

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11801 OF 2023

Ajit Bhagwan Sawant	]	
Aged : 44 Years, Occupation : Service,	]	
Having his address at Room No.8,	]	
Sawant Chawl, Lokmanya Nagar No.4,	]	
Thane (West), Pin Code – 400606.	]	... Petitioner

Versus

1. M/s. Parveen Industries Pvt. Ltd.	]	
Through its Managing Director / C.E.O.,	]	
R 55, 59, 662, TTC MIDC Industrial area,	]	
Thane Belapur Road, Rabale,	]	
Navi Mumbai, Pin Code – 400701.	]	
2. Anil Warang,	]	
Works Manager at	]	
M/s. Parveen Industries Pvt. Ltd.	]	
R 55, 59, 662, TTC MIDC Industrial area,	]	
Thane Belapur Road, Rabale,	]	
Navi Mumbai, Pin Code – 400701.	]	
3. K. T. Dongre,	]	
Inquiry Officer at	]	
M/s. Parveen Industries Pvt. Ltd.	]	
R 55, 59, 662, TTC MIDC Industrial area,	]	
Thane Belapur Road, Rabale,	]	
Navi Mumbai, Pin Code – 400701.	]	... Respondents

Mr. Hamza Lakdawala for Petitioner.

Mr. Avinash Jalisatgi a/w Mr. T. R. Yadav & Ms. Divya Wadekar for Respondent No.1.

CORAM :- SANDEEP V. MARNE, J.

RESERVED ON :- 04 JANUARY, 2024

PRONOUNCED ON :- 08 JANUARY, 2024

JUDGMENT :

1. The issue involved in this Petition is about right of a workman to avail services of a legal practitioner to defend himself in the domestic inquiry when the Inquiry Officer is a legally trained mind. The issue arises in the light of challenge set up by the Petitioner to the Order dated 9 August 2023 passed by the Industrial Court at Thane rejecting application at Exh.U-2 in Complaint (ULP) No.240 of 2022 claiming interim relief, *inter alia*, for permission to engage Mr. Shishir Dhavale as defence representative in the inquiry.

2. Both the learned counsel have been heard extensively on the issue and they agree that the Petition can be decided finally. In that light, **Rule** which is made returnable forthwith.

3. Considering the narrow controversy involved in the present Petition, it is not necessary to narrate facts in detail. Suffice it to record that the Petitioner is working with the Respondent – Company and has been subjected to domestic inquiry by issuance of chargesheet dated 6 October 2022. The employer has nominated Mr. K. T. Dongre, a practicing Advocate, as Inquiry Officer. The management representative however is not a legal professional. Since the Inquiry Officer is a practicing Advocate, the Petitioner requested that he be granted an opportunity to engage an Advocate to act as defence representative. Alternatively, he requested for nomination of Mr. Shishir Dhavale, his well-wisher, to act as his defence representative. The Inquiry Officer has, however, rejected the request of the Petitioner for engagement of Mr. Shishir Dhavale to act as defence representative.

4. According to the Petitioner, the Respondent – employer was hurriedly proceeding with the inquiry without granting sufficient opportunity of defence to him. He, therefore, approached the Industrial Court, Thane, by filing Complaint (ULP) No.240 of 2022 seeking various reliefs for withdrawal of suspension order and chargesheet. Alternatively, he has prayed for permitting engagement of Mr. Shishir Dhavale as his defence representative. He has also sought various other reliefs such as conduct of inquiry before the Industrial Court, payment of wages, compensation, etc. In his complaint, the Petitioner filed application for interim relief at Exh.U-2 under the provisions of Section 30(2) of The Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (**'MRTU & PULP Act'**). One of the interim reliefs sought by the Petitioner is to permit him to engage Mr. Shishir Dhavale as his defence representative in the inquiry. By Order dated 9 August 2023, the Industrial Court has proceeded to reject the said application at Exh.U-2, which has necessitated filing of the present Petition.

