

(2010) 02 BOM CK 0112
In the Bombay High Court
Case No : Writ Petition No. 623 of 2010

Yeshwant Harichandra Gharat

APPELLANT

Vs

Clairant Chemicals (I) Ltd. (Earlier known as Colour Chem Ltd.) and Shri J.Y. Mankame, General Manager (Personnel and Indus Relations), Thane Works

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Bombay Port Trust Employees (Conduct) Regulations, 1975 — Regulation 12(8)
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 15(5)
Industrial Disputes Act, 1947 — Section 7A
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30(2)

Citation : (2010) 2 ALLMR 875 : (2010) 126 FLR 360 : (2010) 4 LLJ 225

Hon'ble Judges : S.J. Vazifdar, J

Bench : Single Bench

Advocate : Jane Cox, for the Appellant; P.K. Rele, instructed by Rahul Oak, for the Respondent

Judgement

S.J. Vazifdar, J.—The Petitioner has challenged the order of the Industrial Court rejecting the Revision Application filed by him against the order of the Labour Court in Complaint (ULP) No. 27 of 2009 rejecting his application for interim reliefs. In the Complaint, the Petitioner had sought various reliefs. Ms. Jane Cox, the learned Counsel appearing on behalf of the Petitioner, however, restricted the Petitioner's case to allowing him to be represented by a legal practitioner or one Arjun Singh Rajput, a workman. In the Complaint, the Petitioner filed an application for interim reliefs u/s 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act) to restrain the Respondents, inter alia, from proceeding with the enquiry against him, without providing him the assistance of a legal practitioner or the said workman. The Labour Court rejected this interim application. The Petitioner filed the said Revision Application against this order, which was rejected by the impugned order.

2. The Petitioner is an employee of Respondent No. 1 Respondent No. 2 is the Enquiry Officer appointed in respect of a disciplinary enquiry against the Petitioner.

3. The few factual aspects which require appreciation in turn lead to a question of law of some importance. The question of law that falls for consideration is whether a workman is entitled to the assistance of a lawyer when the Presenting Officer/Management Representative is a legally trained person if the facts are simple and not complicated. I have come to the conclusion that the Presenting Officer is a legally trained person and that the facts are not simple. I have answered the question of law in the affirmative. The Petitioner has, therefore, succeeded in his application for the assistance of a legal practitioner.

4. The Petitioner has been employed by the Respondent since 3rd February, 1979. He was initially appointed as an operator-cum-mechanic and thereafter, in the fire fighting department. The Respondent issued a show-cause notice dated 3rd July, 2009 to the Petitioner alleging that on 16th June, 2009 he had misbehaved and threatened an officer of the company. The Petitioner, by a letter dated 3rd July, 2009, requested the Respondent for time upto 13th July, 2009 to furnish his explanation to the show-cause notice. The Respondent, however, served a charge-sheet dated 8th July, 2009, levelling serious charges against the Petitioner of indecent behaviour on the premises of the establishment and commission of acts subversive of discipline or good behaviour on the premises of the establishment. It is pertinent to note that in the charge-sheet, the Respondent stated that five days had passed since it had issued the show-cause notice which, according to the Respondent, was ample time for the Petitioner to conduct meetings, discussions and deliberate on the issue. The Petitioner's request for time upto 13th July, 2009, was, therefore, rejected.

5(a). The Petitioner, by his letter dated 9th July, 2009, denied the charges and requested fifteen days' time to reply to the show-cause notice and the charge-sheet.

(b) The Petitioner addressed a letter dated 19th August, 2009 to the Enquiry Officer stating that not only was he highly qualified in the legal field but that the Management Representative one N.M. Date was also highly qualified in the legal field. The Petitioner, therefore, requested that he be permitted to appoint an advocate or such other competitive person as his defence representative in the enquiry. By another letter also dated 19th August, 2009, addressed to the Enquiry Officer, the Petitioner stated that he was appointing the said Arjun Singh Rajput as his defence representative. The said Rajput was then working at the Respondent's Plant at Thane.

6. The Enquiry Officer considered the Petitioner's application for permission to appoint a lawyer or such other qualified person as his defence representative. He stated that the Petitioner may be permitted

the assistance of a co-worker or an office bearer of the union to which he

belongs, as his defence representative. The Enquiry Officer rejected the Petitioner's request.

