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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8548 OF 2017

Tata Motors Limited
Pimpri, Pune – 411 018

..PETITIONER

VERSUS

1. Prakash Arjun Mugade
Age : 44 Occ. Service
R/at Shriram Colony,
Lane No.5,
Alandi Road, Bhosari,
Pune – 411 039
2. Mr Ashok Bhamare
Off : Sai Shradha Enterprises
(Management consultant)
JB/1/003, Ajmera Housing Complex
Pimpri, Pune – 411 018

..RESPONDENTS

WITH

WRIT PETITION (ST.) NO.20090 OF 2017

Tata Motors Limited
Pimpri, Pune – 411 018

..PETITIONER

VERSUS

1. Suresh Sopan Phale
Age : 51 Occ. Service
R/at Sr. No. 33/3/7/1/1,
'Raghuvanshi', Phale Nagar,
near Reliance Fresh, Aambegaon
Budruk, Pune 411046
2. Mr Ashok Bhamare
Off : Sai Shradha Enterprises
(Management consultant)
JB/1/003, Ajmera Housing Complex
Pimpri, Pune – 411 018

..RESPONDENTS

Mr Sudhir Talsania along with Mr Kiran Bapat, Mr Atman Mehta, Aniket Mokashi and A.K. Gopalan, instructed by Haresh Mehta & Co. for petitioner;

Mr Prashant P. Kshirsagar along with Mr Anirudha M. Sanap, instructed by Sarvadnya Legal Associates for respondent no.1

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CORAM : PRASANNA B. VARALE, J.

DATE : 29th September, 2017

ORAL ORDER:

Since both these petitions involve a common issue, they are heard together and are being decided by this common order.

2. The petitioner is a company engaged in manufacturing and selling of automobile products. Respondent no.1 was an employee with the petitioner company working as Auto Mechanic. Respondent no.1 in Writ Petition No.8548 of 2017 was served with the charge-sheet/show cause notice dated 27th April, 2017. It was the allegation against respondent no.1 in the said charge-sheet that respondent No.1 though was required to discharge his duties personally, he instead of discharging his duties personally, was asking some other employee to work in his place. It was further submitted that respondent No.1 was not using the protective gear and in spite of repeated requests made to him, he was avoiding to use the personal protective equipments. Respondent No.1 was under close watch through his superiors and it was found that from 2nd January, 2017 till 17th April, 2017, he was only endorsing his signatures of discharging the duties personally, but in fact, he was absent at the place of the work. The show cause notice refers to list of such various dates ranging from 2nd January, 2017 to 17th April, 2017.

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3. Insofar as Writ Petition (St.) No.20090 of 2017 is concerned, respondent No.1 was served with the charge-sheet/show cause notice dated 27th April, 2017. It was submitted that though respondent No.1 was assigned with the duty of inspection of the vehicles, without informing his superior, he was leaving the workplace. It was submitted that because of the absence of the respondent No.1, the work of inspection of vehicles had hampered. It was then submitted that because of the neglect of respondent No.1, there was failure in expected output. It was also submitted that respondent No.1 was not using the personal protective equipments at the workplace and in spite of repeated warnings given to him, there was no change in his behaviour. Then it was submitted that respondent No.1 was under a close scrutiny/watch and from 31st January, 2017 till 15th April, 2017 there was a consistent decrease in the output. Thus, respondent No.1 in both these petitions were charged for serious misconduct and breach of Standing Orders and the said act of the respondents was calling for an action as per Sections 24(A), 24(C), 24(H), 24(L) and 24(V) of the Standing Orders.

