
(1991) 10 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 2260 of 1984

Shri Prashanta Kumar Kar

APPELLANT

Vs

Board of Trustees, Paradip Port Trust and Others

RESPONDENT

Date of Decision : 30-10-1991

Acts Referred:

Paradip Port Employees (Classification, Control and Appeal) Regulations, 1967 — Regulation 10(8)

Citation : (1992) 73 CLT 425 : (1993) 1 LLJ 136

Hon'ble Judges : P.C. Patnaik, J;A. Pasayat, J

Bench : Division Bench

Advocate : R.K. Mohapata and B. Routray, for the Appellant; S.B. Nanda, N.N. Misra and S.K. Nanda, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—The petitioner, who was serving as a Senior Radio Mechanic, was suspended by order dated February 22, 1984 as per Annexure-1 under Regulation 7(1)(a) of the Paradip Port Employees (Classification, Control and Appeal) Regulations, 1967 and a disciplinary proceeding was indicated with three heads of charges. The charges and the statements of imputation of misbehavior or misconduct have been annexed as Annexure-1. The charges were sought to be supported by documents and witnesses, witnesses being 6 in number. Shri Sridhar Mishra, Tug Engineer, was appointed as the Enquiring Officer and Shri R.N. Mohanty, Assistant Engineer (Mech.), Sand Pump Division, was appointed as the Presenting Officer. The petitioner pursuant to notice filed his written statement and requested for permission to engage a lawyer which was turned down vide Annexure-5 dated July 2, 1984 on the ground that he was not entitled to the assistance of lawyer under Clause (8) of Rule 10 of the Regulations. He renewed his prayer to the Chairman by a representation dated July 4, 1984. By Annexure-5/1 dated August 4, 1984, the Chairman too refused permission observing that the Presenting Officer was neither a legal practitioner nor a public prosecutor and no question of law being involved and the witnesses and

documents being few, he could defend himself or by a Defence Assistant. If no Port Trust employee was willing to act as his Defence Assistant, he might submit a panel of Port Trust employees to the Chief Electrical and Mechanical Engineer so that the latter could instruct any of such employees to act as his Defence Assistant. The Inquiring Officer by Annexure-6 called upon the petitioner to nominate a Port Trust employee to assist him as required by Clause (8) of Rule 10, The petitioner has filed this writ application for the quashing of the order of suspension as per Annexure-1, the charges levelled against him as per Annexure-2 and the orders refusing permission to defend by way of a lawyer as per Annexures-5 and 5/1.

2. The petitioner has in this writ application assailed the charges on merits on legal and factual grounds. But, we did not address ourselves to the said question since in our view the domestic enquiry has not commenced and it would be premature for us having regard to the facts and circumstances to entertain the said contention.

3. We, therefore, consider the only question, if having regard to the facts and circumstances the Authorities were justified in refusing the request of the petitioner to engage a lawyer in his defence. The rules framed by the Port Trust are similar to the provisions applicable to Government employees and employees serving in other industrial concerns. Shri R.K. Mohapatra, the learned counsel for the petitioner, has urged that having regard to the facts and circumstances, the exercise of discretion by the authorities was improper, unjust, arbitrary and inequitable whereas Shri S.B. Nanda, the learned counsel for the opp. parties, has urged that inasmuch as the Presenting Officer was neither a lawyer nor a person belonging to the Legal Department of the Port Trust but a mere Engineer and the charges were simple, documents and witnesses were few, denial of permission to the petitioner to be represented by a lawyer was valid. Clause (8) of Rule 10 of the Regulations reads as under:

"The employee may take the assistance of any other employee to present the case on his behalf, but shall not engage a legal practitioner for the purpose unless the presenting officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority having regard to the circumstances of the case, so. permits."

4. Admittedly, the Presenting Officer was not a legal practitioner. Hence, the question to be considered is, if having regard to the facts and circumstances permission to be represented by a lawyer should have been accorded. The petitioner in his representation dated June 7, 1984 to the Chief Engineer pleaded that he was only a matriculate. The charge-sheet must have been prepared by the Legal Department manned by persons trained in law. The Presenting Officer was a qualified senior engineer. Hence, permission to be represented by a lawyer should be granted. In his representation dated June 26, 1984 he pleaded that he could not defend his case himself. The Presenting Officer was a graduate having long experience in dealing with matters of enquiry and proceedings and more

competent having regard to his education and status. Number of witnesses were to be examined and nature of charges were serious. More importantly he pleaded;

"No Port Trust employee is willing to work as Defence Asst. for me in this enquiry stating that "For any ordinary charges nowadays the delinquent is losing his job. So why I will be unnecessarily put to trouble helping you in this regard? Rather, I can contribute for you to engage a legal practitioner."