5. Mr. Lakdawala, the learned counsel appearing for the Petitioner, would submit that the Petitioner is being targeted as he floated a rival union and because he continued to remain the sole surviving member of his union. That, he is deliberately implicated in the false charges with a view to ensure his ouster from services. Though the interim application at Exh.U-2 was filed seeking various reliefs, Mr. Lakdawala would fairly that concede the scope of the Petition is to restrict the nomination of Mr. Shirish Dhavale as defence representative or any other person as desired by the Petitioner. In fact, this is a limited prayer made in the present Petition in addition to the prayer of conduct of *de novo* – fresh inquiry after nomination of defence representative.

6. Mr. Lakdawala would submit that the charges levelled against the Petitioner are of serious nature and complicated questions are involved in the same. That, the Petitioner is educated only up to 10th standard and is incapable of understanding the complicated charges and defending himself. That, the Inquiry Officer is a practicing Advocate, who is not part of the Respondent – Company. That, since an outsider legally trained mind is being utilized by the employer for conducting inquiry against the Petitioner, it is incumbent that the Petitioner also needs to be given an opportunity to defend himself through an Advocate. Alternatively, Petitioner's request for being represented through his well-wisher, who is not an Advocate, ought to have been accepted. That, Mr. Lakdawala would invite my attention to the provisions of Rule 25 of the Rules framed under the provisions of Bombay Industrial Employment Act and would submit that the objective behind formulating Rule 25 of the Bombay Industrial Employment (Standing Orders) Rules 1959 is to afford proper and adequate opportunity of defence to the workman. He would submit that in every case where legally trained person acts as an Inquiry Officer or Presenting Officer, the workman must be given an opportunity of defence by engaging an Advocate or at least a well-wisher of his choice. Additionally, he would submit that whenever serious and complicated charges are levelled, the workman must be given an opportunity to be represented through an Advocate or well-wisher of his choice. He would submit that since the Petitioner is educated only up to 10th standard whereas the management representative is an educated person coupled with legal background of the Inquiry Officer, the Petitioner must be given an opportunity of at least nomination of Mr. Shirish Dhavale who does not even possess any legal background. The Petitioner faces grave charges of carrying explosives inside the company premises which he is incapable of defending considering his educational background. That, the members of

rival union will not assist him and all other employees in the company have already joined the rival union. In support of his contention, Mr. Lakdawala would rely upon following Judgments :

- (i) ***Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others***¹,
- (ii) ***Ghatge Patil Transport (Private) Ltd. and B. K. Etale and others***²,
- (iii) ***J. K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and Others***³,
- (iv) ***Yeshwant Harichandra Gharat Vs. Clairant Chemicals (I) Ltd., Mumbai and another.***⁴

7. *Per contra*, Mr. Jalisatgi, the learned Counsel appearing for Respondent No.1, would oppose the Petition. He would submit that the inquiry is being conducted in a fair manner by affording full opportunity of defence to the Petitioner. That, the Inquiry Officer is a neutral authority who does not present or prosecute the case on behalf of the employer. That, therefore, the qualification of Inquiry Officer becomes wholly irrelevant. That, the management representative engaged by the employer is admittedly not a legally trained person and therefore no prejudice would be caused to the Petitioner if the inquiry is conducted by the Respondent No.2. He would accuse the Petitioner of deliberately delaying the inquiry by filing baseless litigations.

8. Mr. Jalisatgi would further submit that the Apex Court has repeatedly held that representation through an Advocate does not form part of principles of natural justice. In support of his contention, he would rely upon the Judgments of the Apex Court in ***N. Kalindi and Others Vs. Tata Locomotive & Engineering Co. Ltd., Jamshedpur***⁵ and

¹ (1983) 1 Supreme Court Cases 124

² Writ Petition No.2250 of 1979, dated 29 March 1984

³ (1991) 2 Supreme Court Cases 283

⁴ [2010(3) Mh.L.J.] 642

⁵ (1969) 3 SCR 407 : AIR 1960 SC 914 : (1960) 2 LLJ 228

*Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi*⁶. He would further submit that the principle is reiterated by the Apex Court in the recent Judgment in *The Rajasthan Marudhara Gramin Bank (RMGB) & Anr. Vs. Ramesh Chandra Meena & Anr.*⁷ Relying on the Judgment of the Apex Court in *Saran Motors Private Ltd., New Delhi Vs. Vishwanath and Another*⁸, Mr. Jalisatgi would submit that the Apex Court has permitted a practicing Advocate, who was engaged by the employer as lawyer in industrial matters, to act as Inquiry Officer. He would pray for dismissal of the Petition. Mr. Jalisatgi would rely upon the provisions of Section 21 and 22 of the MRTU & PULP Act in support of his contention that neither Rule 25 nor the provisions of MRTU & PULP Act envisage representation to the workman through legal practitioner.

