assistance of any co-worker of his choice. Workman will not be allowed to seek assistance of any legal practitioner before the Enquiry Officer. Similarly, the Presenting Officer from the management side will not be a legal practitioner. The Enquiry Officer shall record the proceedings of the enquiry and in the enquiry report, a concise summary of the evidence and pleas of both the parties and finally the findings shall be recorded".

14. It was contended by Mr. M.R. Singhvi, the learned counsel appearing for the appellant that as per Clause 29 of the Standing Orders, a workman can seek assistance of any co-worker of his choice but no workman can be allowed to seek assistance of legal practitioner before the Enquiry Officer. According to him, even the Presenting Officer from the management side cannot be a legal practitioner. It was further submitted that the aforesaid six labourers against whom enquiries were initiated requested that they should be assisted by Shri Iqbalsingh and Shri Gopikishan, Trade Union leaders, who are not employees of the appellant-Organisation. Even they are not Office-bearers of the respondent-Union. According to Mr. Singhvi, Trade Union Leaders Shri Iqbalsingh and Shri Gopikishan are outsiders and, therefore, as per Clause 29 of the Standing Orders the appellant was perfectly justified in refusing to provide assistance of outsiders i.e. Shri Iqbalsingh and Gopikishan to the aforesaid six labourers, against whom enquiries were initiated. It was also contended by Mr. Singhvi that Shri Iqbalsingh and Shri Gopikishan are not Office-bearers of the respondent-Union. Moreover, they are not employees of the petitioner-Organisation and, therefore,

seeking assistance of such persons was not contemplated by Clause 29 of the Standing Orders, which has a binding force not only on the management of the appellant-Organisation but also on the workmen and hence, the management of the appellant-Organisation was perfectly justified in refusing to provide assistance of Trade Union leaders Shri Iqbalsingh and Shri Gopikishan to the aforesaid six labourers. It is nobody's case that Clause 29 of the Standing Orders is unreasonable and unjust. It was submitted that no declaration has been sought that Clause 29 of the Standing Orders should be declared to be unjust, unfair and unreasonable and till Clause 29 of the Standing Orders is declared to be unjust, unfair and unreasonable, the workmen and the management of the appellant-Organisation are bound by these Standing Orders because these Standing Orders have statutory binding force.

15. While relying on a decision of their lordships of the Supreme Court in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, it was contended by Shri Mohan Poonamiya that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable clause in a contract, entered into between the parties who are not equal in bargaining power. This is not a case of contract between the two parties, who are unequal in bargaining power. In this case, the Standing Orders have been certified with the intervention of the State Govt. and thus, it is a tripartite contract.

As stated above the respondent-Union did not take any objection before the Certifying Officer that these Standing Orders are in any way unreasonable or unjust. Even in reply to the writ petition, it was not argued that Clause 29 of the Standing Orders is in any way unreasonable, unfair and unjust and, therefore, *Central Inland Water Transport Corporation Ltd.* 's case (*supra*) has no application to the facts of the present case.

16. Reliance was also placed on a decision of their lordships of the Supreme Court in *Workmen of Hindustan Steel Ltd. and Another Vs. Hindustan Steel Ltd. and Others*, In that case Standing Order No. 32 nowhere obligated the General Manager of a plant belonging to Hindustan Steel Ltd. to record reasons for dispensing with the inquiry as prescribed by S.O. 31. On the contrary, the language of S.O. 32 enjoined a duty upon the General Manager to record reasons for his satisfaction why it was inexpedient or against the interest of the security of the State to continue to employ the workman. Reasons for dispensing with the inquiry and reasons for not continuing to employ the workman stand wholly apart from each other. In those facts, it was held :

"that a Standing Order which confers arbitrary, uncanalised and drastic power to dismiss an employee by merely stating that it is inexpedient or against the interest of the security to continue to employ the workman are violative of the basic requirement of natural justice inasmuch as the General Manager can impose penalty of such a drastic nature as to affect the livelihood and put a stigma on the character of the workman without recording reasons why

disciplinary inquiry is dispensed with and what was the misconduct alleged against the employee. Hindustan Steel Ltd. to recast S.O. 32 and to bring it in tune with the philosophy of the Constitution".