7. The Petitioner, thereafter and obviously in the alternative, requested permission to take the assistance of the said Rajput as his defence representative. This application was also opposed by the Management representative and was rejected.

8. Rule 25(4) of the Industrial Employer (Standing Orders) Act, 1946, which is applicable in the present case, reads as under:

25(4) A workman against whom an inquiry is proposed to be held shall be given a charge-sheet clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to appear himself for defending him or shall be permitted to be defended by a workman working in the same department as himself or by an office bearer of a trade union of which he is a member. Except for reasons to be recorded in writing by the officer holding the inquiry, the workman shall be permitted to produce witness in his defence and cross-examine any witness on whose evidence the charges rests. A concise summary of the evidence led on either side and the workman's plea shall be recorded.

9. The correspondence indicates serious differences between the Petitioner and the office bearers of the union of which he is a member. It is neither possible nor necessary to consider which of the parties was in the wrong. The significance of the correspondence is that it discloses serious disputes, rendering it impossible for the Petitioner to avail of the assistance of any office bearer of the union. This is clear from the following correspondence.

10(a). The Petitioner had relied upon a letter dated 12th May, 2007, allegedly addressed by the General Secretary of the union to the Company stating that its supervisor abused the Petitioner who complained about the same to the union in writing. The letter records that on 12th May, 2007, the union committee members called the Petitioner and the supervisor and even at that meeting, the supervisor misbehaved. The union, accordingly, lodged a protest in this regard.

(b)(i) The Company, by a letter dated 30th September, 2009, addressed to the General Secretary of the union stated that it had never received the letter dated 12th May, 2007 and called upon the union to produce proof of the delivery thereof to the company.

(b)(ii) The General Secretary of the union, by an endorsement dated 6th October, 2009, at the foot of the letter stated that the letter dated 12th May, 2007 was, in fact, not given by anyone in the union.

(c) This has raised a serious dispute between the Petitioner and the union ? the Petitioner alleging that the letter dated 12th May, 2007, is genuine and the union alleging, in effect, that it was fabricated.

11(a) The Petitioner also relied upon the minutes of meetings held on 4th July, 2009 and 17th July, 2009. The union recorded that on 4th July, 2009, it's representative had telephoned the Enquiry Officer with a view to settle the Petitioner's case and that the Enquiry Officer had agreed to try and settle the matter.

(b) The minutes of 17th July, 2009 record that the Enquiry Officer was unhappy with the answers given by the Petitioner and gave a proposal to the committee to settle the matter, but avoided answering what punishment would be given to the Petitioner. The minutes further record that at a function held later that day, the Petitioner's matter was once again discussed whereat the Enquiry Officer stated that if the Petitioner apologized in writing, he would merely issue a Memo and a warning letter and that if he did not do so, he would be dismissed.

(c) The above minutes were forwarded to the Petitioner under cover of a letter dated 31st August, 2009, addressed by the General Secretary of the union.

(d) The Petitioner referred to the said minutes in the enquiry. Thereupon, the Enquiry Officer addressed a detailed letter dated 9th September, 2009, denying the contents of the said minutes.

(e) The General Secretary of the union, in turn, by a letter dated 9th September, 2009, addressed to the Respondent's General Manager stated that the union had adopted a wrong procedure as the matter could not have been discussed with the Enquiry Officer.

12. The letter dated 9th September, 2009, by itself would not indicate any animosity between the Petitioner and the union for the union has not, on it's part, denied the contents of what transpired at the meetings. It is, however, highly probable that the General Secretary of the union may be summoned to confirm the contents of the minutes. It may be difficult for the Petitioner even for this reason to avail of the assistance of the union if he desires to examine the union or even refer to and rely upon the said minutes. The difficulty is enhanced by the obvious animosity between the Petitioner and the union.

13(a). The doubt in this regard, if any, is set at rest by the Petitioner's letter dated 27th October, 2009, addressed to the General Secretary of the union making various allegations against the office bearers stating that they had colluded with the Management. The Petitioner raised a grievance regarding the stand of the union as regards both, the letters and the minutes. The Petitioner also alleged collusion between the Respondent on the one hand and the President and the General Secretary of the union, on the other.

(b). At the foot of the letter dated 27th October, 2009, the union stated that the contents thereof were not acceptable and that the charges against the office bearers were baseless.

14. In view of the above disputes between the Petitioner and the union, it is impossible to expect the Petitioner to avail of the assistance of any member,

leave alone an office bearer of the union in the present enquiry.