4. Respondent No.1 submitted his say to the charge-sheet/show cause notice. Respondent No.1 denied the allegations against him. It was the submission of the respondent No.1 that he was either the representative of the union or was the office bearer of the union and he was taking active interest in the issues of the workers. It was his submission that he was insisting for the valid demands of the workers, such as rise in the pay scales and better service conditions. It was submitted in the reply that the

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management was having a grudge against respondent No.1 and with a *mala fide* intention, he was subjected to a show cause notice/charge-sheet. It was submitted that no opportunity of hearing was granted to respondent No.1. It was then submitted that the action initiated against respondent No.1 was a one sided act and it was intended to apply pressure on the union. Certain material is placed on record, namely, the proceedings of the departmental enquiry initiated against respondent No.1. Respondent No.1 participated in the enquiry proceedings. Respondent No.1 was present before the Enquiry Committee constituted of the Enquiry Officer Mr Bhamare and the management representative Mr Kashid. The Committee sought reply from respondent No.1 on the aspect of his representative as a defence representative. Respondent No.1 was permitted to be represented through a co-worker or the representative of the union, of which respondent No.1 was member, as his defence representative. Respondent No.1 submitted that he will file the necessary written application and will remain present with his defence representative on the next date.

5. Perusal of the material placed on record shows that respondent No.1 then sought some time and accordingly his request was allowed on 30th May, 2017 and 12th June, 2017. The respondent then prayed for being represented through a lawyer as his defence representative. The Enquiry Committee turned down his request on the ground that there is no such procedure permitting respondent no.1 being represented through a lawyer under the Model Standing Orders. It was also stated in the proceedings

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that the respondent was permitted to be represented either through the co-worker or the office bearer of the union as his defence representative, but the respondent failed to seek such an assistance.

6. Being aggrieved by the rejection of aforesaid request, respondent No.1 approached the learned Member, Industrial Court, Pune, by filing Complaint ULP against the order dated 12th June, 2017. Respondent No.1 filed an application Exh.U-2 under Section 30 (2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, for interim relief.

7. The application seeking interim relief was opposed by the petitioner.

8. The learned Member, Industrial Court, Pune passed order dated 7th July, 2017, thereby allowing the application Exh.U-2 partly. Respondent No.1/complainant was allowed to be represented through an advocate as defence representative in the departmental enquiry proceedings initiated against him.

9. Being aggrieved by the orders passed in favour of respondent No.1 in these petitions, the petitioner is before this Court.

10. Mr Bapat, learned Counsel appearing for the petitioners vehemently submitted that the order passed by Member, Industrial Court is clearly unsustainable on more than one grounds. It was the first submission of Mr

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Bapat that the order passed by the learned Member of the Industrial Court on an application seeking interim relief was in the nature of grant of final relief in the complaint. Thus, the submission of Mr Bapat was, by grant of the final relief in an application for interim relief, the learned Member of the Industrial Court in turn decided the complaint itself, which is impermissible. The second submission of Mr Bapat is, the learned Member of the Industrial Court failed to appreciate the facts of the matter in proper perspective and only on an erroneous reliance placed on the judgment of the Apex Court in the matter of **Board of Trustees of the Port of Bombay vs. Dilipkumar Raghavendranath Nadkarni and others**, reported in **1983 SCR (1) 828**, the order impugned is passed. Mr Bapat then submitted that respondent No.1 in both these petitions were assigned with the manual or technical work and the provisions of Model Standing Orders are applicable against these respondents. It was then submitted by Mr Bapat that the learned Member of the Industrial Court erred in observing that the petitioner permitted advocates as defence representatives on earlier occasions, in earlier proceedings. He then submitted that the learned Member of the Industrial Court also erred in observing that as there are complex issues involved, respondent No.1 requires a lawyer as defence representative. Mr Bapat then submitted that the representative of the management Mr Kashid is only possessing law degree, but he is not a practicing lawyer. Mr Bapat submitted that Mr Kashid is management's representative Engineer and is not a legally trained person. Mr Bapat then submitted that if it would have been a case that respondent was pitted against the management representative, who is either a practicing lawyer

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or a trained law graduate, then it would have been a case of fight amongst unequals, but in the present matter, respondent No.1 in Writ Petition No.8548 of 2017 Prakash Mugade himself was a representative for some workers in some departmental enquiry proceedings and Mr Kashid, representative of the management, is neither a lawyer by profession nor a legally trained person, as such, it is not a case of fight between unequals.