9. Rival contentions of the parties now fall for my consideration.

10. Having considered the contentions raised by the learned counsel appearing for the rival parties, the short issue that is involved in the present Petition is about right of the Petitioner to be represented by an Advocate or a well-wisher of his choice to act as the defence representative.

11. The Industrial Employment (Standing Orders) Act, 1946 is enacted for requiring employers in the industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. Section 15 of the Act empowers the appropriate government to notify Rules. In exercise of powers under Section 15 of the Act, the State Government has formulated and notified the Bombay Industrial Employment (Standing

⁶ (1993) 2 Supreme Court Cases 115

⁷ Civil Appeal No.7451 of 2021, decided on January, 04 2022

⁸ 1964 SCC OnLine SC 9

Orders) Rules 1959. In Schedule-I of the Rules, Model Standing Orders have been notified for workmen doing manual or technical work. Clause 25 of the Model Standing Orders deal with the procedure for holding enquiry and punishing the workman. Sub-clause 4 of Clause 25 of the Model Standing Orders provides as under :

(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 any 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.

Thus, under Clause 25 of the Model Standing Orders, the workman can be permitted to be defended by any other workman working in the same department or by any office-bearer of a union, of which he is a member. Thus, there is no provision under Rule 25 for engagement of any outsider or an Advocate for being represented by a workman.

12. Sections 21 and 22 of MRTU & PULP Act deal with rights of recognised and unrecognised unions to appear or act in proceedings relating to unfair labour practices. Sections 21 and 22 of the MRTU & PULP Act read thus :

“21. Right to appear or act in proceedings relating to certain unfair labour practices :-

(1) No employee in an undertaking to which the provisions of the Central Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceedings relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the recognised union :

Provided that, where there is no recognised union to appear, the employee may himself appear or act in any proceeding relating to any such unfair labour practices.

(2) Notwithstanding anything contained in the Bombay Act, no employee in any industry to which the provisions of the Bombay Act, for the time being apply,

shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the representative of employees entitled to appear under section 30 of the Bombay Act.

22. Rights of unrecognised unions :- *Such officers, members of the office staff and members of any union (other than a recognised union) as may be authorised by or under the rules made in this behalf by the State Government shall, in such manner and subject to such conditions as may be prescribed, have a right -*

- (i) to meet and discuss with an employer or any person appointed by him in that behalf, the grievances of any individual member relating to his discharge, removal, retrenchment, termination or service and suspension;*
- (ii) to appear on behalf of any of its members employed in the undertaking in any domestic or departmental inquiry held by the employer.”*

13. Thus, no specific provision is made either under the Standing Orders or under MRTU & PULP Act for engagement of any outsider or Advocate as defence representative of a delinquent workmen. Does it mean that under no circumstances, the delinquent employee can be permitted to engage services of legal practitioner as defence representative?

14. Through various juridical pronouncements, it is held that even in absence of specific provision under the Rules governing conduct of inquiries, a delinquent employee can be permitted to avail services of legal practitioner as defence representative. In this regard, it would be apposite to make reference to some of the decisions of the Apex Court and of this Court on the subject :

- (i) In ***Board of Trustees of the Port of Bombay*** (*supra*), the Apex Court held that in a case where the employer appoints Presenting-cum-Prosecuting Officer to represent the employer is legally trained, the delinquent employee can also engage legal practitioner and denial of request to that effect would vitiate the inquiry. The Apex Court has held in paragraphs 9, 10 and 11 of the Judgment as under:

