

(2014) 09 KL CK 0182

In the High Court Of Kerala

Case No : Writ Appeal No. 590 of 2014 in W.P. (C). 21429/2013

Prakash Joseph

APPELLANT

Vs

Malabar Cements Ltd.

RESPONDENT

Date of Decision : 20-09-2014

Acts Referred:

Advocates Act, 1961 — Section 30

Citation : (2014) 4 ILR 467 : (2014) 4 KLJ 357 : (2014) 4 KLT 269 : (2015) 1 RCR(Civil) 132

Hon'ble Judges : T.B. Radhakrishnan, J;P.B. Suresh Kumar, J

Bench : Division Bench

Advocate : Renjith Thampan (Sr.) and Reena Mathew, Advocate for the Appellant; E.K. Nandakumar, Senior Advocate, M. Gopikrishnan Nambiar, P. Gopinath, P. Benny Thomas and K. John Mathai, Advocate for the Respondent

Judgement

P.B. Suresh Kumar, J.—Petitioner in the writ petition is the appellant. He is a Law Officer in the service of the first respondent company. A domestic enquiry was ordered by the first respondent company on a memo of charges issued to the appellant. According to the appellant, the presenting officer at the domestic enquiry is a legally trained person and he is therefore, at a considerable disadvantage in the enquiry. Though he had requested for permission to engage a lawyer to appear on his behalf in the enquiry, his request was not considered. It is in the said circumstances, the appellant had approached this court and sought a direction to the company to permit him to engage a lawyer in the domestic enquiry. Section 30 of the Advocates Act, 1961, which was brought into force on 15.06.2011, was pressed into service to sustain the said relief.

2. The learned single Judge took the view that the purpose of the domestic enquiry being one to ascertain the facts, after affording the employee concerned an opportunity of hearing, it cannot be said that an enquiry officer is a person who is legally authorised to take evidence, to attract Section 30 of the Advocates Act, 1961. Accordingly, the writ petition was dismissed.

3. We have heard senior counsel Sri. Ranjith Thampan for the appellant and senior counsel Sri. E.K. Nandakumar for the respondents.

4. The learned senior counsel for the appellant, relying on the decision of this Court in *Subramanya Pillai K. v. Senior Divisional Manager, LIC and others*, (2009(3) KHC 787), contended that the enquiry officer has a duty to arrive at a factual finding, based on the materials brought on record by the parties and therefore, it has to be held that he is legally authorised to take evidence. Relying on the decision of the Apex Court in *Krushnakant B. Parmar Vs. Union of India (UOI) and Another*, he has also contended that the disciplinary proceedings are quasi criminal in nature and therefore, it cannot be held that the enquiry officer is not a person legally authorised to take evidence.

5. Per contra, the learned Senior Counsel for the Company submitted that the law in this country does not concede an absolute right of representation to an employee as part of his right to be heard, unless the rules, regulation or standing orders, if any, regulating the conduct of the disciplinary proceedings, specifically recognise such a right and provide for such a representation. He relied on the decision of the Apex Court in *The Management of National Seeds Corporation Ltd. Vs. K.V. Rama Reddy*, in support of his submission. According to him, Section 30 of the Advocates Act, 1961 has not brought any change at all to the law on the point as settled by a catena of decisions.

6. The learned Senior Counsel for the appellant did not dispute the proposition of law laid down by the Apex court in *National Seeds Corpn. Ltd. v. K.V. Rama Reddy* (supra). But, according to him, the principles settled as regards the right of an employee to be represented by a lawyer, in a domestic enquiry, need a re-look, in the light of the provision in Section 30 of the Advocates Act, 1961. An observation made to that effect by this Court in *Sebastian K. Antony v. Manager, St. Albert's College, Ernakulam and others* [2012 KHC 347] was also brought to our notice.

7. In the light of the submissions made at the Bar, the question arises for consideration is whether Section 30 of the Advocates Act confer on a litigant a right to be represented by an advocate before the enquiry officer in a domestic enquiry?

8. The provision in Section 30 of the Advocates" Act, 1961 reads thus:

"30. Subject to the provisions of this Act, every advocate whose name is entered in the common roll shall be entitled as of right to practise throughout the territories to which this Act extends--

(i) in all courts including the Supreme Court.

(ii) before any tribunal or person legally authorised to take evidence: and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice."

Section 30 of the Advocates Act, 1961 proceeds on the basis that the litigant has a right to be represented by an Advocate. If a person is not otherwise free to appoint an agent, S. 30 of the Advocates Act will not authorise him to do so. Section 30 of the Advocates Act, 1961 is the successor provision of section 14 of the Bar Council Act, 1926. In the context of Section 14 of the Bar Council Act, 1926, the Madras High Court in *T. Rajagopala Aiyangar Vs. The Collector of Salt Revenue*, had held as follows:

"There is in British India no common law right in a party to a proceeding to be represented by counsel. The right, wherever it exists, will be found to be given by enactment. The Advocates right of audience since the Bar Council's Act depends on section 14 of the Act.....But the Advocates right of audience is necessarily inseparable from his client's right to appear by advocate before a particular tribunal. If the client is expressly denied the privilege of being heard by counsel, it is obvious that the Bar Council's Act will not save him from the disability."

It is thus clear that Section 30 of the Advocates Act, 1961 does not confer on a litigant a right to be represented by an advocate in any proceedings whatsoever. Section 30 of the Advocates Act, 1961 is intended only to protect the right of audience of an advocate, when the litigant he represents, has a right to be heard by counsel in a proceeding.

9. Further, Section 30 of the Advocates Act, 1961 only confer a right on an Advocate, to appear before any Tribunal or person legally authorised to take evidence. It is certainly lawful for an enquiry officer to take evidence in an enquiry, but the word used in Section 30 of the Advocates Act is "legally" and not "lawfully". "Legal" is more appropriate for conformity to positive rules of law, whereas "lawful" is more appropriate for conformity to moral substance or ethical permissibility. So the phrase "legally authorised" denotes the Tribunal or person who has been authorised by a statute or statutory rules, to take evidence. We are fortified in this view by the decisions of the Allahabad High Court in *State of Uttar Pradesh Vs. Ratan Shukla*, and *Zonal Manager, Life Insurance Corporation of India, Central Zonal Office, Kanpur and Others Vs. City Munsif, Meerut and Another*, . We are, therefore, in agreement with the view taken by the learned single Judge.

10. The argument advanced by the learned counsel for the appellant based on the decisions in *Subramanya Pillai K. v. Senior Divisional Manager, LIC and others* (supra) and *Krushnakant B. Parmar v. Union of India and Another* (supra) also has to fail, for, they do not lead to the inference that enquiry officer in a domestic enquiry is a person legally authorised to take evidence.

11. Alternatively, the learned senior counsel for the appellant prayed for a direction to complete the disciplinary proceedings expeditiously. In the peculiar facts and circumstances of this case, we feel that it is necessary in the interests of justice to direct expeditious completion of the disciplinary proceedings.

In the result, the writ appeal is disposed of directing the respondents to complete the disciplinary proceedings initiated against the appellant, as expeditiously as possible, at any rate, within six months from the date of receipt of the copy of this judgment.