

(1996) 04 KAR CK 0046
In the Karnataka High Court
Case No : Writ Petition No. 508 of 1995

N. Balasubramanian

APPELLANT

Vs

Can Bank Financial Services Ltd.

RESPONDENT

Date of Decision : 10-04-1996

Acts Referred:

Securities Contracts (Regulation) Act, 1956 — Section 21, 22 (ii)

Citation : (1996) 74 FLR 2047 : (1996) ILR (Kar) 2385 : (1996) 5 KarLJ 511

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : P.S. Rajagopal, for the Appellant; S.S. Ramadas, for Ramdas and Anand, for the Respondent

Final Decision : Allowed

Judgement

Tirath S. Thakur, J.—The only question that falls for consideration in this Writ Petition is as to whether the petitioner is in the peculiar facts and circumstances of this case entitled to be represented by a lawyer in the domestic enquiry initiated against him by the Respondent-Company. That representation in a domestic enquiry by a legal practitioner is not a component of the principles of natural justice is no longer *res integra* having been authoritatively settled by a large number of judgments of the Apex Court including the one in *Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi*, where upon an elaborate review of the case law on the subject, the Supreme Court summed up the legal position thus:-

"It is, therefore, clear from the above case law that the right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or Standing Orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice in so far as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent. In the instant case the delinquent's right

to representation was regulated by the Standing Orders which permitted a clerk or a workman working with him in the same department to represent him and this right stood department to represent him and this right stood expanded on Sections 21 and 22(ii) permitting representation through an Officer, staff-member or a member of the Union, albeit on being authorised by the State Government. The object and purpose of such provisions is to ensure that the domestic enquiry is completed with despatch and is not prolonged endlessly. Secondly, when the person defending the delinquent is from the department or establishment in which the delinquent is working he would be well conversant with the working of that department and the relevant rules and would, therefore be able to render satisfactory service to delinquent. Thirdly, not only would the entire proceedings be completed quickly but also inexpensively. It is, therefore, not correct to contend that the Standing Order of Section 22(ii) of the Act conflicts with the principles of natural justice."

2. Even this Court has an occasion to examine the question at some length in G.R. Venkateshwara Reddy Vs. Karnataka State Road Transport Corporation, Bangalore and Others, leading to the formulation of the following governing principles:-

(a) The right to be represented by a Legal Practitioner is not an element of principle of Natural justice;

(b) A delinquent employee will have the right to claim to be defended by a Legal Practitioner, where the rules or Regulations permit the employee to be represented by a Legal Practitioner;

(c) Where the Rules or Regulations are silent about representation by a Lawyer or vest discretion in the Disciplinary Authority or the Inquiring Authority, to permit the employee to be represented by a Legal Practitioner or other Agent of his choice, denial of such permission on a request made by the employee, would violate the principles of Natural Justice (i) if the Presenting Officer is a Legal Practitioner of a person legally trained or experienced; or (ii) if the charges are of a serious and complex nature;

(d) Where the Rules or Regulations specifically prohibit the employee from engaging the service of a Legal Practitioner, such Rule or Regulations will be read down as vesting a discretion in the Disciplinary Authority to permit the employee to engage a Legal Practitioner, where (i) the Presenting Officer -is a Legal Practitioner or legally trained person, or (ii) the charges are of a serious and complex nature, if it is not so read down, the Rule itself may have to be held to be invalid as violating Article 14 of the Constitution."

3. Mr. Rajagopal, learned Counsel appearing for the petitioner argued that the petitioner's case fell in category "C" of the propositions enunciated by this Court in the aforesaid judgment. He urged that the petitioner was entitled to be defended by a legal practitioner of his choice because the charges framed against him were serious and complex in nature.

4. Mr. Ramdas, learned Counsel appearing for the Respondent on the other hand argued that the charges in question pertain only to making of entries, preparation of vouchers and maintenance of records etc with which the petitioner was fully conversant and which he could effectively deal with either himself or with the assistance of a co-employee. He submitted that the seriousness of the consequences that may follow the enquiry being held against the petitioner was not by itself sufficient to hold that the charges framed against him were serious and complex in nature so as to entitle him to the assistance of a legal practitioner.

