

(2011) 06 MAD CK 0120

In the Madras High Court

Case No : Writ Petition No. 8392 of 2011 and M.P. No. 1 of 2011

V. Sundararajan

APPELLANT

Vs

The Additional General Manager (HR) and Inquiring Authority
Deputy General Manager (CMM) Nuclear Power Corporation
of India Ltd.

RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Constitution of India, 1950 — Article 21
Factories Act, 1948 — Section 2

Citation : (2011) 06 MAD CK 0120

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : S.T. Varadarajulu, for the Appellant; V. Vijayshankar, for the Respondent

Judgement

T. Raja, J.—The Petitioner-V. Sundararajan has filed the present Writ Petition seeking for the issuance of a Writ of Certiorarified

Mandamus, calling for the records relating to the order bearing No. NPCIL/ MAPS/31(2253)/2011, dated 05.01.2011 of the second

Respondent, quash the same and consequently direct the first Respondent to offer assistance of the choice of the Petitioner in the enquiry.

2. Learned Counsel appearing for the Petitioner submits that the Central Government has established an Atomic Power Station at Kalpakkam in

1976 for production of electricity. Since, it was coming under the control of the Department of Atomic Energy, the same came to be registered in

the year 1986 as Nuclear Power Corporation under the Companies Act. Now, as there are about 2000 employees employed, it is a factory as

per Section 2(m) of the Factories Act, 1948. He further submits that the

Petitioner was working as Helper "D" ESL, Madras Atomic Power

Station since 01.10.1972 and after putting more than 39 years of continuous service, he had retired on reaching the age of superannuation, on

01.05.2011. While he was in service, on 20.08.2010, the Petitioner went to the house of one Venkataraman Office-in-Charge to grant leave for

LTC. As his request was refused, the Petitioner had explained to the Officer concerned that if LTC was not granted, it would be lapsed. On that

basis, he made a further request to grant leave for LTC as he was on the verge of his retirement. Again, the Officer refused to grant leave.

Subsequently, the Petitioner returned home. But, thereafter he came to know that two false complaints were filed against him on 20.08.2010 and

21.08.2010, making an allegation that he entered the Office room of one Venkataraman, Office-in-Charge, situated at DAE Township Kalpakkam

and abused him in Tamil and threatened to assault him with an umbrella. Subsequently, he was issued with a charge memo dated 02.09.2010 and

an enquiry was ordered. At that point of time, the Petitioner demanded for Tamil version of the charge memo. But that was not furnished to him till

date. Again he had also sought for permission to engage an Assistant of his choice to help him in the said enquiry. Even that request was also

turned down by the Enquiry Officer, the second Respondent herein, on 05.01.2011.

3. Learned Counsel appearing for the Petitioner further submits that the refusal of his request to engage an Assistant of his choice to help him in the

enquiry, is totally running contrary to the principles of natural justice, for the reason that the Petitioner is an uneducated person, as he has no

knowledge to put forth his case before the Enquiry Officer in the enquiry and the charge being serious in nature, if his request for engaging an

Assistant of his choice is given, the Petitioner would be in a position to participate effectively to defend his case and refusal of his request to engage

an Assistant of his choice would not only defeat the purpose for which the enquiry is called for but also would cause serious prejudice to him. On

that basis, the learned Counsel for the Petitioner has relied upon the Standing Order (4) (ba) of the Industrial Employment (Standing Orders) Act,

1946, to contend that the workman is entitled to appear in person or to be represented by an Office-bearer of a trade union of which he is a

member. The refusal by the Respondents to permit the Petitioner to engage an Assistant of his choice is running contrary to their own Standing

Order (4) (ba) of the Industrial Employment (Standing Orders) Act, 1946. Further, he also relied upon the judgment of the Supreme Court in the

case of Director of BCG Vaccine Laboratory, Madras V. S. Pandian and Ors. reported in 1996 II LLJ 30, wherein it has been held that there is

nothing wrong in permitting an incumbent who is an uneducated to be aided by a legal practitioner in an enquiry. But in the present case, the

Petitioner is not asking for assistance or permission to engage the legal practitioner, but his only case is that when the Standing Order (4) (ba) of

the Industrial Employment (Standing Orders) Act, 1946, clearly says that an incumbent is entitled to appear in person or to be represented by an

