

(1996) 02 GUJ CK 0010

In the Gujarat High Court

Case No : Special Civil Application No. 9689 of 1995

K.M. Bhatt

APPELLANT

Vs

Regional Manager, Dena Bank and Another

RESPONDENT

Date of Decision : 23-02-1996

Acts Referred:

Citation : (1997) 3 GLR 2495

Hon'ble Judges : C.K.Thakker, J

Bench : Single Bench

Advocate : I.S. Supehia, for the Appellant; K.M. Patel, for the Respondent

Judgement

C.K. Thakker, J.—This petition is filed by the petitioner for an appropriate writ, direction or order quashing and setting aside a letter-cum-communication dated October 19, 1995, Annexure E to the petition, issued by the Inquiry Officer appointed by the Regional Manager, Dena Bank, Respondent No. 1 herein, by which an application of the petitioner dated October 17, 1995 to represent his case through an Advocate came to be rejected. A prayer is also made that the petitioner may be allowed to remain present and defend at the inquiry by taking assistance of a lawyer and the said inquiry can be proceeded only after supply of necessary documents as asked by him vide his letter October 17, 1995. Interim relief is also prayed not to proceed with the inquiry during the pendency of the petition.

2. After the notice was issued by this Court, the respondents appeared and an affidavit-in-reply is filed by one L. T. Upadhyay, Manager (Personnel), Bhuj Region of the respondent-Bank.

3. The case of the petitioner is that he was serving as Typist-cum-Clerk with the respondent-bank and at the relevant time, he was at Bhuj. A charge-sheet came to be issued to the petitioner on July 19, 1995 containing serious allegations. It was, inter alia, alleged that on June 20, 1995, he had left the branch at about 2.55 p.m. leaving about 20 to 25 vouchers pending to be written in the transfer

scroll. The petitioner left the branch without bringing to the notice of in-charge officer, Mr. Joshi, about the incomplete work. At about 3.45 p.m. the petitioner came back. The petitioner was informed about the pending work by Mr. Joshi, but the petitioner interfered when Mr. Joshi attempted to report the said matter to the Branch Manager. In spite of the Branch Manager informing the petitioner not to interfere, the interference was continued. The petitioner also abused Mr. Joshi by using vulgar language. He even raised his hand to slap Mr. Joshi. When Mr. Joshi tried to defend himself, the hand of the petitioner razed with the hand of Mr. Joshi below shoulder. The petitioner also attempted to slap Mr. Joshi again, but other staff members in the meanwhile came there and the petitioner was taken out. Thus, the petitioner had committed gross misconduct within the meaning of clause 19.7 of the relevant bipartite settlement and he was liable to be dealt with in accordance with paragraph 19.7 of the said settlement.

4. The petitioner vide his communication dated 3rd August, 1995 denied the allegations levelled against him. He asked for certain documents so as to enable him to submit his written explanation. It is the case of the petitioner that the said documents were not supplied to him and, in the meanwhile, the inquiry started. On October 17, 1995, the petitioner made an application to the Inquiry Officer, Annexure-D to the petition, wherein it was stated that the inquiry had started on October 10, 1995, but his defence representative could not remain present and, hence, he wanted to defend his case through an Advocate. He, therefore, prayed that necessary permission to engage an Advocate be granted in his favour. As stated above, the said application came to be rejected by the Inquiry Officer on the ground that it is open to the petitioner to engage a representative of a Registered Trade Union of the Bank to which the petitioner is a member. If the petitioner is not a member of any Trade Union of the Bank, he can be represented by a representative of a Registered Trade Union of the Bank in which he is employed or at the request of the said union, a representative of the State Federation or All India Association. But his request for being defended by an Advocate could not be acceded to by the Disciplinary Authority. It is that order by which the petitioner is aggrieved, and is challenged by filing this petition.

5. Various contentions were raised by Mr. I. S. Supehia, learned Counsel for the petitioner. It was contended that the authorities have committed an error of law apparent on the face of the record in not permitting the petitioner to defend his case by engaging an Advocate. The argument was that there is no prohibition either in the bipartite settlement or in any other statute to engage an Advocate. In other words, there is no embargo or bar in engaging an Advocate. The only thing is that an employee cannot, as of right, be represented in a departmental inquiry through a lawyer. In the facts and circumstances of the case, particularly when he could not get a representative at the local level, if a prayer is made to permit the petitioner to defend his case by engaging an Advocate, such a request or demand cannot be said to be unreasonable. On the contrary, by refusing such prayer, the respondent-bank has acted illegally and unlawfully. Mr. Supehia further argued that apart from the rules and regulations, even the principles of

natural justice and fairplay also require that reasonable opportunity of being heard should be afforded to all employees. Serious charges have been levelled against the petitioner. If these charges will be proved, in all probability, it may result in an imposition of a major punishment. When the petitioner's career is at stake and a representative of which the petitioner wanted to get assistance was unable to remain present at the inquiry, an application was made to engage an Advocate, no reasonable man, in the facts and circumstances of the case, would have rejected such prayer. On all these grounds, the petition requires to be allowed by directing the respondent-bank to permit the petitioner to engage an Advocate and to represent his case through a lawyer. A grievance is also made that necessary documents have not been supplied to the petitioner. In view of the fact that the inquiry is still not over, I am not expressing any opinion on that aspect.