17. In this case, no arbitrary, uncanalised and drastic powers have been given to the Enquiry Officer by Clause 29 of the Standing Orders. What is contemplated is that a workman, who is a party to the misconduct can have assistance of a co-worker of his choice and he cannot take assistance of any legal practitioner. Even the management of the appellant-Organisation has been restrained from taking assistance of any legal practitioner in the enquiry. Thus, Clause 29 of the Standing Orders does not confer any drastic powers on the Enquiry Officer because the procedure that has been prescribed clearly embodies in it the principles of natural justice i.e. audi alteram partem. The chargesheet has to be served and an Enquiry Officer has to be appointed. Even, the place of enquiry has to be fixed and the workman is provided an opportunity to explain his conduct. The proceedings have to be recorded and evidence has also to be taken. Finally, findings have to be recorded after affording an opportunity of hearing to both the parties. Thus, the procedure appears to be fair and reasonable.

18. It was next contended by Mr. M.R. Singhvi, the learned counsel appearing for the appellant that these Standing Orders have been overlooked by the Tribunal on the ground that there is no prohibition to permit the labourers to avail the assistance of the outsiders. He has submitted that the learned single Judge has also overlooked the binding force of these Standing Orders on the ground that the objectivity in the domestic enquiry is very important and the attitude of the management to stand to the technicalities that the certified Standing Orders bind the delinquent and the management cannot be looked upon with favour, if there is a failure of justice and, therefore, in this background it has held that the course adopted by the Tribunal cannot be said to be wrong. The learned single Judge has considered several authorities cited before him by Mr. Singhvi as also by Mr. Mohan Poonamiya. After considering the decisions of their lordships of the Supreme Court in *N. Kalindi v. T. Locomotive & Engineering Co.* : 1962 (II) LLJ 426 ; *Labour Commissioner, Madhya Pradesh Vs. Burhanpur Tapti Mills and Others*, *C.L. Subramaniam Vs. Collector of Customs, Cochin*, *Board of Trustees, Port of Bombay v. D.R. Nadkarni* 1983 SCC (L & S) 61; *Brooke Bond India (Pvt.) Ltd. v. Subba Roman* 1961 II LLJ 417, the learned single Judge has held:

"In this background we have to consider as to whether the employees received a reasonable opportunity to defend themselves or not. The salient features which stand out in this case are that the Enquiry Officer, who was an employee of the Management was a police personnel, who was legally trained and there was no prosecutor appointed on behalf of the management. Thus, he was prosecutor as well as Judge in the present case. The workmen were pitted against a legally trained person who was presiding as the Enquiry Officer and as an employee of the Management as well as the Public Prosecutor. It becomes very difficult for a

poor workman to defend himself against such a legally trained person. Therefore, the whole matter has to be viewed in this context as to whether the workmen have received a reasonable opportunity or not. From these facts it is clear that the workmen's request for being represented by a person of his choice from outside the establishment cannot be said to be unreasonable. As matter of fact, looking to the present context it would have been in the fitness of things if the management has permitted the employees to be represented by a person to whom the employees wanted to be represented. The fairness in the domestic enquiry should be that justice should not only be done but it should have appeared to be done is applicable with all fairness. It should not lose sight of the fact that the workmen were pitted against the management and the Enquiry Officer is normally an employee of the management.

Therefore, he has to face a basic bias in favour of the management. Thus, it was all the more necessary that while conducting the domestic enquiry, the Management should not normally turn down the reasonable request of the employee to be represented by his co-worker or a worker from other establishment who can objectively against the delinquent".

The gist of the aforesaid discussion made by the learned single Judge is that reasonable opportunity to defend their cases should be provided to the workman and it was in this background that the decision of the learned Tribunal was upheld by the learned single Judge.

19. Mr. M.R. Singhvi, the learned counsel for the appellant has submitted that the Standing Orders are framed on the basis of a tripartite contract, in which the State Govt. also acts as a mediator between the employer and the employees or their Unions and the Certifying Officer also the appellate authority are duty bound to see that Standing Orders are certified only when they are reasonable and fair. According to him, there is a presumption that once the Standing Orders are certified, these Standing Orders have to be treated as fair and reasonable. Mr. Singhvi has submitted that when these Standing Orders were circulated to the respondent-Union, no objection was raised that these Standing Orders are unfair and unreasonable and, therefore, these Standing Orders acquire the character of statutory binding contracts on the management of the appellant-Organisation as also the labourers and as such they cannot be easily brushed aside. They can only be overlooked if the Court feels that they are unfair or unreasonable.