15. Mr. Rele, the learned Senior Counsel appearing on behalf of the Company submitted that this still leaves the Petitioner the options under Rule 25(4) to defend himself or to take the assistance of a workman working in the same department as himself.

16. The same, however, and for that matter even if there were no disputes between the Petitioner and the union, would make no difference for in this case, the Presenting Officer is a legally trained person. I referred to the disputes only to indicate that the Petitioner's predicament in being adequately represented in the inquiry is thereby further aggravated.

17. In view of the authorities which I will shortly refer to, it is necessary to consider whether the Presenting Officer/Management Representative is a legally trained person. I find that he is. It was further contended by Mr. Rele that even assuming that the Presenting Officer is a legally trained person, the Petitioner is not entitled to the assistance of a lawyer as the facts of the case, the charges are simple and not complicated. I have rejected the contention. Further, I have, in any event, found that the facts are not simple or uncomplicated. The Petitioner is, therefore, in any event, entitled to the assistance of a lawyer.

18. The Central Board for Workers Education has issued the Petitioner a certificate for having completed a three-month course "for Worker Teacher in this course". The certificate states that in this course, labour problems, industrial relations, productivity and trade union related subjects are discussed. The Petitioner has been declared as a worker-teacher having passed the examination. This certificate, by no stretch of imagination, establishes that the Petitioner is in a position to conduct the proceedings.

19. The Management Representative, on the other hand, holds the qualification of B.Com. and a Diploma in Personnel Management. The diploma in personnel management includes the study of industrial and labour.

The Petitioner, by the said letter dated 19th August, 2009, addressed to the Enquiry Officer, stated that the Enquiry Officer was highly qualified in the legal field and that the Management Representative was also highly qualified in the legal field. This was not denied either in any reply to the letter or even before me.

In paragraph 3(i) of the Complaint, the Petitioner stated that the Enquiry Officer and the Management representative were legally qualified persons. The Petitioner stated that the Management representative had a B.Com. degree and a diploma in personnel management and was a legally trained and experienced person, whereas he had no experience of conducting an enquiry, cross-examining witnesses or leading evidence in his defence. Paragraph 18 of the reply contained but a bare denial to the Petitioner's assertion that the Enquiry Officer and the Management representative were legally qualified and experienced persons. The fact that they were qualified as alleged by the Petitioner, however, was not

denied.

That the Petitioner also alleged bias against the Enquiry Officer is another matter and is kept open in the departmental proceedings and any action that may be adopted pursuant thereto. The question of bias qua the Enquiry Officer/Respondent No. 2 was not pressed at this stage.

20. In view of the above material, it must be held that the Management representative is a legally trained person. I will deal with the second aspect viz. whether the facts and issues involved in the departmental enquiry are complicated, after dealing with the question of law.

21. Ms. Cox relied upon the judgment of the Supreme Court in Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, in support of her submission that when the presenting officer/management representative is a legally trained person, the employee ought to be permitted the assistance of a lawyer. In that case, the employee's request seeking permission to engage a legal practitioner for his defence was rejected. The appellant, however, appointed its legal advisor and a junior assistant legal advisor as presenting officers before the Enquiry Officer. The enquiry commenced on 13th April, 1976. Thereafter, on 8th May, 1976, the Bombay Port Trust Employees Regulations, 1976, came into force. Regulation 12(8) provided that an employee may take the assistance of certain categories of persons, but specifically provided that the employees may not engage a legal practitioner 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. Even after the regulation came into force, neither the Enquiry Officer nor the appellant's Chairman reviewed the earlier decision rejecting the employee's request to appear through a legal practitioner before the regulations came into force. Paragraphs 7, 10, 11 and 12 of the judgment read as under:

7. The narrow question which we propose to examine in this appeal is whether where in a disciplinary enquiry by a domestic tribunal, the employer complaining misconduct appoints a legally trained person as Presenting-cum-Prosecuting Officer the denial or refusal of a request by the delinquent employee seeking permission to engage a legal practitioner to defend him at the enquiry, would constitute such denial of reasonable opportunity to defend oneself and thus violate one of the essential principles of natural justice which would vitiate the enquiry.

....