6. Mr. K. M. Patel, learned Counsel for the respondent-bank on the other hand, supported the order passed by the authority. Relying upon clause 12 of the bipartite settlement, it was argued that the petitioner cannot claim, as of right, that he should be allowed to be defended by taking assistance of a lawyer. The respondent-bank considered the pros and cons of the matter, the averments and allegations levelled against the petitioner and the fact that the Presenting Officer himself was also neither an Advocate nor a legally trained officer and only then a prayer to permit the petitioner to engage an Advocate was not granted. According to Mr. Patel, engaging a lawyer is never considered to be a part of principles of natural justice. The proceedings before the respondent-bank are not judicial proceedings to which the provisions of the Code of Civil Procedure, Code of Criminal Procedure and Evidence Act would apply. The petitioner, therefore, has no right that he must be permitted to appear through an Advocate. It is no doubt true that, if by refusing a just and reasonable prayer of engaging an Advocate the principles of natural justice and fair-play are violated, the Court can interfere at this stage. But when the allegations levelled against the petitioner are of simple nature, the correctness or otherwise of such allegations can be explained by the petitioner himself and when even the Presenting Officer is neither an Advocate nor a legally trained officer, refusal of prayer made by the petitioner to engage an Advocate can never be said to be arbitrary, unreasonable or unlawful. It is, therefore, submitted that the petitioner cannot make any grievance and that the petition requires to be dismissed.

7. Both the sides have relied upon various decisions of the Hon"ble Supreme Court in this connection. It is not necessary for me to deal with all the cases and details. Suffice it to say that, as per well settled principle of law, right to be represented by a lawyer was not considered to be a part of natural justice either under the English Law or under the Indian Law. It depends upon the facts and circumstances of each case as to whether the principles of natural justice require assistance of a lawyer or an Advocate. If it is so, refusal of such permission may go to the root of the inquiry and the proceedings would be vitiated. If, on the other hand, the questions are not complicated, the allegations levelled against

the delinquent are such that without taking legal assistance he can defend himself effectively and that the inquiry does not involve complicated or complex questions of law, refusal of legal assistance may not be said to be violative of principles of natural justice or violative of fundamental rights guaranteed under the Constitution of India. Strong reliance was placed on the decisions of the Hon''ble Supreme Court in Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, and C.L. Subramaniam Vs. Collector of Customs, Cochin, by Mr. Supehia, In my opinion, neither of the cases support the case of the petitioner. In Dilipkumar's case (supra), a permission to engage an Advocate was refused by the Board, but the respondent was represented by legally trained mind. In these circumstances, the Hon''ble Supreme Court held that the balance will be tilted against the delinquent if, in the light of the facts the petitioner-delinquent will not be allowed to be defended by an Advocate. In C. L. Subramaniam's case (supra) the delinquent was a Class IV employee in Customs Department. According to the Hon''ble Supreme Court, he was not in a position to defend his case inasmuch as he was not able to appreciate the intricacies of law and allegations made against him. Thus, in both the cases, according to the Court, the facts and circumstances required that an application to permit to engage an Advocate ought to have been granted.

8. On the other hand, in Krishna Chandra Tandon Vs. The Union of India (UOI), , an Income Tax Officer was found guilty in departmental inquiry on certain charges including corruption, and was dismissed from service. He was not granted permission to engage an Advocate during inquiry. The dismissal was set aside by the trial Court, but the High Court reversed the decree. When the delinquent approached the Supreme Court, an argument was advanced regarding the services of a lawyer. The Court, however, did not uphold the argument observing that "the appellant was the best person to give proper explanations. The circumstances and the evidence against him were clearly put to him and he had to give his explanation. An Advocate could have hardly helped him in this. It was not a case where oral evidence was recorded with reference to actions and the petitioner required the services of a trained lawyer for cross-examining the witnesses. There was not legal complexity in the case." Thus, according to the Hon''ble Supreme Court, what is required to be seen is whether legal complexity or questions of law require legally trained mind or legal assistance. In Krishna Chandra's case (supra) according to the Hon''ble Supreme Court, no such legal complexity was involved and various flaws and defaults which were apparent in the face of the assessment orders could have been explained by the Income Tax Officer himself. It was, therefore, not considered necessary to have legal assistance and when that prayer was not granted, no complaint could have been made that principles of natural justice were violated. In Kanhaiyalal Vs. Mannalal and Others, , also, a Senior Railway Inspector was dismissed from service on the ground that he had demanded and accepted some amount by way of illegal gratification. His request for legal representation was refused. Upholding the said action, the Hon''ble Supreme Court said that the accusations made against the

