

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9122 OF 2016

KINETIC ENGINEERING LTD NAGAR DAUND ROAD AHMEDNAGAR
VERSUS
ATULKUMAR RAMNATH SIKCHI

...
Advocate for Petitioner : Shri Bedre Vinayak Sudhakar.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th September, 2016

Per Court:

1 The Petitioner is aggrieved by the part-1 judgment of the Labour Court dated 14.11.2014 by which the enquiry conducted by the Petitioner under it's Standing Orders against the Respondent, has been held to be vitiated for non compliance of the principles of natural justice and the findings of the Enquiry Officer are branded as being perverse.

2 The Petitioner is also aggrieved by the judgment dated 04.08.2015 delivered by the Industrial Court, Ahmednagar by which it's Revision (ULP) No.8/2015 has been dismissed.

3 Shri Bedre, learned Advocate for the Petitioner, has strenuously criticized the impugned judgments. The contention is that the

Labour Court has erroneously declared that the enquiry is vitiated because the Respondent was not granted liberty to engage an Advocate as his Defence Representative (DR). He further submits that the Management Representative (MR) was not a practicing Advocate. He further submits that the Standing Orders do not permit engaging of an Advocate as a DR and hence, the conclusion of the Labour Court that failure on the part of the Petitioner to allow the Delinquent to engage an Advocate amounts to violation of principles of natural justice, is perverse and erroneous.

4 Shri Bedre has further strenuously submitted that the Respondent desired to examine the dismissed employee by name Sanjay Manikrao Misal. The said employee having been dismissed from service by the Petitioner for proved misconduct, was naturally not a necessary witness. The application Exhibit-8 filed by the Respondent before the Enquiry Officer seeking permission to examine Sanjay Misal was rightly rejected since the Delinquent did not set out reasons for examining Sanjay Misal. Shri Bedre further submits that a witness, who is necessary to prove the case of the Delinquent, could alone be permitted to be examined. If the application of the Delinquent does not make out any ground by which Sanjay Misal could be said to be connected to the case, rejection of the application was not in violation of the principles of natural justice.

5 I have considered the strenuous submissions of Shri Bedre and I have gone through the petition paper book with his assistance.

6 There can be no dispute that the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 do not prescribe engagement of an Advocate as a DR. However, it is settled law that if the MR is an Advocate or legally trained, the Delinquent employee gets right to engage an Advocate as a DR. If the MR is a law graduate or a person trained in the subject, though he may not be a practicing advocate, it would give advantage to the Management as against the Delinquent who has no knowledge of law. If the DR is an Union Representative and incidentally is an Advocate, he can also be permitted. [See *Vijay Thakur vs. Videsh Sanchar Nigam Ltd.*, 2007 LLR 690 : (2007) ILR 2 Delhi 82 and *Shiraz Golden Restaurant vs. Commercial Shop and Factory Establishment Union and others*, 2007 LLR 897 (SC) : 2007 (115) FLR 143].

7 The Honourable Apex Court, in *J.K. Aggarwal vs. Haryana Seeds Development Corporation Ltd. and others*, 1991 (II) LLJ 412, has held in paragraph Nos.8 and 9 as under:-

“8. It would appear that in the inquiry, the respondent-Corporation was represented by its Personnel and

Administration Manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to entail a dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reasons of the appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include "whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser". In the last analysis, a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question "whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner" which was kept open in Board of Trustees of the Port of Bombay v. Dilipkumar 1983 1 SCC 124. However, it was held in that case (p.132):

"... 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..."

9. *On a consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the inquiry was not a proper exercise of the*

*discretion under the rule resulting in a failure of natural justice; particularly, in view of the fact that the Presenting Officer was a person with legal attainments and experience. It was said that the appellant was no less adept having been in the position of a Senior Executive and could have defended, and did defend, himself competently; but as was observed by the learned Master of Rolls in *Pett v. Greyhound Racing Association*, 1968 (2) ALL ER 545, 549 (CA) that in defending himself one may tend to become “nervous” or “tongue-tied”. Moreover, appellant, it is claimed, has had no legal background. The refusal of the service of a lawyer, in the facts of this case, results in denial of natural justice.”*

8 Similarly, the Honourable Apex Court, in *The Board of Trustees of the Port of Bombay vs. Dilipkumar Raghavendranath Nadkarni and others*, **1983 (I) LLJ 1**, has held in paragraph No.12 as under:-