10. Even in a domestic enquiry there can be very serious charges, and an 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 would generally treated as a managerial function and the Enquiry Officer is more often a man of

the establishment. Ordinarily he combines the role of the 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 hamstringing the enquiry by such a domestic tribunal. We have moved far away from this stage. The situation is where the employer has on his pay-rolls labour officers, legal advisors ? lawyers in the garb of employees ? and they are appointed Presenting-cum-Prosecuting Officers and a delinquent employee pitted against such 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 a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner. Why do we say so? Let us recall the nature of enquiry, who held it, where it is held and what is the atmosphere? Domestic enquiry is claimed to be a managerial function. A man of the establishment dons the robe of a Judge. It is held in the establishment office or a part of it. Can it even be compared to the adjudication by an impartial arbitrator or a court presided over by an unbiased judge? The Enquiry Officer combines the judge and prosecutor role into one. Witnesses are generally employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehensions. Add to this uneven scales the weight of legally trained minds on behalf of employer simultaneously denying that opportunity to delinquent employee. The weighted scales and titled 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 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 *M.H. Hoskot v. 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.

11. We are faced with the situation where when the enquiry commenced, the rules neither provided for permitting the delinquent employee to be represented by an advocate nor an embargo was placed on such appearance. The rules were silent on this point. But the Chairman of the appellant while rejecting the request of the 1st respondent seeking permission to appear through a legal practitioner simultaneously appointed M/s R.K. Shetty and A.B. Chaudhary, Legal Adviser and Junior Assistant Legal Adviser respectively in the employment of Presenting-cum-Prosecuting Officers. What does this signify? The normal inference is that according to the Chairman of the appellant the issues that would arise in the enquiry were such complex issues involving intricate legal propositions that the

Enquiry Officer would need the assistance of Presenting-cum-Prosecuting Officers. And look at the array of law officers of the appellant appointed for this purpose. Now examine the approach of the Chairman. While he directed two of his law officers to conduct the enquiry, as prosecutor, he simultaneously proceeds to deny such legal representation to the delinquent employee, when he declined the permission to the 1st respondent to appear through a legal practitioner. Does this disclose a fair attitude or fair play in action? Can one imagine how the scales were weighted and thereby tilted in favour of the prosecuting officer. In this enquiry, the employer would be represented by two legally trained minds at the cost of the Port Trust while the 1st respondent was asked either to fend for himself in person or have the assistance of another employee such as Nadkarni who is not shown to be a legally trained person, but the delinquent employee cannot engage a legal practitioner at his cost. Can this ensure a fair enquiry? The answer is not far to seek. Apart from any legal proposition or formulation we would consider this approach as utterly unfair and unjust. Moreso in absence of rules, the Chairman of the appellant was not precluded from granting a request because the rules did not enact an inhibition. Therefore, apart from general propositions, in the facts of this case, this enquiry would be a one-sided enquiry weighted against the delinquent officer and would result in denial of reasonable opportunity to defend himself. He was pitted against the two legally trained minds and one has to just view the situation where a person not admitted to the benefits of niceties of law is pitted against two legally trained minds and then asked to fend for himself. In such a situation, it does not require a long argument to convince that the delinquent employee was denied a reasonable opportunity to defend himself and the conclusion arrived at would be in violation of one the essential principles of natural justice, namely, that a person against whom enquiry is held must be afforded a reasonable opportunity to defend himself.

12. Are we charting a new course? The answer is obviously in the negative. In *C.L. Subramaniam v. Collector of Customs, Cochin*, a government employee requested the Enquiry Officer to permit him to appear through a legal practitioner and even though a trained Public Prosecutor was appointed as Presenting Officer, this request was turned down. When the matter reached this Court, it was held that the enquiry was in breach of the principles of natural justice. The order of the domestic tribunal was sought to be sustained on the submission that Sub-rule (5) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 that "the government servant may present his case with the assistance of any government servant approved by the Disciplinary Authority but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case, so permits". The submission was that it is a matter within the discretion of the Enquiry Officer whether to grant permission and moreso because the relevant rule fetters the claim to appear through a legal practitioner. Negating this contention, this Court held that the fact that the case

against the appellant was being handled by a trained prosecutor was by itself a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales should be weighted against him. This conclusion was recorded after reference to the earlier decisions in *Brooke Bond India (Pvt.) Ltd. v. Subba Raman (S.)* and *Dunlop Rubber Co. v. Workmen*. Reference was made to *Pett* case, referred to earlier, but it is observed that this case has not commended itself to this Court. The earlier cases of this Court were distinguished. In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated. This view has been taken by a learned Single Judge and while dismissing the appeal in limine approved by the Division Bench of the High Court commends to us. Therefore, this appeal is liable to be dismissed.