20. We have already observed above that it is nobody's case that these Standing Orders are unfair and unreasonable. The Clause 29 of the Standing Orders prescribes a particular procedure for making enquiries against the delinquent workman. In statutes, conferring powers to be exercised on certain conditions, the conditions prescribed are normally held to be mandatory and a power inconsistent with those conditions is impliedly negated. If an affirmative statute which is introductive of a new law directs a thing to be done in a certain way, that thing shall not, even if there be no negative words, be done in any other

way. It is not at all necessary that the statutes must have provided specifically the exclusion of the assistance of outsiders to the delinquent workmen before the Enquiry Officer. When the Statute has specifically provided the assistance of a co-worker to the delinquent workmen before the Enquiry Officer of their own choice then by necessary implication, the assistance of any outsider is prohibited. This is what has been stated by the learned Author Justice G.P. Singh, Former Chief Justice, M.P. High Court in his treatise Principles of Statutory Interpretation, Fourth Edition 1988, at page 232.:

21. Their lordships of the Supreme Court in *State of Uttar Pradesh v. Singhara Singh* AIR 1964 SC-358, while relying on the principles laid down in *Taylor v. Taylor* 1876 1 Ch.D-426, which were followed by their lordships of the Privy Council in AIR 1936 253 (Privy Council) have held that the principle that where power is given to do a certain thing in a certain way, one thing must be done in that way or not at all and that the other methods of performance are necessarily forbidden applies to Judicial Officers making a record u/s 16 and the quasi-judicial authorities and it can safely be extended to the domestic enquiries as well. This very principle has been reiterated by their lordships of the Supreme Court in a recent decision in *A.K. Roy and Others Vs. Union of India (UOI) and Others*, It was, therefore, contended by Mr. Singhvi that the use of negative language is not at all necessary and, therefore, the view taken by the learned Tribunal that as the outsider's assistance to workman before the Enquiry Officer has not been specifically excluded in Clause 29 of the Standing Orders, it has to be presumed that such assistance can be provided to a workman, cannot be sustained. If it was the intention of the legislature to provide for the outside assistance, it should have provided for it in the Standing Orders. He has submitted that the Courts cannot supply the concept which is not contained in the Standing Orders. According to him, the Courts are not usually to legislate but they are only to interpret the law. In this respect, reliance has been placed on a decision of their lordships of the Supreme Court in *The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur*, wherein it has been observed:

"If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a *casus omissus* in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so, would be entrenching upon the preserves of the legislature, the primary function of a Court of law being just *dicere* and not *decre*".

22. The same view has been expressed by their lordships of the Supreme Court in a recent decision: in *Punjab Land Development & Reclamation Corporation Ltd. v. Presiding Officer, Labour Court* : 1990 (II) LLJ 70 wherein it has been held that the gaps in the provision should be remedied by legislature by amendment and

the Court has only to interpret a statute and apply it to the facts.

23. The learned Author B.R. Ghaiya in his treatise "Law and Procedure of Departmental Enquiries" (In Private and Public Sectors) (Volume-I) (Third Edition) at pages 16-17 under the Head "The Principles of Natural Justice are implied in Standing Orders" has stated that a statutory provision will be construed as implied in the principles of natural justice except when the said provision expressly provides otherwise. It was submitted by Mr. Singhvi that providing reasonable opportunity to defend his case covers the principle of natural justice. According to him, the Standing Orders provide for a particular procedure and that procedure alone has to be followed unless it is held that that is violative of the principle of natural justice. The principles of natural justice are very much inherent in the provisions. He has submitted that the rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. Their aim is to secure justice to prevent miscarriage of justice and as per the decision of their lordships of the Supreme Court in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, these rules can operate only in areas not covered by any law validly made and they do not supplant the law but supplement it. If a statutory provision can be read consistently with the principles of natural justice, the Courts should do so. But if a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice then the Court cannot ignore the mandate of the legislature of the statutory authority and read into the concerned provision the principles of natural justice. Where, the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

24. In this case, Clause 29 of the Standing Orders clearly provides for the issuance of a chargesheet, opportunity to give reply, led evidence and right of hearing coupled with the right to get himself defended with the assistance of a co-worker of his own choice. Thus, enough safeguards are provided in the Standing Orders whereby a workman can reasonably defend his case before the Enquiry Officer.