“12. We would reach the same conclusion for a different reason altogether. The first respondent while submitting a reply to the charge-sheet dated 14th April 1975 requested the Chairman of the appellant to permit him assistance of an advocate at the enquiry. This request was refused and the decision was conveyed by the Dock Manager as per his letter dated March 1975. The enquiry opened on April 13, 1976. By May 8, 1976 evidence of only one out of 25 witnesses of the employer was offered and the second witness was under examination. On that date Bombay Port Trust Employees (Regulation), 1976 admittedly came into force. The relevant regulation 12(8) is extracted hereinbefore. The latter portion of the regulation practically borrows the languages of sub.rule (5) of rule 15 referred to herein before, in that it provides that the delinquent officer may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is the legal practitioner or the Disciplinary

Authority having regard to the circumstances of the case so permits. Now the first respondent had already submitted his request for appearing through a legal practitioner at the enquiry. This eminently just request was turned down on untenable grounds, and to make matters worse for the delinquent employee two law officers of the appellant were appointed Presenting-cum-Prosecuting Officers. Assuming that in the absence of rules the Chairman has a discretion which was required to be exercised wisely yet taking shelter behind legal facade it was exercised against the first respondent because he was not under any statutory obligation to grant this request. However, when Regulation 12(8) came into force the situation materially altered and the large number of witnesses almost all except one were examined after the Regulation came into force and which made it obligatory to grant the request of the first respondent because the regulation provided granting of permission to appear and defend by a legal practitioner once the department was represented by legally trained minds. A very feeble submission was made by Mr.Nariman that after the Regulation 12(8) came into force, the request was not renewed. In our opinion, that is hardly relevant. The unjustly refused request was already there and obligation under the regulation coupled with fair play in action demanded that the employer should have suo motu reviewed his order refusing the request. In fact one can go so far as to say that the Enquiry Officer in order to be fair and just, whenever he finds the employer appointing legally trained persons as Presenting cum-Prosecuting Officers must enquire from the delinquent employee before commencement of enquiry whether he would like to take assistance of a legal practitioner. The option then is with the delinquent employee. In this connection, we would like to refer to a weighty observation on this point where despite constitutional inhibition this Court conceded such a right. In *K. Roy v. Union of India* (1982) 1 SCC 271, the learned Chief Justice while rejecting the contention that a

detenu should be entitled to appear through a legal adviser before the Advisory Board observed that Art. 22(3)(b) makes it clear that the legal practitioner should not be permitted to appear before an Advisory Board for any party. While noting this constitutional mandate, the learned Chief Justice proceeded to examine, what would be the effect if the department is represented before the Advisory Board by a legally trained person. It was held that in such a situation despite the inhibition of Art. 22(3)(b) the fair procedure as contemplated by Article 21 requires that a detenu be permitted to appear by a legal practitioner. Thus spoke the learned Chief Justice:

"We must therefore make it clear that if the Detaining Authority or the Government take the aid of a legal practitioner or a legal adviser before the Advisory Board, the detenu must be allowed the facility of appearing before the Board through a legal practitioner. We are informed that officers of the Government in the concerned departments often appear before the Board and assist it with a view to justifying the detention orders. If that be so, we must clarify that the Boards should not permit the authorities to do indirectly what they cannot do directly; and no one should be enabled to take shelter behind the excuse that such officers are not "legal practitioners" or "legal Advisers."

And this view was taken as flowing from Art. 21 which mandates that no one shall be deprived of his life or liberty except in accordance with the procedure prescribed by law. The expression 'life' does not merely connote animal existence or a continued drudgery through life. The expression 'life' has a much wider meaning where therefore the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of a person, some of the finer graces of human civilization which make life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedures. In this context one can recall the famous

*words of Chapter II of Bhagwad Gita:
Sambhavitasya Cha Kirti Marnadati Richyate.”*

9 Considering the above, it is noteworthy that the Management Representative of the Petitioner is a law graduate. There is no dispute that he has acquired LLB Degree and is conversant with domestic enquiries.

10 Taking into account the fact situation as above, I do not find that the impugned part-1 judgment of the Labour Court dated 14.11.2014 and the judgment of the Industrial Court dated 04.08.2015, could be termed as being perverse or erroneous.

11 This Writ Petition being devoid of merit is, therefore, dismissed.