In his representation dated July 4, 1984 made to the Chairman, he bemoaned the fact that his request to the Chief Engineer had been turned down and having regard to his poor educational attainment he would not be in a position to defend himself whereas the Port Trust has huge establishment of persons trained in law. The charge-sheet has been prepared and checked by them. The Presenting Officer was more educated and experienced and no Port Trust employee was willing to work as a Defence Assistant and was afraid of victimisation in case he defended the petitioner. Whereas the Chief Electrical Engineer turned down his requests by his letters dated June 11, 1984 and July 2, 1984, by letter dated August 4, 1984 (Annexure-5/1) the Chairman refused permission. He observed;

"If no Port Trust employee is willing to act as his Defence Assistant, he may submit a panel of Port Trust employees to the Chief Electrical and Mechanical Engineer, so that the Chief Elec. & Mech. Engineer can instruct one of such employees from the said panel to act as his Defence Assistant."

5. In our view, the aforesaid reasoning of the Chairman was not just and reasonable in the facts and circumstances. In neither of the three letters dated June 11, 1984, July 2, 1984 and August 4, 1984 it was alleged that the petitioner's assertion that no Port Trust employee was willing to defend him, was incorrect or baseless. The petitioner is entitled to a Defence Assistant if he is unwilling to defend himself personally and wants to be defended by another. Under the Regulations, he is entitled to the assistance of another employee in the service of the employer. But, where no employee is willing but he is entitled to defence, it is not fair to urge that a panel of names of the employees who were unwilling to defend him should be submitted so that one of them could be instructed by the Chief Engineer to defend the petitioner.

6. The petitioner should have trust in the person who is engaged to defend him. He should have trust in his competence. If by reason of failure to defend himself properly, charges which could otherwise have been disproved are established, he runs the risk of losing his job or suffering punishment provided under the law. His mental condition has to be taken into consideration. An unwilling employee commanded to defend the petitioner cannot be expected to have the trust of the delinquent-petitioner. Neither in the several replies which were sent to the petitioner nor in the counter-affidavit has it been asserted that there were employees in the employ of the Paradip Port Trust who were willing to defend the petitioner in a competent manner.

7. We are aware of the law laid down by the apex Court in *Brooke Bond India (Pvt.) Ltd. v. S. Subba Raman* 1961 II LLJ 417 and *The Dunlop Rubber Co. Vs. Workmen*, . We are not oblivious of the rule laid down and the further enunciation made by the said Court in the case of the *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*, . Ultimately, each case has to be considered on its own facts and circumstances. The discretion has to be exercised having regard to the circumstances as has been enjoined by Clause (8) of Rule 10 of the Regulations. The un rebutted assertions of the petitioner that no employee of the Port Trust was unwilling to defend him created a situation where refusal to permit to be represented by a lawyer amounted to refusal of the right to defend. It is no good saying that the petitioner was to submit a panel of names of employees of the Port Trust who were willing to defend him so that the employer could direct one of them to defend him. Justice must not only be done but seen manifestly to have been done. The concerned man should have faith in the dispensation of justice. He should have a feeling that he had an adequate opportunity of defending himself. That feeling in his mind begets trust in the system of dispensation of justice, absence of which leads to collapse and chaos. We are, therefore, of the view that in view of the exceptional facts and circumstances, the authorities should not have declined permission to the petitioner to be defended by a lawyer of his choice. The Inquiring Officer could have controlled the proceeding by refusing adjournments if unreasonably required by the lawyer, which is one of the reasons for which assistance of lawyer is not accorded in various proceedings. Hence, having regard to the facts and circumstances, we are satisfied that this is an exceptional case where we should exercise our extra ordinary jurisdiction and quash the orders as per Aunexures-5 and 5/1 and issue mandamus directing the opposite parties to permit the petitioner to engage a lawyer of his choice to defend him and we do so. This case shall not be treated as a precedent or as laying down any rule having general application.

8. In the result, the writ application is allowed. But, in the circumstances, there would be no order as to costs.

A. Pasayat, J.

9. I agree.