Office-bearer of a trade union of which he is a member, the Respondent has no reason to refuse the Petitioner's request to take assistance from an

Office-bearer of his own trade union, for the simple reason that justice should not only be done it should appear to be done. In this context, it is

useful to refer the following passage from the judgment of the Apex Court in the case of Madhav Hayawadanrao Hoskot Vs. State of

Maharashtra, , which is as follows:

4. Under Article 21 no person shall be deprived of his life or personal liberty except according to procedure established by law. "Procedure

established by law" are words of deep meaning for all lovers of liberty and judicial sentinels. Amplified activist fashion "procedure" means "fair and

reasonable procedure" which comports with civilized norms like natural justice rooted firm in community consciousness....

In the same line, the Hon"ble Apex Court in the case of Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and

Others, has held:

The inquiry officer combines the judge and prosecutor rolled into one. Witnesses are generally employees of the employer who directs an enquiry

into misconduct. This is sufficient to raise serious apprehensions. Added to this uneven scales, is the weight of legally trained minds on behalf of the

employer simultaneously denying that opportunity to delinquent employee. The weighted scales and tilted balance can only be partly restored if the

delinquent is given the same legal assistance as the employer enjoys. Justice

must not only be done but must seem to be done is not an euphemism

for courts alone, it applies with equal vigour and rigour to all those who must be responsible for fair play in action. And a quasi judicial tribunal

cannot view the matter with equanimity on inequality of representation. This Court in *Madhav Hayawadanrao Hoskot Vs. State of Maharashtra*, ,

clearly ruled that in criminal trial where prosecution is in the hands of public prosecutor accused, for adequate representation, must have legal aid at

State cost. This will apply *mutatis mutandis* to the present situation.

4. In that case, this Court has referred to with approval the following observation of Lord Denning in *Pet v. Greyhound Racing Association Ltd.*

1968 (2) All E.R. 545.

The trend therefore is in the direction of permitting a person who is likely to suffer serious civil or pecuniary consequences as a result of an enquiry,

to enable him to defend himself adequately, he may be permitted to be represented by a legal practitioner.

The above judgments lay down the law that a person, who is likely to suffer serious civil or pecuniary consequences as a result of an enquiry, is

entitled to defend himself adequately by availing a legal practitioner. In the present case in spite of the Standing Order (4) (b) of the Industrial

Employment (Standing Orders) Act, 1946 enabling the Petitioner to be represented by an Office bearer of a trade union of which he is a member,

refusing his request to engage an Assistant of his choice is absolutely against the Respondents own Standing Order (4) (b) of the Industrial

Employment (Standing Orders) Act, 1946.

4. When a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth but he has also a right to speak through his

representative. Even as per the second Respondent's own standing order bearing No. NPCIL/MAPS/31(2253)/2011, dated 05.01.2011, he is

entitled not only to appear himself but also to appoint an agent on his behalf before a domestic enquiry.

5. Therefore, I am of the view that the Petitioner should be permitted to engage an Assistant from his own trade union, in the enquiry, which is

pending for quite a long time, so that it could be completed without any further delay. Though the learned Counsel for the Respondents submits that

the Petitioner is not entitled to take any assistance of his choice from anywhere,

it has to be seen that the Petitioner is not asking for any legal practitioner or any person from outside the Union and his only case is that he being uneducated employee while participating in the domestic enquiry, he has to be assisted by an Office-bearer of a trade union of which he is a member. When the standing order clearly says that a workman shall be entitled to appear in person or to be represented by an Office-bearer of a trade union of which he is a member, I do not find any difficulty in permitting the Petitioner to have an assistant of his choice from the same trade union, in which he is a member.

6. With the above observation, the Writ Petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed. It

appears that the Petitioner has already reached the age of superannuation and retired on 01.05.2011. Therefore, the Enquiry Officer is directed to

complete the enquiry within a period of six months from the date of receipt of a copy of this order. The Petitioner is also directed to co-operate

with the enquiry proceedings. Needless to say, for any reason, if the Petitioner is not able to co-operate with the enquiry, the Enquiry Officer shall

proceed further in accordance with law.