“9. We concern ourselves in this case with a narrow question whether where in such a disciplinary enquiry by a domestic tribunal the employer appoints Presenting-cum-Prosecuting Officer to represent the employer by persons who are legally trained, the delinquent employee, if he seeks permission to appear and defend himself by a legal practitioner, a denial of such a request would vitiate the enquiry on the ground that the delinquent employee had not been afforded a reasonable opportunity to defend himself, thereby vitiating one of the essential principles of natural justice

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 is generally treated as a managerial function and the Enquiry Officer is more often a man of the establishment. Ordinarily he combines the role of a 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 hamstring the inquiry 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 advisers - lawyers in the garb of employees - and they are appointed Presenting-cum-Prosecuting Officers and the 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 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 rolled into one. Witnesses are generally employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehensions. Add to these uneven scales, the weight of legally trained minds on behalf of employer simultaneously denying that opportunity to delinquent employee. The weighed 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 a 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 Maharashtra⁹ 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 he appellant as 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 the 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 his 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. More so 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 of the essential principles of natural justice, namely, that a person against whom enquiry is held must be afforded a reasonable opportunity to defend himself.”

⁹ (1978)3 SCC 544 : 1978 SCC (Cri) 468 : AIR 1978 SC 1548 : 1978 Cril LJ 1678
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(ii) In *Ghatge Patil Transport (Private) Ltd.* (*supra*), the Apex Court held that even in absence of a specific provision, it is one of the basic principles of natural justice that when the delinquent employee is pitted against a legally trained mind and seeks permission to appear through a legal practitioner, refusal to grant such request would amount to denial of reasonable opportunity of defence. The Apex Court held in paragraph 6 as under :

“6. As held by the Supreme Court in the latest case, i.e., *Board of Trustees of Port of Bombay v. Dilipkumar Raghavendranath* [1983 – I.L.L.N. 314] (*vide supra*), apart from the provisions of law, it is one of the basic principles of natural justice that the inquiry should be fair and impartial. Even if there is no provision in the standing order or in law, where in an inquiry before the 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. In the present case, apart from the request to be represented by a legal practitioner, the employee has also prayed for being represented by some well-wisher from outside or by some union representative from outside. This request was also not granted. While dealing with this contention, in Para. 16 of his order, the Presiding Officer of the Labour Court has come to the conclusion that the person who appeared as a representative of the employers was the Personnel Officer and from the way in which he handled the case of the first party in the inquiry, it would have to be said that he had considerable experience and acumen in the matter of handling such cases. Such experience was lacking on the part of the employee. He ultimately came to the conclusion that the inquiry officer was not justified in refusing permission in the circumstances of the case. We have gone through the evidence of the inquiry officer adduced before the Labour Court and from it also it is quite clear that the inquiry officer was also of the view that the bailiff's evidence would be quite helpful in the matter. However, according to him, it was the duty of the employee to produce the witness in the domestic inquiry. The inquiry officer was of this view obviously for the reason that the charge referred to a document with which the bailiff was ultimately concerned. Irrespective of the fact on whom the burden lay for examining the bailiff, the fact remains that in the absence of assistance from an expert the employee was handicapped in this respect. Therefore, though we generally agree with the reasons given by the Presiding Officer for holding the inquiry as vitiated on that count, we do not agree with the Presiding Officer when he says that it was only a technical defect. In the matters of domestic inquiries, if the employee is refused a fair opportunity of putting forward his case, i.e., his request for being

represented by an outsider or a union representative or a legal practitioner, then it cannot be termed only as a technical defect. However, this will depend on facts and circumstances of each case. Having regard to the facts and circumstances of this case, in our opinion, prejudice was considerable and is writ large. In any case, by this finding the employer's case is not prejudiced in any way. Before the Labour Court, he is entitled to lead evidence and prove the guilt of the employee. His case is not shut out. On the other hand, if the parties are permitted to adduce evidence before the Labour Court, it will help the course of justice since in the trial before the Labour Court, the bailiff also could be examined. Therefore, taking a cumulative view of the whole matter, in our opinion, this is not a fit case in which we should exercise the extraordinary Jurisdiction under Art. 226 of the Constitution of India at this stage."