11. Leaned Counsel appearing for respondent No.1 vehemently opposed the petitions and supported the orders impugned in the petitions. Learned Counsel for respondent No.1 submitted that there is no blanket ban for appointing an advocate or lawyer as a defence representative. He then submitted that such an appointment will depend upon gravity of the charges or the complex issues involved. It was submitted by the learned Counsel appearing for respondent No.1 in Writ Petition (St.) No.20090 of 2017, that the management itself states that charges against respondent No.1 are serious in nature. It is submitted that as the charges are serious in nature and complex issues are involved, it was necessary for respondent No.1 to seek assistance of a lawyer as a defence representative.

12. In support of the submissions, Mr Bapat, learned Counsel appearing for the petitioner placed reliance on the judgments in the following matters:-

1. N. Kalindi & ors. vs. M/s Tata Locomotive and Engineering Co. Ltd. (AIR 1960 SC 914)
2. Brooke Bond India (Private) Ltd. vs. Subba Raman (S.) & anr. (1961 (II) LLJ 417)
3. The Dunlop Rubber Co. (India) Ltd. vs. Their Workmen (AIR 1965 SC 1392)
4. Board of Trustees of the Port of Bombay vs. Dilipkumar Raghavendranath Nadkarni & ors. (1983 (1) SCC 124)
5. Crescent Dyes and Chemicals vs. Ram Naresh Tripathi (1993 (2) SCC 115)
6. Harinarayan Srivastav vs. United Commercial Bank & anr. (1997 (76) FLR 268)
7. M/s. Cipla Ltd. & ors. vs. Ripu Daman Bhanot & anr. (1999 (82) (FLR) 225)
8. Annasaheb Dattatray Sandhbhor vs. Garware Wallropes (I) Ltd. & anr. (2000 II CLR 522)

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9. Indian Overseas Bank vs. Indian Overseas Bank Officers' Association & ors. (2001 (9) SCC 540)
10. National Seeds Corpn. Ltd. Vs. K. V. Rama Reddy (2006 (11) SCC 645)
11. Order dated 29th September 2015 passed by this Hon'ble High Court in Writ Petition No. 7899 of 2015 M/s. Thermax Limited vs. Mr Keshav H. Golave & ors.
12. Order dated 23rd August, 2016 passed by Hon'ble Supreme Court in Special Leave to Appeal © Nos. 6486-6487 of 2016 Keshav H. Gholve & anr. vs. M/s. Thermax Ltd.
13. Order dated 19th July 2017 passed by this Hon'ble High Court in Notice of Motion No. 1136 of 2017 in Suit No. 391 of 2017 Ritu Prakash Desai & anr. vs The Willingdon Sports Club & anr.

Learned Counsel for respondent No.1 Mr Kshirsagar placed reliance on the judgments:-

1. Board of the Trustees of the Port of Bombay vs. Dilipkumar R. Nadkarni (1983 SCR (1) 828)

2. Ghatage Patil Transport Pvt. Ltd. vs. B. K. Etale and others
(AIR 1984, Bom. 167)
3. India Photographic Company Ltd. vs. Saumitra Mohan Kumar
(1984 I LLJ 471 Cal)
4. Adolfo Vaz vs. Baroda and others (1993 II LLJ 232 Bom.)
5. Sevadal Ali vs. Clairant Chemicals (I) Ltd. (2010 (3) 642
Bom.)

14. With the assistance of learned Counsel appearing for the respective parties, I have gone through the material placed on record as well as the judgments relied on by the learned Counsel. As the facts are referred to in detail, it may not be necessary to refer to the facts giving rise to the petitions. The limited controversy involved in the petitions is, whether respondent No.1 in both the petitions ought to have been permitted to seek assistance of a lawyer as defence representative in the departmental enquiry proceedings initiated against them. The ground raised by respondent No.1 is, the representative of management Mr Kashid is possessing LL.B. degree. Mr Kashid is a trained graduate and he may represent the management more effectively being a trained graduate. It was also the submission of the respondents that though they made an attempt to seek assistance from the co-workers or the office bearers of the union either as their representative or their defence representative, they were unable to

seek such assistance as the co-workers and office bearers expressed their inability. A heavy reliance is placed by the respondents on the judgments of the Apex Court in the matter of Board of Trustees (*supra*), which is heavily relied on by the learned Member of the Industrial Court while passing the orders impugned.