22. The ratio of this judgment is not restricted to cases where the rules and regulations confer a discretion upon the Management or the Enquiry Officer to permit the employee being represented by a lawyer. It applies at least to cases where there is no express bar to the employee taking the assistance of a legal practitioner and the Presenting Officer is a legally trained person. These observations were made even in respect of the position as it was prior to the *Bombay Port Trust Employees Regulations, 1976*. I am not concerned here with a case where there is an express and absolute bar in the rules and regulations against the employee being represented by a lawyer. Rule 25(4) in this case does not contain such a bar. Indeed, it does not confer a discretion upon the Management or the Enquiry Officer to permit the employee appointing an advocate, but that would make no difference to the applicability of the judgment of the Supreme Court.

23. In *Indian Airlines Corporation v. N. Sundaram* 1992 II LLN 811, a Division Bench of the Madras High Court considered a situation where the Respondent was denied the opportunity of defending himself through a lawyer, while the appellant-corporation had the services of a legally qualified and trained Presenting Officer. Standing Order 32, applicable to that case, expressly provided that no outside representation shall be permitted in any circumstances. The employee was permitted the assistance of a friend who must be an employee of the corporation. The Division Bench observed that if the standing order were to be read strictly, even the corporation travelled beyond the same as the standing order did not permit the appellant-corporation the facility of having a presenting officer who was legally qualified and trained. I would, however, not rest my judgment on that line of reasoning and would also refrain from expressing any opinion on the same. I am in respectful agreement with the conclusion reached by the Division Bench that there cannot be a denial of a facility to an employee on par with the facility availed of by the employer in having the assistance of a legally trained person. I also respectfully concur with the following observation:

8. The anxiety and vigil of the Court must be to keep the balance and not to countenance the bringing in an perpetuation of an imbalance in the conduct of disciplinary proceedings. By any act of the employer, the employee should not be put to disadvantage in the conduct of disciplinary proceedings. That is the cardinal rule that must prevail and guide and there cannot be prosecution of disciplinary proceedings in derogation thereof....

After referring to the judgment of the Supreme Court in *The Board of Trustees v. D.R. Nadkarni*, the Division Bench observed thus:

The duty of the Court must be to discountenance, to discourage, to weed out, and to strike down any element of disparity, inequality and imbalance in the conduct of disciplinary proceedings.

The Division Bench, accordingly, dismissed the appeal against the order and judgment of the learned single Judge who allowed the Respondent's Writ Petition.

24. While agreeing with the conclusion of the Madras High Court, I would add my reasons for the same.

The reasons for limiting the representation in a domestic enquiry are that the same ought not to be unduly influenced by strict rules of evidence and "the procedural juggernaut". The delinquent employee should be heard in person and in such an informal enquiry, the delinquent officer would be able to defend himself. The basis for the rule discouraging, if not excluding legal representation, is referred to in *De Smith's Judicial Review of Administrative Action*, Fifth Edition page 453 thus:

...The reasons for excluding legal representatives (or permitting them to appear only with the tribunal's consent) are various. It is said that they tend to introduce too much formality and an inappropriate adversarial element into the proceedings, which are apt to become unnecessarily prolonged; they disturb witnesses and inexperienced members of the tribunal by asking awkward questions and making "technical" points; their presence increases the likelihood of subsequent proceedings in the courts to impugn the decision. This recital suggests that, in general, legal representation of the right quality before statutory tribunals is desirable, and that a person threatened with social or financial ruin by disciplinary proceedings in a purely domestic forum may be gravely prejudiced if he is denied legal representation.

25. However, when the Management chooses to avail of legal assistance for itself by appointing an advocate or a legally trained person as its representative before an Enquiry Officer, the logical sequiter is that the very basis for the rule discouraging or excluding legal assistance vanishes. The basis on which legal representation is considered to be undesirable in a domestic enquiry no longer exists upon one side being permitted to avail of the assistance of an advocate or a legally trained person. It can hardly be suggested that, whereas one side is entitled to the benefit of the assistance of a legally trained person, the other side

ought not to be permitted an equal opportunity in this regard on the basis of such a presumption. This, to my mind, would constitute the most fundamental reason for permitting the charge-sheeted employee the benefit of being represented by a legally trained person when the Management itself chooses to avail of the same. This is the basis on which I am inclined to agree with the conclusions arrived at by the Division Bench of the Madras High Court.