(iii) In ***J. K. Aggarwal*** (*supra*), the Apex Court held that when the Respondent–Corporation therein was represented by its Personnel and Administration Manager, who was legally trained, refusal to sanction services of lawyer in the inquiry was not a proper exercise of discretion resulting in failure of natural justice.

(iv) In ***Yeshwant Harichandra Gharat*** (*supra*), a Single Judge of this Court has held that even if the charges are simple or uncomplicated, an employee would be entitled to assistance of a legal practitioner, if the management representative / Presenting Officer is a legally trained person.

15. Thus, the law by now is well-settled that in absence of any specific provision in the Standing Orders or Service Rules, wherever Management Representative / Presenting Officer is a legally trained person, the workman is entitled to seek assistance of legal practitioner to defend himself. Therefore, mere absence of provisions in the Rules or Standing Order does not come in the way of seeking assistance of legal professional where the employer is represented by a legally trained mind.

16. The issue in the present case is however slightly different. The management representative in the present case is not legally trained. The Inquiry Officer is a practicing Advocate. The issue, therefore, is whether the legal background of the Inquiry Officer would entitle the Petitioner to seek assistance of a legal professional. In none of the Judgments discussed above, which are in fact relied upon by Mr. Lakdawala, the Inquiry Officer was legally trained mind. The Inquiry Officer merely conducts the inquiry. He is supposed to be neutral who permits both the sides to lead evidence and makes his recommendations to the employer, who ultimately takes a final decision in the inquiry. The recommendations of the inquiry officer are not even binding on the employer, who is entitled to differ from such recommendations. The Inquiry Officer thus does not prosecute the case on behalf of the employer and he is not expected to take side of the management. In that view of the matter, legal background of the Inquiry Officer would not necessarily entitle the delinquent – workman to seek assistance of legal practitioner in every case.

17. Mr. Jalisatgi has relied on various decisions in support of his contention that representation through Advocate does not form facet of principles of natural justice. In *N. Kalindi and Others* (supra), the Apex Court held that the workman has no right to be represented by representative of the union and such opportunity is at the discretion of the employer. The Court held in paragraphs 3, 4 and 5 as under :

“3. Accustomed as we are to the practice in the courts of law to skilful handling of witnesses by lawyers specially trained in the art of examination and cross-examination of witnesses, our first inclination is to think that a fair enquiry demands that the person accused of an act should have the assistance of some person, who even if not a lawyer may be expected to examine and cross-examine witnesses with a fair amount of skill. We have to remember, however, in the first place that these are not enquiries in a court of law. It is necessary to remember also that in these enquiries, fairly simple questions of fact as to whether certain acts of misconduct were committed by a workman or not only

fall to be considered, and straightforward questioning which a person of fair intelligence and knowledge of conditions prevailing in the industry will be able to do will ordinarily help to elicit the truth. It may often happen that the accused workman will be best suited, and fully able to cross-examine the witnesses who have spoken against him and to examine witnesses in his favour.

4. *It is helpful to consider in this connection the fact that ordinarily in enquiries before domestic tribunals the person accused of any misconduct conducts his own case. Rules have been framed by Government as regards the procedure to be followed in enquiries against their own employees. No provision is made in these rules that the person against whom an enquiry is held may be represented by anybody else. When the general practice adopted by domestic tribunals is that the person accused conducts his own case, we are unable to accept an argument that natural justice demands that in the case of enquiries into a charge-sheet of misconduct against a workman he should be represented by a member of his Union. Besides it is necessary to remember that if any enquiry is not otherwise fair, the workman concerned can challenge its validity in an industrial dispute.*

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

18. In ***Crescent Dyes and Chemicals Ltd.*** (supra), the Apex Court held that a delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The Apex Court held that imposition of restrictions by statute or Standing Orders on the right of representation is valid. The Apex Court held in paragraph 17 as under :

"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 of representation was regulated by the Standing Orders which permitted a clerk or a workman working with him in the same department to represent him and this right stood expanded on Sections 21 and 22(ii) permitting representation through an officer, staff-member or a member of the union, albeit on being authorised by the State Government. The object and purpose of such provisions is to ensure that the domestic enquiry is completed with 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.”