5. As to what should be deemed to be a serious and complex charge has not been elaborated in any one of the apex Court judgments cited before me at the Bar. As observed by their Lordships in J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others, , the answer to the question shall always depend upon the facts of each case and the situational peculiarities besetting the requirement of justice. In the circumstances while it is difficult to lay down any hard and fast Rule of general application as to what should or should not amount to a serious and complex- charge, it is possible to indicate certain broad tests that shall bear relevance to the determination of any such question. One of these tests will certainly be the seriousness of the consequence that may follow the conclusion of the enquiry. That an employee may in all probability be exposed to an order of dismissal from service on the proof of the charge may be said to be one of the factors relevant for holding that the charge is serious. Allegations, attributing any kind of criminality to the delinquent employee may also be a relevant factor for holding the charge to be serious. In particular allegations of fraud, falsification of Accounts, cheating or the like may be themselves and in conjunction with other circumstances suggested that the charge against the employee is of a serious nature. The fact that the employee is facing a criminal trial based on the same set of allegations as constitute the foundation for the departmental action may also suggest that the charge against the employee in the departmental proceedings, is of a serious nature. I however hasten to add that while, none of these tests may in itself be conclusive for determining whether or not a charge is serious, yet a prudent application of the same in the context of the diverse situational peculiarities of the cases where the issue arises for consideration may go a long way in leading the Court to a reasonably satisfactory conclusion.

6. Coming then to the instant case it is not in dispute that the charges framed against the petitioners can and may in all probability result ,in an order of dismissal against him. It is also apparent from a reading of the charge-sheet served upon the petitioner that; allegations made in the same suggest criminal intent behind the acts of omission and commission with which he is charged. The fact that the petitioner is facing a criminal trial on the basis of a complaint lodged by the Respondent-Bank, on the same set of facts as constitute the basis of the present departmental proceedings is also not disputed. The chargesheets ANNEXURES-"E" & "H", further disclose that the allegations made therein relate to transactions that have taken place over a period of 2 1/2 years or so involving

nearly Rs. 28.27 Crores. One of the issues that would arise for consideration in the course of the enquiry is as to whether the transactions in question were "Ready Forward Transactions" within the meaning of Securities Contract Act. It is not therefore one of those Cases where the charges can be said to be so simple as to be capable of being handled even by the petitioner on his own or with the assistance of a co-employee from the Company. The nature of the allegations made, the magnitude of the amount involved, the consequences that may flow from the proceedings initiated against the petitioner, the criminal intention alleged against the petitioner and his simultaneous prosecution for the transactions in question in a criminal Court all suggest that the charges are of serious and complex nature justifying the grant of permission to the petitioner to be represented by a legal practitioner. That in connection with a similar charge served upon the petitioner involving almost identical allegations, the Company had itself permitted the petitioner to be represented by a legal practitioner can also not be ignored. This permission was subsequently withdrawn on the ground that the legal practitioner earlier engaged to represent the Company at the enquiry had been withdrawn from the said enquiry which was according to the Company sufficient to justify withdrawal of permission given to the petitioner. This Court however, quashed the said withdrawn holding that permission once granted could not be withdrawn particularly when the same had not been granted only on the ground that the Company was being represented by a lawyer. On a consideration of the totality of the circumstances I am of the view that the Disciplinary Authority was in error in having refused to the petitioner the permission to be represented by a legal practitioner.

7. Mr. Ramdas however expressed an apprehension that the engagement of a Counsel on behalf of the petitioner is likely to unduly delay the conclusion of the enquiry proceedings, for a variety of reasons. There does not appear to be any sound basis for such an apprehension as at present. All the same, Mr. Rajgopal, appearing on behalf of the petitioner assured that the petitioner as also his Counsel shall extend all co-operation to the Enquiry Officer concerned for an expeditious conclusion of the enquiry. This assurance is recorded with the observation that the Enquiry Officer shall be at liberty to expedite the enquiry within the parameters of law and fair procedure, curbing at all times any tendency on the part of the petitioner or his counsel to protract the same.

8. In the result this petition succeeds and is hereby allowed. Order passed by the Disciplinary Authority dated 12th November, 1994 ANNEXURE-M, to the Writ Petition is hereby quashed and by a mandamus the Respondent directed to permit the petitioner to be defended by a legal practitioner of his choice. In the circumstances of the case however, the parties are left to bear their own costs.