25. At this stage, it was contended by Shri Mohan Poonamiya that the industrial relations are ever changing branch of law where static rule of precedence cannot concern the relationship between the employer and employees. He has submitted that it is an old concept that Judges cannot make the law. In this respect, he has placed reliance on a decision of their lordships of the Supreme Court in *Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc.*, wherein it has been observed that it used to be disputed that Judges make law. Today, it is no longer a matter of doubt that a substantial volume of the law governing the lives of citizens and regulating the functions of the State flows from the decisions of superior Courts. It was further observed that the judicial search for solutions

responsible to a changed social era involves a search not only among competing propositions of law. or competing versions of a legal proposition, the modalities of an indeterminacy such as fairness or reasonableness, but also among propositions from outside the ruling law, corresponding to the empirical knowledge or accepted values of present time and place, relevant to the dispensing of justice within the new parameters. It was also observed that yet the law must meet the need to adjust itself in a forever changing society.

26. Shri Mohan Poonamiya also referred to a decision of their lordships of the Supreme Court in Punjab Land Development and Reclamation Corporation Ltd."s case (supra) wherein it has been observed that in a fast developing branch of industrial and labour law, it may not always be of particular importance to rigidly adhere to a precedent, and precedent may need be departed from if the basis of legislation changes. It was, therefore, contended by Shri Mohan Poonamiya that in this particular branch of industrial and labour law, which deals with human relationship between the employer and the employees, the Judges should have an attitude that Justice should not only be done but it seems to have been done or looked to have been done.

27. It was contended by Mr. Mohan Poonamiya that in this case, the prosecuting as well as the Presenting Officer who was appointed by the Management of the appellant-Organisation has been a retired Dy. Superintendent of Police and, therefore, he was a legal man and hence, it was essential for the management of the appellant-Organisation to have allowed the labourers the assistance of Shri Iqbalsingh and Shri Gopikishan, the Trade Union leaders to defend their cases fairly and reasonably and in such matters, the Standing Orders can be overlooked. He has submitted that it is true that earlier in N. Malindi"s case (supra), their lordships of the Supreme Court have held that a workman is not entitled as of right to get assistance even of a representative of the Union, if the Standing Orders do not so provide but later, their lordships of the Supreme Court in Dunlop Rubber Co."s case (supra) have held that if the Standing Orders provide that a workman can get assistance of a representative of the Union, which is registered under the Indian Trade Union Act, in a domestic enquiry, then he cannot claim assistance of another representative of an unrecognised Union. According to him, these decisions have to be ignored in the context of the fast developing concept of the industrial and labour law. These two decisions were considered by their lordships of the Supreme Court in C.L. Subramanian"s case (supra), wherein it has been observed that if the Govt. has appointed a trained prosecutor to represent the case against a Govt. servant, the refusal to permit a Govt. servant to engage a legal practitioner vitiates the enquiry.

28. Their lordships of the Supreme Court in the Board of Trustee"s case (supra) have observed that even in a domestic enquiry, there can be very serious charges and adverse verdict may completely destroy the future of the delinquent employees. The adverse verdict may so stigmatize him that his future would be bleak and his reputation and livelihood should 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 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 as presenting-cum-prosecuting officers and the delinquent employees pitted against such a 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 employees 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 complete or simple issues that may arise in the course of enquiry, the delinquent employees in order to afford reasonable opportunity to defend himself should be permitted to appear through a legal practitioner.

29. Likewise reliance was placed on a decision of their lordships of the Supreme Court in Venkatraman Sambamurthy Vs. Union of India and another, wherein it has been held that the term "Legal Practitioner" is not confined to legal practitioners as the words are commonly understood and it means a legally trained mind with activity and experience. In that case, the Prosecuting Officer was not a legal practitioner as commonly understood but he was an experienced officer with number of domestic enquiries to his credit where he has acted as a prosecutor. Because of the experience of the Prosecuting Officer, it was held that he had a legally trained mind and he was pitted against the Officer who had never took part in any domestic enquiry and, therefore, it was held that legal assistance should have been provided to the delinquent.

