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**(2008) 09 DEL CK 0055**

**In the Delhi High Court**

**Case No :** Writ Petition (Civil) No. 18969 of 2006

St. Stephens Hospital

APPELLANT

Vs

The Workman Sh. S.K. Adhikari

RESPONDENT

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**Date of Decision :** 29-09-2008

**Acts Referred:**

**Citation :** (2008) 153 DLT 663 : (2009) 120 FLR 64 : (2009) 2 ILR Delhi 575

**Hon'ble Judges :** Sudershan Kumar Misra, J

**Bench :** Single Bench

**Advocate :** Rajeev Sharma, for the Appellant; R.P. Sharma, for the Respondent

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## **Judgement**

Sudershan Kumar Misra, J.—The petitioner, St. Stephens Hospital has approached this Court against an order dated 16th May, 2006 passed by the Labour Court-XX (Fast Track), Karkardooma Courts, New Delhi in ID No. 595/2006 (Old No. 550/1998). By that order, the Labour Court set aside the enquiry that was instituted by the Hospital against the respondent/workman on the ground that the Enquiry Officer, who happened to be retired District Judge, had violated the principles of natural justice by not permitting the workman to be represented by one Mr. Hamilton despite a request by the respondent in that behalf. The Labour Court felt that as a result of this refusal, the respondent/workman was denied a proper and fair opportunity to defend himself and for that reason, the enquiry proceedings stood vitiated and deserve to be set aside. As requested by the petitioner in its written statement before the Labour Court, after the enquiry was set aside for the aforesaid reason, the petitioner management was given an opportunity to prove its charges against the respondent/workman in the Court. The matter was thereafter posted for management evidence.

2. The respondent was working with the petitioner as a Cashier since 1972. On 4.7.1994, the respondent was served with a charge sheet, wherein the respondent was stated to be responsible for shortage of cash of Rs. 6,000/-, and for tampering with certain vital records of the section relating to the matter. The

petitioner appointed one Sh. R.N. Mehrotra, a retired Additional District Judge, as the Enquiry Officer to conduct the enquiry. The respondent requested the Enquiry Officer to permit one Mr. Hamilton to represent him in the enquiry. At that time, Mr. Hamilton was the President of the St. Stephens Hospital Employees Association. On 25th August, 1994, the Enquiry Officer rejected this request on the ground that Mr. Hamilton had never been an employee of the Hospital and he was, therefore, an outsider. Ultimately, after the enquiry was completed, the petitioner terminated the services of the respondent/workman on 27th November, 1995.

3. Consequent upon his termination, the respondent raised an industrial dispute against the petitioner and the matter came to be referred to the Labour Court by the Government. One of the issues framed by the Labour Court was, "whether valid and proper enquiry in accordance with the principles of natural justice was conducted against the workman." Whilst examining the argument of the respondent that he was not provided a proper opportunity to defend himself in the enquiry because he was not permitted to seek the assistance of a person of his choice from the Union, the Labour Court accepted the fact that although Mr. Hamilton, who is a person chosen by the petitioner, was not a worker in St. Stephens Hospital,

but being the President of St. Stephens Hospital Employees Association, he has every right to defend the workman in enquiry proceedings who is a member of the said association. Accordingly, the workman was entitled to seek assistance of Mr. Hamilton during the enquiry proceedings as Mr. Hamilton was the President of the Association of which the workman was a member. As such, the workman was denied assistance of Union representative of his liking who was competent to defend him.

Consequently, this issue was decided in favour of the respondent and the following order was passed:

As such the enquiry is not in accordance with the principles of natural justice. As such the enquiry proceedings stand vitiated for the reason stated above. Accordingly the enquiry is set aside. The management in its written statement has stated that in case the enquiry is set aside the management may be given opportunity to prove the charges against the workman in the Court. Accordingly opportunity is given to the management to prove the charges against the workman in the Court.

4. It is the petitioner's case that the finding by the Labour Court to the effect that by rejection to the request of the respondent, to be represented by Mr. Hamilton, the petitioner has violated the principles of natural justice, is ex-facie erroneous in as much as the rules governing domestic enquiries in force, in petitioner hospital including, inter alia, Rule 6, clearly provide that a charge sheeted employee can only seek assistance of a co-employee. The relevant portion of the said rules reads as follows;

6(c) Assisting Officer: If the charge-sheeted employee desires in writing, the services of any co-employee to assist him in the enquiry, the Medical Superintendent may, subject to exigencies of work and subject to the concurrence of the co-employee, allow the co-employee to assist the charge-sheeted employee during the enquiry proceedings.