26. Faced with this, Mr. Rele, the learned senior Counsel appearing on behalf of the Respondents contended that even where the Management representative/the Presenting Officer is a legally trained person, the employee may be denied a similar facility if the subject matter of the enquiry is not complicated. Mr. Rele relied upon a judgment of the Supreme Court in *Harinarayan Srivastav Vs. United Commercial Bank and another*, to contend that where the presenting officer is a lawyer or a legally trained person, the employee may be denied the right of being assisted by a lawyer if the case is not a complicated one. He submitted that this is the interpretation of the judgment by a subsequent judgment of the Supreme Court in *Biecco Lawrie Ltd. and Another Vs. State of West Bengal and Another*, .

27. The submission is not well founded. Further, even if the submission is well founded in the present case it would not carry the Respondents' case further for I have come to the conclusion that the proceedings are complicated enough to entitle the Petitioner to the assistance of a lawyer. I will, however, first deal with the two judgments.

28. It is necessary to set out the judgment in *Harinarayan Srivastav's* case in extenso:

1. Delay condoned.

2. This SLP arises from the judgment of the Single Judge of the Madhya Pradesh High Court, Jabalpur Bench, made on 28-10-1996 in WP No. 4472 of 1996.

3. A charge-sheet has been given to the petitioner on the allegation that he sanctioned loan for non-existing fictitious persons and got disbursement on demand drafts mentioned in the charge-sheet within two days i.e. 10-12-1990 and 11-12-1990 in favour of M/s. Sudarshan Trading Co. of Bhopal for Rs. 2,80,000. On the basis thereof, the respondents imputed that the petitioner committed the misconduct. An enquiry has been initiated and is now being proceeded against him. He filed an application for permission to engage the services of an advocate. The permission was refused. In the writ petition, the petitioner contended that the charge-sheet was filed against him in the criminal court for the selfsame offence. In view of the fact that the matter is pending in the criminal court, an assistance of the advocate is necessary. Since presenting officer of the bank is a law graduate, denial of the assistance of an advocate is violative of principles of natural justice. The High Court has held that since the facts are not complicated and the presenting officer of the bank is not a legally trained person, assistance of an advocate is not mandatory in the domestic

enquiry. On these simple facts, he could himself or through any other employee defend the case without the assistance of an advocate. On that basis, the High Court has held that denial of assistance of an advocate is not violative of principles of natural justice.

4. The learned Counsel for the petitioner contends that since the charge-sheet has already been filed and criminal trial is pending, any enquiry conducted against the petitioner himself or any of the officer, as notified in para 19.12 of the Bipartite Settlement, would prejudicially affect the petitioner's case and therefore, the denial of the assistance of an advocate is violative of the principles of natural justice. We find no force in the contention.

5. As per Rule 19.12 of the Bipartite Settlement, the permission to defend himself with the assistance of the advocate is one of the options to be given by the bank. We have perused the charge-sheet in the enquiry now sought to be proceeded against the petitioner. The allegations are very simple and they are not complicated. Under these circumstances, we do not think that the failure to permit the petitioner to engage an advocate is violative of the principles of natural justice.

6. The SLP is accordingly dismissed.

29. It is important to note that in paragraph 3, the Supreme Court noted the contention on behalf of the Respondent to the effect that the presenting officer of the appellant-bank was a "law graduate", but that the High Court held that he was "not a legally trained person". The High Court, therefore, on the ground that the presenting officer was "not a legally trained person" and that the facts were simple, held that the Respondent-employee was not entitled to the assistance of an advocate. The Supreme Court, on these facts, dismissed the Special Leave Petition. The Supreme Court did not reject the Respondent-employee's contention that the presenting officer was "a law graduate". Neither did the Supreme Court reject the appellant's contention upheld by the High Court that the presenting officer was "not a legally trained person." The Supreme Court, therefore, dismissed the SLP although the presenting officer of the bank was a law graduate as the allegations were very simple and not complicated. In other words, the Supreme Court did not proceed on the basis that the appellant's representative was a legally trained person. I do not read the judgment as having held that even if the presenting officer was a legally trained person, the Respondent would not have been entitled to the assistance of an advocate as the facts were simple and not complicated. This would ascribe to their Lordships' words which are significantly absent.