15. On consideration of the material, it reveals that the respondents are charged broadly for not discharging their duties personally. It is the allegation against the respondents that only a record was created by these respondents that they discharged the duties personally, whereas they were not present at the work place. The charge-sheet or show cause notice refers to the various dates ranging for a period of nearly four months. The charges are inclusive of the breach of Standing Orders, committing breach of discipline, in-subordination and not using the personal protective equipments. Though it was vehemently submitted by the respondents that these issues are the complex issues, bare perusal of the show cause notice shows that these issues are not the complex issues but they are more of a nature involving the serious misconduct of these respondents. Respondent No.1 in Writ Petition No.8548 of 2017, in his reply to the show cause notice, submitted that the show cause notice is issued against him with an ill motive as he was taking an active interest in union activities and with an intention to bring a pressure on union, the show cause notice was issued against him. If this ground is considered, then the ground clearly states that the emphasis of the respondent is not on the so called complex issues, but it is on alleged *mala fide* action of the petitioner-management.

It is the submission of Mr Bapat that the management representative Mr Kashid is only a law graduate but is not a practicing lawyer and he is the management's representative Engineer. There is no contra material brought on record by respondent No.1. On perusal of the material placed on record, I find a considerable merit in the submission of Mr Bapat that this is not the case of a fight amongst unequals, as projected by respondent No.1. There is also merit in the submission of Mr Bapat that there is no right to representation through a lawyer as defence representative, unless the company by its Standing Orders recognizes such right. I also find considerable merit in the submission of Mr Bapat that the learned Member of the Industrial Court, while allowing application Exh.U-2 granted interim relief, which is in the nature of final relief and the same leads to allowing the complaint itself and such course was not permissible. Mr Bapat was justified in placing reliance on the judgment of the Apex Court in the matter of Crescent Dyes and Chemicals Ltd. (supra). It would be useful to refer the relevant observations of the Apex Court in paragraphs 8, 11, 13 and 17 :

“8. It may also be noticed that under the Certified Standing Orders the acts or omissions constituting misconduct have been enumerated in Standing Order No. 25 and Standing Order No. 26(2) entitles a delinquent 'to be defended by a clerk or a workman working in the same department as himself. Since Talraja was not a clerk or workman working with the delinquent in his department, even under the Standing Orders he was not entitled to represent the delinquent. As held by this Court in *Sudhir Chandra Sarkar v. Tata Iron & Steel Co. Ltd.* [(1984) 3 SCR 325 at 336] the

Standing Orders certified under the Industrial Employment Standing Orders Act, 1946, become part of the terms and conditions of service between the employer and the employees and they governed the relationship between the parties. Once the Standing Orders get incorporated in the contract of service both the employer and the employee are bound by those terms and the employee cannot be heard to contend that notwithstanding the same he would insist on an outsider representing him unless any special statute permits him such representation. There is no such statute which has the effect of overriding the Standing Orders except the Act, Section 22 (ii) whereof enlarges the scope and permits an authorised officer, staff-member or member of an unrecognised union to represent him. We are, therefore, of the view that the Enquiry Officer was justified in refusing permission to Talraja to represent the delinquent. The High Court, with respect, has adopted a simplistic approach that since it is unfair labour practice to discharge or dismiss an employee in utter disregard of the principles of natural justice under item 1(f) of Schedule IV, in not allowing the workman to be defended by Talraja, the employer was guilty of unfair labour practice because there was nothing in Section 22 to deny such a basic fundamental right without noticing the effect of the Standing Orders and the true purport of Sections 21 and 22 of the Act and the decisions of this Court to which we shall presently refer.