30. Shri Mohan Poonamiya has submitted that looking to the forward march of the law as has been laid down by their lordships of the Supreme Court in the aforesaid two authorities, it was absolutely just and correct on the part of the learned Tribunal as also on the part of the learned single Judge to have held that the domestic enquiry conducted by the management of the appellant - Organisation was unfair and unreasonable as no effective opportunity to defend their cases was provided to the labourers.

31. We have considered these submissions of Shri Mohan Poonamiya and we are unable to accept them so far as this case is concerned. In the case of C.L. Subramaniam Vs. Collector of Customs, Cochin, the Govt. was assisted by a legally trained person and, therefore, it was felt by their lordships of the Supreme Court that refusal to permit a Govt. servant to engage a legal practitioner would amount to the denial of reasonable opportunity to the workman. Likewise in Board of Trustee's case (supra), it has been held that if the Rules do not place any embargo to be represented by a legal practitioner and

the prosecuting and Presenting Officer has a legal mind then the denial of assistance of legal man to delinquent official would amount to the denial of reasonable opportunity to defend his case, which will be against the principles of natural justice. Here, in this case, the Standing Orders clearly put an embargo on taking any assistance of a legal practitioner. It is nobody's case that the retired Deputy Superintendent of Police is a legal practitioner. Of course in Venkataraman Subbamarthy's case (supra), it has been held that though the Prosecuting Officer is not a legal practitioner as commonly understood but if he is an experienced Officer with number of domestic enquiries to his credit where he has acted as a Prosecutor then he can be taken to be a legally trained mind. In this case, it has never been contended that the Enquiry Officer is a prosecutor of that type, who has number of domestic enquiries to his credit, in which he has acted as a prosecutor and, therefore, there is no reason to hold that he has a legally trained mind. Moreover, in the application, that has been filed by the Workmen (Labourers), they have never claimed that the Prosecuting Officer or the Enquiry Officer is a legally trained mind and, therefore, they should be provided with the assistance of a legal man. Their only contention is that the charges framed against them are related to their Union activities and, therefore, they should be provided assistance of Trade Union leaders Shri Iqbalsingh and Shri Gopikishan. Thus, the very foundation on which this argument has been built cannot help the case of the respondent-Union.

32. Mr. M.R. Singhvi, the learned counsel appearing for the appellant organisation has contended that the decisions rendered by their lordships of the Supreme Court in N. Kalindi's case (supra) and Dunlop Rubber Co.'s case (supra) have been rendered by a Bench of three Hon'ble Judges whereas the decisions rendered in Board of Trustee's case (supra) and Venkataraman Subbamarthy's case (supra) have been rendered by a Bench of two Hon'ble Judges and, therefore, the decisions in Board of Trustees' case (supra) and Venkataraman Subbamarthy's case (supra) cannot overrule the decisions of the larger Bench in N. Kalindi's case (supra) and Dunlop Rubber Co 's case (supra). In this respect, our attention has been drawn to a decision of their lordships of the Supreme Court in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., wherein it has been held that what has been laid down in Motilal Sugar Mills case 1979 2 SCC 408 in this regard is the correct law. A different view taken in a subsequent decision in Jit Ram v. State of Haryana pressing Court's disagreement with the observations made in Motilal Sugar Mills case cannot prevail. A Bench of two Judges in Jit Ram could not overturn or disagree with what was said by another Bench of two Judges in Motilal Sugar Mills. If the two judge Bench in Jit Ram's case found themselves unable to agree with the law laid down in Motilal Sugar Mills case, they could have referred Jit Ram's case to a larger Bench.

33. The same view has been expressed by their lordships of the Supreme Court in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., wherein after making a thorough discussion in paras 18 to 27, it has been

observed by their lordships in para 28 as under:

"We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the full Court or a Constituent Bench of the Court. We would, however, like to think that for the purpose of imparting certainty and endowing due authority decision of this Court in the future should be rendered by Division Benches of at least three Judges unless, for compelling reasons that is not conveniently possible."