30. Indeed, paragraph 39 of the judgment of the Supreme Court in *Biecco Lawrie Ltd.*'s case, relied upon by Mr. Rele, established this interpretation of the judgment in *Harinarayan Srivastava*'s case. Paragraph 39 of the judgment reads as under:

39. Furthermore in *Harinarayan Srivastav v. United Commercial Bank* this Court

again held that refusal of inquiry officer to permit representation by an advocate even when the management was being represented by a law graduate will not be violative of the principles of natural justice if the charges are simple and not complicated.

The Supreme Court interpreted the judgment in Harinarayan Srivastav's case to the effect that if the charges are simple and not complicated the refusal of an Enquiry Officer to permit the employee the assistance of an advocate even when the Management was being represented by a "law graduate" will not be violative of the principles of natural justice. In other words, it does not interpret Harinarayan Srivastav's case as holding that if the facts are simple, there would be no violation of the principles of natural justice by denying the employee the assistance of a lawyer even if the Management representative is "a legally trained person". The mere fact that a person is a law graduate would not necessarily make him a "legally trained person" placing the employee at a disadvantage. That would depend upon the facts of each case although a person having a law graduate with even minimal experience would be a very strong indication of his being a legally trained person. On the other hand, a fresh law graduate may not be considered always to be a legally trained person.

31. Mr. Rele also relied upon paragraph 40 of the judgment in Bieccos' Lawrie Ltd., which reads as under:

40. In the present case, the respondent had based his case firmly on the fact that he was denied legal representation but nonetheless he could have resorted to the help of a friend who could have presented his case or the registered Union could have very well taken up the matter of the workman concerned. The High Court had decided on the fact that the management was represented by a person who was a commerce graduate and passed the diploma course of special welfare even though was not a lawyer, yet was a legally trained person and thus there was violation of the principles of natural justice, which this Court believes is untenable as the respondent would have sought permission from the Tribunal or would have asked help from the registered trade union. We are, therefore, of the opinion that the charges were specific and simple and not difficult to comprehend.

32. These observations do not support Mr. Rele's submission that even if the Presenting Officer is a legally trained person, the employee would not be entitled to the assistance of a legally trained person if the facts are simple and not complicated. The judgment must be read as a whole. The first ten paragraphs of the judgment state the facts of the case. Pursuant to a charge-sheet, departmental proceedings were held leading to the employee being dismissed. The dispute was referred u/s 7-A of the Industrial Disputes Act wherein the pleadings were filed and witnesses were examined and cross-examined by both the parties. The Industrial Tribunal affirmed the order of dismissal. The High Court, in a Writ Petition filed by the employee, set aside the order of the Tribunal and remanded the matter for reconsideration albeit to a limited extent. Upon remand, the Industrial Tribunal held that the Respondent was illegally terminated

and set aside the dismissal order. The appellant's Writ Petition was dismissed by a learned Single Judge of the High Court. The Division Bench upheld the order.

It is important to note that not once during all these rounds of litigation did the employee make an application to be represented by a lawyer in view of the Management representative being a legally trained person. The point appears to have been taken for the first time only in the Supreme Court (paragraph 15 of the judgment).

The Supreme Court obviously meant this when it observed that the submission was untenable "as the Respondent would have sought permission from the Tribunal...." Obviously, the permission referred to relates to availing assistance from a legally trained person. The contention was, therefore, rejected on the ground that the Respondent did not seek the necessary permission from the Tribunal to avail of the assistance of a legally trained person and not on the ground that he was not entitled to the same. The Supreme Court also rejected the contention as untenable as the employee could "have asked help from the registered trade union". This help also obviously refers to the assistance of a legally trained person either from within the trade union or otherwise. In any event, I do not read the observations as an absolute proposition that an employee is not entitled to the assistance of a legally trained person although the Management representative is a legally trained person merely because the facts are simple and not complicated.

33. Mr. Rele also relied upon (1999) 1 CLR 694 LIC v. Shri Subhash N. Ghodke and Ors. The Management of National Seeds Corporation Ltd. Vs. K.V. Rama Reddy, and D.G. Railway Protection Force and Others Vs. K. Raghuram Babu, . It is not necessary to deal with these judgments as they do not deal with cases where the Presenting Officer was a legally trained person. The management's right to restrict representation in disciplinary proceedings upheld in these judgments was not challenged by the Petitioner.