11. A delinquent appearing before a Tribunal may feel that the right to representation is implied in the larger entitlement of a fair hearing based on the rule of natural justice. He may, therefore, feel that refusal to be represented by an agent of his choice would tantamount to denial of natural justice. Ordinarily it is considered desirable not to restrict this right of

representation by counsel or an agent of one's choice but it is a different thing to say that such a right is an element of the principles of natural justice and denial thereof would invalidate the enquiry. Representation through counsel can be restricted by law as for example, Section 36 of the Industrial Disputes Act, 1947, and so also by certified Standing Orders. In the present case the standing orders permitted an employee to be represented by a clerk or workman working in the same department as the delinquent. So also the right to representation can be regulated or restricted by statute. Such provisions in fact serve to underline the importance attached to the right to representation. In *Maclean v. The Workers' Union* [(1929) 1 Sch. 602 at 621] Maugham, J. observed that counsel have no right of audience before a Tribunal. However, in *Pett v. Greyhound Racing Association Ltd.* [(1968) 2 All E.R.545 (No. 1) = (1969) 1 Q.B.125] the Court of Appeal was dealing with an appeal from an interlocutory injunction restraining the Greyhound Racing Association Ltd. from holding an enquiry on the question whether drugs had been administered to Pelt's dog. The rules of the club to which the trainer had agreed did not prescribe the procedure to be followed at such an enquiry and did not exclude legal representation. The procedure in fact followed was to allow the trainer to be present, to hear the evidence and to question the witnesses. The trainer sought to be represented by counsel and solicitor at the enquiry but the track stewards decided not to allow legal representation. On appeal from the grant of an interlocutory injunction restraining the enquiry from being held unless the right to representation was conceded, the Court of Appeal held that *prima facie* the trainer was entitled to an oral hearing and the enquiry being one of serious importance to him, to be represented at it by counsel and solicitor. The Court held that he was entitled not only to

personally appear but also to appoint an agent on his behalf, and so was entitled to appoint counsel and solicitor to represent him. Lord Denning, M.R. while admitting that such a right may not be conceded in minor matters felt that since the enquiry was one of serious consequences to Pett, *prima facie* he was entitled to counsel and solicitor.

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) and Ors. v. Tata Locomotive & Engineering Co. Ltd., Jamshedpur*, (ii) *Brooke Bond India (P) Ltd. v. Subba Raman (S.) and Anr.* [(1961)2 LLJ 417] and (iii) *The 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. 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 to 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 despatch 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.”

16. By referring to the judgments of the Apex Court in *Crescent Dyes and Chemicals Ltd. and in Board of Trustees (supra)*, which was heavily relied on by the learned Counsel for respondent, this Court was pleased to observe in the case of *Annasaheb Dattatraya Sandbhor, Pune vs. Garware Wall Ropers Ltd., Pune & anr. (supra)* and the same reads thus :-

“...The law on this point has been sufficiently clarified and crystalised by the Supreme Court in the judgment of *Crescent Dyes & Chemical Ltd. v. Ram Naresh Tripathi*. The Bench of the three Hon'ble Judges of the Supreme Court has succinctly stated after considering its earlier decisions in paragraphs 11, 12, 13, 14, 15 and 16. The Supreme Court has finally concluded that the right to be represented through counsel or agent was restricted, controlled or regulated by statute, rules, regulations or standing orders. It is further observed that a delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. Shri Bukhari has tried to distinguish the said Judgment of the Supreme Court on the ground that the

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earlier judgment in the case of Board of Trustees, Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and Ors. was not considered by the Supreme Court in its subsequent judgment. It is a fact that in the Crescent Dyes case there is no reference to Nadkarni's case decided by the two Judges. The ratio laid down by the Crescent Dyes judgment is specifically on the point in respect of the right of the delinquent workman to be defended in the enquiry and it has been explained and crystalised. The Crescent Dyes judgment was given by three Judges and is a later judgment on the specific point before me and hence I am bound by the same. ...”

17. Considering all aforesaid aspects, I am of the opinion that learned Counsel for the petitioner made out a case. The orders impugned passed by the learned Member of the Industrial Court are unsustainable and stand quashed and set aside . Resultantly, the petitions are allowed.

(PRASANNA B. VARALE, J.)

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