19. More recently, in ***The Rajasthan Marudhara Gramin Bank (RMGB) & Anr.*** (supra), the Apex Court held that the delinquent – employee did not have an absolute right to avail the services of ex-employee of the bank as his defence representative in the departmental proceedings. The Court held in paragraphs 7 and 8 as under :

“7. Applying law laid down by this Court in the aforesaid decisions to the facts of the case on hand, the respondent employee / respondent delinquent has no absolute right to avail the services by ex-employee of the Bank as his DR in the departmental proceedings. It is true that Regulation 44 puts specific restriction on engagement of a legal practitioner and it provides that for the purpose of an enquiry under Regulation, 2010, the Officer or Employee shall not engage a legal practitioner without prior permission of the competent authority. Therefore, even availing the services of legal practitioner is permissible with the leave of the competent authority. However, Regulation does not specifically provides that an employee can avail the services of any outsider and / or ex-employee of the Bank as DR. Therefore, Regulation, 2010 neither restricts nor permits availing the services of any outsider and / or ex-employee of the Bank as DR and to that extent Regulation is silent. If the reasoning of the High Court is considered, the High Court is of the opinion that as there is no complete or absolute bar even on engaging a lawyer, it is difficult to accept that a retired employee of the Bank cannot be engaged to represent a delinquent officer in the departmental inquiry. However, the High Court has not appreciated the effect of the Handbook As per Clause 8 of the Handbook Procedure which has been approved by the Board of Directors and it is applicable to all the employees of the Bank and Clause 8 is with respect to the defence representative it specifically provides that DR should be serving official / employee from the Bank. The said Handbook Procedure which has been approved by the Board of Directors of the Bank is binding to all the employees of the Bank. Court has considered The High Regulation 44 of the Regulation, 2010, however has not considered clause 8 of the Handbook Procedure on the ground that the same cannot be said to be supplementary. However, we are of the opinion that Handbook Procedure can be said to be supplementary. The same cannot be said to be in conflict with the Regulation 44 of Regulation, 2010 As observed herein above, neither Regulation 44 permits nor restricts engagement of an ex-employee of the Bank to be DR. Therefore, Clause 8.2 cannot be said to be in conflict with the provisions of Regulation 2010. Provisions of Regulation 2010 and the provisions of Handbook Procedure are required to be read harmoniously and be achieved the result without any violation of any of the provisions of Regulation, 2010 and the Handbook Procedure. The objects of Regulation 44 of Regulation, 2010 and

Clause 8 of the Handbook Procedure seem to be to avoid any outsider including legal representative and / or even ex-employee of the Bank. At the cost of repetition, it is observed that there is no absolute right in favour of the delinquent officer's to be represented in the departmental proceedings through the agent of his choice and the same can be restricted by the employer.

8. *As per the Bank there is a justification also to permit delinquent officer to be represented in the the departmental proceedings through serving official employee from the Bank only. The Bank has justified its action of not permitting ex-employee of the Bank as DR and according to the Bank, the ex-employee who themselves may have been subject of a disciplinary enquiry/ chargesheet / dismissed from service; the ex-employee might be a part of vigilance or audit sections who come across a lot of information of confidential nature and therefore, if they are allowed to be DR in the departmental proceedings, which would result in grave injustice; the solemn nature of proceedings is taken away and would result in issues of orderliness as well as decorum when a disgruntled ex-employee is enabled to act as defence representative; they may adopt delay tactics in departmental enquiry and may not permit completion of department enquiry within six months as mandated by the CVC Circular and as per Vigilance Handbook adopted by the Bank. For all the aforesaid reasons not permitting the delinquent officer to be represented through ex-employee of the Bank in the departmental enquiry cannot be said to be in any way in breach of principles of natural justice and / or it violates any of the rights of the delinquent officer. As per settled proposition of law and as observed herein above, in decisions referred to herein above, the only requirement is that delinquent officer must be given fair opportunity to represent his case and that there is no absolute right in his favour to be represented through the agent of his choice. However, at the same time, if the charge is severe and complex nature, then request to be represented through a counsel can be considered keeping in mind Regulation 44 of Regulation, 2010 and if in a particular case, the same is denied, that can be ground to challenge the ultimate outcome of the departmental enquiry. However, as a matter of right in each and every case irrespective of whether charges is severe and complex nature or not, the employee as a matter of right cannot pray that he may be permitted to represent through the agent of his choice."*