appellant were not such which require any expert or special skill. The question, according to the Hon"ble Supreme Court, was "simple one whether he had taken money" and for that, an Advocate could have hardly said anything. Finally, my attention was invited on State of Rajasthan v. S. K. Dutt Sharma 1993 (2) SLR 281 (SC). In that case, departmental inquiry was held against an employee of the State Government and he was found guilty. The petition came to be dismissed by a learned single Judge of the High Court. A Division Bench of the High Court, on appeal, however, allowed the appeal holding that refusal of permission to engage a lawyer in the departmental inquiry was violative of principles of natural justice. The State approached the Supreme Court. Setting aside the order passed by the Division Bench and restoring the reasoning of the learned single Judge, the Court observed :-

"8. As regards the objection that the respondent was not afforded an opportunity to engage a legal practitioner, suffice to say that Shri D. C. Malik, the departmental nominee was not a legal practitioner nor a Prosecuting Inspector at the relevant time. Further, the charges against the respondent were not of such nature that he could not defend them himself or through a departmental representative whose assistance was offered to him but which assistance he declined. We agree with the finding and conclusion arrived by the learned single Judge in this regard".

9. Looking to the above judgment, it is clear that ordinarily, when there is no representation of a lawyer as of right, no person can claim services of a lawyer and such prayer can be granted if the Disciplinary Authority is of the opinion that principles of natural justice and fair-play require acceptance of such prayer. For that purpose a number of circumstances must be borne in mind, such as, the nature of inquiry, the statement of allegations, evidence which is to be led at the inquiry, complicated questions of fact and law, whether the department is permitted to engage an Advocate or case of the department is presented through a legally trained person and others, etc. In other words, what is to be seen is as to whether by refusing such permission, there is denial of reasonable opportunity to defend by a delinquent. If it is so, such prayer should be granted, otherwise it will vitiate the action. If it is not so, a prayer for granting permission to engage an Advocate can be rejected and in absence of any prejudice at the inquiry, the inquiry cannot be vitiated merely on the ground that the delinquent was not permitted to appear through a lawyer.

10. In the instant case, in my opinion, neither complicated questions of law nor complex questions of fact are involved at the inquiry. The allegations are very simple. It was alleged against the petitioner that he left the bank before office hours. Some work was pending at that time. He neither informed his superior officer nor the Branch Manager that some work was left incomplete by him. Then he came back and when Mr. Joshi asked him about the pending work, the petitioner abused him. When Mr. Joshi reported the said fact to the Branch Manager, the petitioner interfered. In spite of the efforts made by the Branch

Manager himself, the interference was continued by the petitioner. The petitioner also abused Mr. Joshi and assaulted him and tried to beat him.

11. In my opinion, the submission of Mr. Patel appears to be well founded that for such allegations, the petitioner himself is the best person to throw light. Whether the allegations are correct or not, assistance of a lawyer would not be helpful in such case. Mr. Patel is also right, according to me, that as per clause 12 of the bipartite settlement, the petitioner can represent his case through a member of the Union. Looking to the application also, it does not appear that for all time to come, the petitioner will not get the assistance of a representative of the Union. Looking to the application, it is clear that on that day, the representative, who was to represent the case of the petitioner, could not remain present because of certain circumstances which were not mentioned in the application. But then from that, it cannot be said that in future also, the said representative will not remain present. Again, if the representative may not be able to remain present, it is open to the petitioner to engage another representative. In bipartite settlement, it is also provided that if an employee is not a member of such Union, his case can be represented through other Union, but, from that, it cannot be said that the petitioner must be granted permission to engage an Advocate and should be allowed to defend through a lawyer. It is also clear that the Presenting Officer is also neither a lawyer nor having a degree in law. In these circumstances, in my opinion, the rejection of application of the petitioner to engage an Advocate at the departmental inquiry cannot be said to be contrary to law or violative of principles of natural justice.

12. For the aforesaid reasons, I do not see any substance in any of the arguments of the learned Counsel for the petitioner and the petition requires to be dismissed and is, accordingly, dismissed. Rule discharged. Ad-interim relief vacated. No order as to costs.

13. Rule discharged.