In response, the respondent has taken the stand that no such rules were in force in the petitioner hospital, and even otherwise, the alleged Rule 6(c) is against the principles of natural justice and that it is obviously framed to deny effective assistance to the workman during domestic enquiries. It was therefore contended that this rule is liable to be declared illegal as the same is heavily loaded in favour of the employer.

5. To my mind, the issues that require consideration here are;

i) Whether a workman has a right of being represented by the person he wants in the domestic enquiry;

ii) Can such right be restricted by such rules or regulations; and

iii) As a corollary, do such rules or regulations permitting the employee to be represented only by a co-employee conflict with the principles of natural justice?

6. In support of his case, counsel for the petitioner has relied on *Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd.*, wherein the Supreme Court held as follows;

5. Our conclusion therefore is that a workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union, though of course an employer in his discretion can and may allow his employee to avail himself of such assistance.

7. This aspect also came to be examined by the Supreme Court in *Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi*, There, the delinquent workman's right of representation was regulated by the standing orders which permitted a clerk or a workman working within the same department to represent him. This right was further extended under the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971 which also permitted the delinquent to be represented through an officer/staff member or member of the Union provided he was duly authorized in this behalf by the State Government. However, in that case, the delinquent workman desired to be represented in the domestic enquiry by his agent, Mr. Talraja. However, since the said Mr. Talraja did not fall within the categories mentioned in the aforesaid standing orders or Statute, this request was denied. In reaching its conclusion, the Supreme Court examined a number of decisions of English Courts, where also, the right to be represented by a person of one's own choice is not an absolute right and can be regulated by the law, or by rules and regulations. It went on to hold as follows:

13. The law in India also does not concede an absolute right of representation as

an aspect of the right to be heard, one of the elements of principle of natural justice. It has been ruled by this Court in (i) Kalindi (N) v. Tata Locomotive & Engineering Co. Ltd. Jamshedpur, (ii) Brooke Bond India (P) Ltd. v. Subba Raman (S) and (iii) Dunlop Rubber Co. v. Workmen that there is no right to representation as such unless the company by its Standing Orders recognises such a right.

17. 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.

8. Following the above judgment in Bharat Petroleum Corporation Ltd. Vs. Maharashtra General. Kamgar Union and Ors, , the Supreme Court held that:

27. The basic principle is that an employee has no right to representation in the departmental proceedings by another person or a lawyer unless the Service Rules specifically provide for the same. The right to representation is available only to the extent specifically provided for in the Rules....

9. Similarly in Indian Overseas Bank Vs. Indian Overseas Bank Officers" Association and Another, it was held that:

6. ...he issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have in a domestic disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject-matter of consideration by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognise such a right and provide for such representation.... Irrespective of the desirability or otherwise of giving the employee facing charges of misconduct in a disciplinary proceeding to ensure that his defence does not get debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as Constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself.

10. Also in The Management of National Seeds Corporation Ltd. Vs. K.V. Rama Reddy, , the Supreme Court held that:

7. The law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings

specifically recognise such a right and provide for such representation....

11. In view of the above judgments, the issue regarding the right of representation which an employee has in domestic enquiries, is no longer *res integra*. The law is that the right of representation to an employee in domestic enquiries, being a limb of right to be heard, is governed by the rules or regulations and standing orders, if any. In other words, the employee has no right to be represented by the person he wants, if the rules or regulations governing such enquiry do not permit it. In the case at hand, the relevant rules provide that the delinquent is only allowed to be represented by a co-employee. Therefore, the test to determine whether the respondent could be validly represented by Mr. Hamilton would be to enquire whether the said Mr. Hamilton is the respondent's co-employee. The fact that Mr. Hamilton also happens to be the President of the Employees Association is irrelevant. That Mr. Hamilton was not employed by the petitioner hospital, is undisputed. Consequently, the respondent had no right to be represented in the domestic enquiry by Mr. Hamilton.

12. Regarding the issue whether such rules or regulations restricting the delinquent workman's right to be represented before the domestic enquiry by a co-worker only, are against the spirit of principles of natural justice, the Supreme Court in *Crescent Dyes and Chemicals Ltd. vs. Ram Naresh Tripathi* (*supra*) in paragraph 17 held that:

17. ...The requirement of the rule 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 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 dispatch 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 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) of the Act conflicts with the principles of natural justice.

Looking to these observations of the Supreme Court, this question is also no longer *res integra*. The impugned regulation permitting the employee to be represented only by a co-employee cannot be said to be in conflict with the principles of natural justice and therefore cannot be declared illegal on that account.

13. Under the circumstances, in the light of the observations made above, and without going into the merits of the case, the petition is allowed. The impugned order dated 16.5.2006 is quashed. Since the other issues raised before it have not been examined on merits, the matter is remanded to the Labour Court with the direction to decide them afresh within six months from today.

14. The writ petition is disposed of accordingly.