20. In ***Saran Motors Private Ltd., New Delhi*** (*supra*), the issue was slightly different. In that case, the employer had engaged an Inquiry Officer who was not only an Advocate but was engaged as lawyer by employer in several industrial matters. It was therefore sought to be urged that the said Inquiry Officer was not expected to conduct the inquiry in a fair manner. The Apex Court, however, repelled the objection and held in paragraphs 5 and 6 as under :

"5. The first question which we have to decide is whether the Tribunal was justified in holding that Mr Chadha had a bias in favour of the appellant, and so, was incompetent to hold the enquiry. It appears that Mr Chadha is sometimes engaged by the appellant as a lawyer in industrial matters and the respondents'

case was that he had been entrusted with the work of holding such enquiries on four five occasions. It is on these grounds that the Tribunal has held that Mr Chadha was not competent to held the present enquiry.

6. In our opinion, this view is completely erroneous and cannot be sustained. We have repeatedly pointed out that domestic enquiries in industrial relations must be fairly conducted and whenever we are satisfied that any enquiry was not fairly conducted or its conclusions were not supported by evidence, we have unhesitatingly ignored the findings recorded at such an enquiry and held that the Tribunals must deal with the merits of the dispute for themselves; but it is impossible to accept the argument that because a person is sometimes employed by the employer as a lawyer, he becomes incompetent to hold a domestic enquiry. It is wellknown that enquiries of this type are generally conducted by the officers of the employer and in the absence of any special individual as attributable to a particular officer, it has never been held that the enquiry is bad just because it is conducted by an officer of the employer. If that be so, it is obviously unsound to take the view that a lawyer who is not a paid officer of the employer, is incompetent to hold the enquiry, because he is the employer's lawyer and is paid remuneration for holding the enquiry. Therefore, the first reason given by the Tribunal for ignoring the findings of the domestic enquiry must be reversed."

(emphasis supplied)

21. Mr. Lakdawala has made strenuous efforts to contend that the charges levelled against the Petitioner are of grave and complicated nature. He has submitted that the Petitioner is accused of carrying explosives in the company premises and considering his educational background, it is impossible for the Petitioner to defend himself in respect of such grave and complicated allegations. Reliance is placed on Judgment of this Court in ***Yeshwant Harichandra Gharat*** (supra) in which this Court has held in paragraphs 16 and 17 as under :

"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 Presiding 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."

(emphasis supplied)

22. In my view, the Judgment of this Court in case of ***Yeshwant Harichandra Gharat*** (*supra*) cannot be cited in support of an absolute proposition that in every case where the charges are of grave or complicated nature, delinquent employee would be entitled to be represented by a lawyer. If such contention is accepted, a workman / worker charged of committing grave misconduct of assault or bribe would demand representation through Advocate even though the management representative is not a legally trained mind. Therefore, nature of charges would not determine the right of the workman to be represented through legally trained mind.

23. Clause 25 of the Model Standing Orders imposes a restriction on the right of the workman to choose his defence representative. The Apex Court has held that the employer has right to impose such restriction. In my view, the Petitioner must choose his defence representative through the person recognized as per the provisions of Clause 25 of the Model Standing Orders. His defence representative needs to be either a workman working in the same department or an office-bearer of trade union of which he is a member. Mr. Shishir Dhavale is not an employee of the Respondent – Company and his nomination has rightly been refused by the employer.

24. I, therefore find the Order passed by the Industrial Court to be unexceptionable. Writ Petition being devoid of merits, is dismissed without any order as to costs. Rule is discharged.

(SANDEEP V. MARNE, J.)