

(1997) 08 KL CK 0040
In the High Court Of Kerala
Case No : O.P. No. 11733 of 1997

Rugmini M. Menon

APPELLANT

Vs

General Manager and Others

RESPONDENT

Date of Decision : 19-08-1997

Acts Referred:

Kerala State Electronics Development Corporation Conduct Discipline and Appeal Rules, 1986 — Rule 20

Citation : (1997) 2 KLJ 598

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : K.C. Eldho, for the Appellant; T.P. Kelu Nambiar (Sr. Advocate), for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—The question that has come up for consideration in this case is as to whether petitioner who is an officer of the Kerala State Electronics Development Corporation can insist that she should be allowed to appoint a competent and qualified person from outside the institution as per defence assistant in the enquiry proceedings. Petitioner while working as Deputy Manager (Administration) in the service of the first respondent Corporation was served with a memo of charges alleging that she failed to take timely action in realising the dues like room rent and charges for food and beverages from the guests who occupied the Keltron Guest House Thiruvananthapuram during the period from 14.1.1995 to 18.5.1996. It is alleged that she failed to give correct and timely answers/clarifications to audit query No. 7 dated 12.6.1996 etc. Petitioner submitted explanation to the memo of charges vide Ext.P2 dated 27.2.1997. First respondent however, by order dated 15.3.1997 suspended the petitioner from service pending enquiry proceedings. During the enquiry proceedings petitioner made a request to the enquiry officer to permit her to appoint one qualified person from outside the institution as defence assistant. Enquiry office rejected the plea of petitioner to engage a legal assistant vide Ext. P5 order

dated 6.6.1997. Petitioner's further request for engaging a defence assistant from outside the institution was also rejected by the enquiry officer vide Ext.P8 letter dated 21.6.1997. While rejecting the said request it was pointed out that petitioner can avail of the service of any other employee of the Corporation as her defence assistant. Petitioner is aggrieved by the said order and has approached this Court seeking a direction to respondents to allow the petitioner to appoint a competent and qualified person from outside the institution as defence assistant.

2. According to the petitioner, since enquiry officer being a practising lawyer, petitioner ought to have been permitted to appoint an Advocate for conducting enquiry. It is also her case the presenting officer is a legally trained person and has been handling the disciplinary proceedings for the last more than 10 years. It is also stated that petitioner being Deputy Manager (Administration) it is difficult for her to get defence assistant holding a higher post than that of the petitioner. Counsel also submitted there is no restriction in the standing orders from engaging defence assistants outside the institution and also to engage a lawyer.

3. When the matter came up for hearing I heard the learned counsel for petitioner as well as the learned senior counsel appearing for respondents. Counsel for the respondents submitted that there is no provision in the standing orders enabling the petitioner to engage a defence assistant from outside the institution or a lawyer in the disciplinary proceedings. I perused the Kerala State Electronics Development Corporation Conduct Discipline & Appeal Rules 1986. The provision which we are concerned in this case is extracted below.

Rule 20. Procedure for imposing Major Penalties.

(1) No order imposing any of the major penalties specified in clauses (e), (f) and (g) of Rule 19 shall be made except after an enquiry is held in accordance with this rule.....

(5) The competent authority is entitled to appoint a presenting officer to present the management's case before the enquiring authority. The presenting officer so appointed shall be an employee of the Corporation.

(6) The employee may take the assistance of another employee of the Corporation.

There is no provision in the rules which permits the petitioner to engage a defence assistant from outside the institution or a trained lawyer. As per rules the Corporation also cannot avail of the benefit of a practising lawyer for conducting the disciplinary proceedings. In other words, both the presenting officer as well as the defence assistance would be employees of the Corporation.

4. Counsel for the petitioner relied on a decision of the Supreme Court in *The Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others* (1983 (1) L.L.J 1). The Supreme Court took the view that even in a domestic enquiry there can be very serious charges and adverse

verdict may completely destroy the future of the delinquent employee. The adverse verdict may so stigmatize him that his future would be bleak and his reputation and livelihood would 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.....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 employee 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 employee 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 complex or simple issues that may arise in the course of enquiry the delinquent employee in order to afford reasonable opportunity to defend himself should be permitted to appear through a legal practitioner. Supreme Court therefore concluded in that case the delinquent has got a right to engage a lawyer to conduct his case. Counsel relied on another decision of the Supreme Court in *Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi*, . Supreme Court held ordinarily it is considered desirable not to restrict this right of representation by counsel or an agent of one's choice but it is a different thing to say that such a right is an element of the principles of natural justice and denial thereof would invalidate the enquiry. The right to be represented through counsel or agent can be restricted, controlled or regulated by statutes, 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 rules of natural justice insofar 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 of 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 expanded in 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 are 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 will be well conversant with the working of that department and the relevant rules and would, therefore, be able to render satisfactory service to the 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 or Section 22(ii) conflicts with the principles of natural justice. I am of the view that the above mentioned decision

of three Judges of the Supreme Court is complete answer to the dispute. In the instant case petitioner is a highly placed official. She is holding a post of Deputy Manager (Administration). It is cannot be said that the petitioner, a senior official of 14 years experience in the administration side would not be able to defend her case. It is also open to the petitioner to engage officer of her cadre. In the enquiry proceedings. Counsel for respondents submitted that they can submit a panel from which the petitioner can select an officer to assist her. Considering the nature of charges levelled against the petitioner and considering the fact that there is no provision in the standing orders which governs the petitioner as well as the Corporation enabling the petitioner to engage a defence assistant from outside the institution or a trained lawyer I am of the view that petitioner cannot seek a direction from this Court as sought for by the petitioner. As held by the Supreme Court there is no provision in the standing orders enabling petitioner specifically to appoint a trained lawyer or an agent. In the absence of any such provision in the standing orders this court cannot compel the respondents to allow the petitioner to be defended by a legal assistant from outside the institution or a trained lawyer. Under such circumstance original petition lacks merits and the same is dismissed.