However, inspite of arriving at this conclusion, their lordships have further observed that the doctrine of precedent is a cardinal feature of the hierarchical character of the Indian Judicial system and, therefore, it is important that the law declared by the highest Court be certain, clear and consistent. It was further observed that the dilemma that a Judge has to face is either to follow the precedent or set out norms to meet the changed social context but whatever the degree of success in resolving the dilemma, the Court would do well to ensure that although the new legal norm chosen represents a departure from the previously ruling norm, it must nevertheless carry within it the same principle of certainty, clarity and stability. The reconciliation lies in keeping both objectives in view, that the law shall be certain and that it shall be just and shall move with the times. For the Court, there are limits to what it can and should do. The extension of the law must be by development and application of fundamental principles. The introduction of arbitrary conditions and limitations must be left to the legislature. It was also observed that the right of the Supreme Court of India to overrule its previous judgments when thought fit to keep pace with the need of changing times has never been in doubt after Bengal Immunity case. It can, therefore, be concluded that the decisions rendered by their lordships of the Supreme Court can be changed by a larger Bench and not by a smaller Bench. If the smaller Bench differs from the views taken by the larger Bench, then it has to refer the matter to the larger Bench but in following the precedents, the ratio decidendi of the earlier decisions has to be taken into consideration. The subsequent benches may narrow or widen the scope of the ratio decidendi in the earlier case specially in the fast developing branch of labour and industrial law. This is what has been observed by their lordships of the Supreme Court in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, wherein the earlier decision of the Constitution Bench in Hari Prasad's case 1957 I LLJ 243 was departed from in The State Bank of India Vs. Shri N. Sundara Money, and while referring the Hari Prasad's case, it was held that its ratio did not extend beyond a case of termination on the ground of closure and as such it would not be correct to say that the subsequent decisions ignored a binding precedent. It was held that the doctrine of ratio decidendi has also to be interpreted in the same line. To consider the ratio decidendi has to ascertain the principle on which the case was decided. The ratio decidendi of a decision may be narrow or widened by

the Judges before whom it is cited as a precedent. In the process, the ratio decidendi which the Judges who decided the case would themselves have chosen may be seen different from the one which has been approved by subsequent Judges and a distinction has to be made between the ratio decidendi and the obiter dicta.

34. It is true that the decisions of their lordships of the Supreme Court in *N. Kalindi* 's case (supra) and *Dunlop Rubber Co.*'s case (supra) have been rendered by a Bench consisting of three Hon'ble Judges of the Supreme Court but their scope is limited to the interpretation of the opportunities provided by the Standing Orders. In *Board of Trustees* s case (supra) and in *Venkatraman*'s case (supra), their lordships of the Supreme Court were not concerned with the interpretation of the Standing Orders. They were only concerned with the particular situation that in the domestic enquiry, the prosecuting or the Enquiry Officer against whom the delinquent was pitted was a legally trained person and, therefore, it was held that to provide a reasonable opportunity to defend his case to the delinquent, he should be allowed to have the assistance of a legally trained person. This situation totally differs from the one which was under challenge before their lordships of the Supreme Court in *N. Kalindi*'s case (supra) and *Dunlop Rubber Co.*'s case (supra) and, therefore, to this extent, it cannot be said that these decisions are per incuriam i.e. they have been rendered in ignorance of the earlier decisions of their lordships of the Supreme Court as has been canvassed by Mr. Singhvi. However, so far as this particular case is concerned, it is nobody's case that the Enquiries Officer is a legally trained person or a legally trained prosecutor and, therefore, the labourers should be provided assistance of legally trained person and, therefore, the authorities which have been cited by Mr. Mohan Poonamiya have no application to the facts of the present case. In this case the assistance has been sought by the labourers of Trade Union leaders Shri Iqbalsingh and Shri Gopikishan. They have no concern with the appellant-Organisation and therefore, seeking assistance of Trade Union leaders was against the spirit of Clause 29 of the Standing Orders of the appellant-Organisation. Thus, the assistance of Trade Union leaders Shri Iqbalsingh and Shri Gopikishan to the labourers has rightly been refused by the management of the appellant -organization and it does not amount to denial of reasonable opportunity to the delinquent workmen to defend their cases before the Enquiry Officer. Even if the Enquiry Officer decides or has decided something against the workmen, still they have an opportunity to raise an Industrial Dispute before the appropriate Tribunal on the ground that the domestic enquiry has not been made properly or the decision arrived at by the Enquiry Officer is unreasonable. The workmen can approach this Court under Article 226 of the Constitution or Hon'ble Supreme Court under Article 32 of the Constitution to get these enquiries set aside. The Standing Orders have been certified with the consent of their Union and, therefore, they are bound to follow these Standing Orders.