34. I would, even in the absence of authorities, and on principle, be inclined to the view that even if the charges are apparently simple and apparently uncomplicated, an employee would be entitled to the assistance of a legal practitioner if the Management Representative/Presenting Officer is a legally trained person. The charges may appear simple. The facts stated in the charge-sheet may appear simple. It may not be difficult for the employee to understand the same. Anyone with any experience of litigation before a Civil Court, an Arbitrator or a Tribunal knows that simple facts may require skillful handling which an employee or a person who is not legally trained cannot be expected to be capable of. Skillful and adept handling of facts and law makes all the difference, not merely to the outcome of the matter but to the production of evidence and placing the matter in the correct perspective. Simple facts are handled quite differently, more skillfully by a legally trained person. A lawyer can, by virtue of his training, complicate simple facts and present complicated facts in clear and simple terms. He can complicate simple cases and simplify, over-simplify

complicated ones. That is the result of his training. I see neither logic nor any justification in denying an employee the benefit of the assistance of a legally trained person where the Management avails of the same.

35. This approach is reinforced by the fact that the scope of judicial review against orders passed in such proceedings are limited. A person denied the assistance of a legally trained person would be at a great disadvantage in seeking judicial review of the orders passed in proceedings where the opposite side has the benefit of a legally trained person.

36. There may be crucial lapses in the decision making process. These may be factors that indicate or establish bias. Considering the scope of judicial review, it is essential that the same are appropriately dealt with, recorded. A legally trained Presenting Officer could well guard against the same appearing on record. It is essential, therefore, that the employee is also granted the assistance of a lawyer to guard against the same.

37. Further, the importance or relevance of evidence, documentary or oral, may not be realised by a lay person. A legally trained person would, however, realize the importance thereof. If the Management representative is a legally trained person, he would be able to produce, for the consideration of the Enquiry Officer, the material necessary to substantiate the charges. The importance of such evidence may escape an employee who does not have similar assistance. The necessary evidence not having been produced before the Enquiry Officer, it may be difficult for the employee to sustain a reasonable challenge/judicial review to the action. The scales would be unfairly tipped against the employee leading to an unfair result.

38. In any event, I am of the opinion that in the present case, the facts are complicated enough to warrant the Petitioner being permitted the assistance of a lawyer in view of the Respondents' representative being a legally trained person. The charge against the Petitioner is serious. If the allegations against him are held to be established, he is likely to suffer serious consequences, including of dismissal. He is alleged to have uttered vulgarities, claimed himself to have closed down the company three times in the past, and to have threatened the Management by gathering a crowd, creating a scene and closing down the company again. Indeed, if the allegations against him are true, it would not be surprising if the Disciplinary Authority decides to terminate his services. Depending upon the nature of the evidence adduced by the Management, evidence in regard to these allegations can become complicated. It would require reasonably skillful cross-examination to rebut the evidence.

39. Charges read by themselves may not appear complicated. However, while deciding whether a matter is simple or not, complicated or not, it is not only the assertions in the charge-sheet that must be considered, but also all the other facts and circumstances including those pertaining to the defence. There is an important aspect in Biecco Lawrie's case that distinguishes it from this case. In

Biecco Lawrie, the employee had "admitted all the charges and sought condonation and mercy". There is no admission in the present case by the Petitioner. Whether the facts in an inquiry are simple or not must necessarily depend upon the facts of each case.

40. In the present case, the Petitioner has raised serious allegations against the Enquiry Officer himself. He has also made allegations against the Union-members. There is, therefore, every possibility of his facing stiff resistance in the proceedings. The Petitioner has also alleged various unfair practices against the Respondent. He has, for instance, alleged that the entire action is mala fide. He has alleged that this was the culmination of previous unfair treatment meted out to him by the Respondent. He has alleged that he was threatened and abused by his superiors. Whether the same are true or not is another matter altogether. That is not relevant at this stage. Establishing these facts cannot possibly be simple for the Petitioner without the assistance of a lawyer, specially when he is met with opposition from a legally trained person and where there is a serious allegation made by him against the Enquiry Officer and the Union-members.

41. In the circumstances, the impugned order is set aside. The Petitioner shall be entitled to appear through a lawyer for defending himself in the enquiry proceedings. The Writ Petition, accordingly, stands disposed of, but with no order as to costs.