35. It has been observed by their lordships of the Supreme Court in *Union of*

India (UOI) and Another Vs. Cynamide India Ltd. and Another etc., that the legislative action, plenary or subordinate is not subject to rules of natural justice. In the case of parliamentary legislation, the proposition is self-evident. In the case of subordinate legislation it may happen that Parliament may itself provide for a notice and for a hearing. There are several instances of the legislature requiring the subordinate legislating authority to give public notice and a public hearing before say, for example, levying a municipal rate in which case the substantial non-observance of the statutorily prescribed mode of observing natural justice may have the effect of invalidating the subordinate legislation. In *Carborundum Universal Ltd. Vs. Central Board of Direct Taxes, New Delhi*, their lordships of the Supreme Court have observed that where a statutory provision does not exclude natural justice, the requirement of affording an opportunity of being heard can be assumed, particularly when the proceedings are quasi-judicial. Exclusion, however, can either be by a clear provision or inferred from the scheme, as also the nature of power which is being exercised. It was further observed that the personal hearing in every situation is not necessary and there can be compliance of the requirements of natural justice of hearing when a right to represent is given and the decision is made on a consideration thereon.

36. It was contended by Shri Mohan Poonamiya that the enquiries contemplated against the delinquent workmen have resulted in their removal from service and therefore, they have affected their livelihood. In *Union of India and Another Vs. Tulsiram Patel and Others*, it has been observed by their lordships of the Supreme Court that the livelihood of an individual is a matter of great concern to him and his family but his livelihood is a matter of his private interest and where such livelihood is provided by public exchequer and the taking away of such livelihood is in the public interest and for public good, the former must yield to the latter. Their lordships of the Supreme Court in *Jain Exports (P) Ltd. and Another Vs. Union of India (UOI) and Others*, have observed that the observance of the rules of natural justice is not referable to the fatness of the stake but is essentially related to the demands of a given situation. The position here is covered by statutory provisions and it is well settled that the rules of natural justice do not supplant but supplement the law.

37. While considering the provisions of Clause 29 of the Standing Orders, we have already held that enough safeguards with regard to the principles of natural justice have been provided in Clause 29 of the Standing Orders. Simply because the Clause 29 of the Standing Orders does not provide for the assistance of any outsiders, it does not mean that the Standing Orders are unfair and unreasonable. The principles of natural justice; have come to be recognised as being a part of the guarantee contained in Art. 14 because of the new and dynamic interpretation given by the Supreme Court to the concept of equality which is the subject-matter of that Article. They are not statutory rules and they can be modified or even they can be excluded in exceptional cases. As stated above, enough safeguards with regard to the principles of natural justice have been provided in Clause 29 of the Standing Orders.

38. Shri Mohan Poonamiya while placing reliance on A.R. Roy's case (supra) has submitted that the Courts can strike down any unfair and unreasonable clause in a contract entered into between the parties, who are not equal in bargaining power. Of course, this principle is deducible from various decisions but it is not a case of private contract. The Standing Orders are the result of a tripartite contract between the employees, employer and the State Govt. and unless the Certifying Officer satisfies himself about the fairness and reasonableness of the Standing Orders, he cannot certify the Standing Orders. Under these circumstances, this authority has no application to the facts of the present case.

39. The upshot of the above discussion is that in view of the provisions of Clause 29 of the Standing Orders of the appellant -Organisation, the management of the appellant-Organisation was perfectly justified in refusing to grant assistance of outsiders i.e. Trade Union leaders Shri Iqbalsingh and Shri Gopikishan to the delinquent labourers and, therefore, on that account, the enquiries held and concluded against the delinquent labourers cannot be held vitiated and it cannot be said that the labourers have not been provided reasonable opportunity to defend their cases before the Enquiry Officer. Thus, the impugned judgments of the learned Tribunal dated 16.6.89 as also of the learned single Judge dated 4.9.1989 deserve to be set aside.

40. In the result, this appeal is allowed and the impugned judgments of the learned Industrial Tribunal and Labour Court, Jodhpur dated 16.6.1989 as also of the learned single Judge dated 4.9.1989 are set aside and the case is remanded back to the learned Industrial Tribunal and Labour Court, Jodhpur for deciding it on merits according to law.

41. In the facts and circumstances of this case, the parties are left to bear their own costs.