SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice K. J. Vaidya.

K. C. MANI v. CENTRAL WAREHOUSING CORPORATION & ORS.*

Constitution of India, 1950 - Art. 226 - Ratio of the judgments not to be mechanically applied - Each case is different on Us own facts, circumstances, light, shade, angles and contours, and facts of no two cases are ever identical - Merely because in any departmental proceedings, the Enquiry Officer happens to be a trained personnel, that by itself does not vests any right in the delinquent to have a legal assistance of a lawyer - If the case presents legal and factual complexity and the delinquent is handicapped to defend his case and if the delinquent is academically and phychologically not fit and competent to defend himself, then and then only he is entitled to legal assistance in departmental inquiry.

Both the learned Counsels have taken recourse to the decisions of the Supreme Court and various other High Courts in their own way, by emphasizing particular decision from the strength point of the facts of their respective cases. Now had indeed the facts situation in any of the above reported decisions been identical, then in that case, there would not have been any difficulty whatsoever in straightway accepting and relying upon the same. But that is not so. It is too well-known that no finger print/impression of two different persons are ever found to be identical ! Similarly, by and large, no facts and circumstances of two different eases have identical facts and situation. In fact, each case reflects its own facts, circumstances, light, shade, angles and contours, giving it distinct entity of its own, and therefore, in this view of the matter to mechanically rely upon any decision without oneself fully applying to the nacked facts of the case on hand and those of the reported decisions can as well result into injustice. All the decisions are good at their respective place from the stand point of facts and circumstances of those particular cases, therefore, instead of taking a straight-jacket and mechanical view. reeling under the pressure and complex of authorities, it would be quite just and proper, in the first place, to screen the facts situation of the present case and then to find out where indeed lies the justice so that grievance of the petitioner can be properly attended to and redressed. (Para 5)

Accordingly, in the present case also, in order to find out whether the petitioner in fact needs a legal assistance or not to defend his case, one has to find out -(i) Whether it is really a fight between the two unequals ? (ii) Whether the charge is simple, plain and understandable enough to any average man of ordinary understanding or is it of complex nature ? (iii) Whether the charge against the delinquent is such where some documents are required to be proved or disproved either because they are false or fabricated ? (iv) Is it a case where there are number of witnesses to be examined and cross-examined ? (v) Is it a case wherein some expert witness is required to be cross-examined ? and; (vi) What is the intellectual capacity, status and experience of the delinquent facing the departmental proceedings ? (Para 5.1)

*Decided on 5-7-1993. Special Civil Application No. 5212 of 1991 with Civil Application Nos. 1222 & 933 of 1993 for issuance of appropriate writ, order or direction directing the authorities to permit the petitioner to engage a lawyer at the hearing of departmental inquiry.

When the charge alleged is so simple and the nature of evidence to sustain the same is also simple where indeed is the need for legal assistance when the petitioner can understand and deal with the same independently. Apart this, it is a matter of common knowledge that quite often when delinquents are befaced with departmental inquiry, they secure legal assistance from outside and on the basis of the same, prepare defence statement, and many a times, also take tips as to what type of questions be put to the witnesses and nobody is debarred from that. The question is only whether the legal assistance should be allowed at the time when inquiry is being conducted. (Para 5.2)

Merely because in any departmental proceedings, the Enquiry Officer happens to be a "trained personnel' that by itself does not mechanically vests any right in the delinquent to have a legal assistance of a lawyer, irrespective of the facts and circumstances of that particular case. Thus, the ultimate answer as regard the right of the delinquent to have legal assistance in matter of departmental inquiry rests entirely upon the facts and circumstances of that particular case, and more parti-• cularly, on the answer to the following two questions, namely — (i) Whether the case against the delinquent employee presents any legal and factual complexity, making him totally handicapped to defend his case ? and (ii) Whether the delinquent facing the inquiry proceedings is academically and psychologically fit and competent enough to defend himself in absence of an outside legal assistance ? The answer to above two questions holds a key to the problem whether the delinquent is entitled to legal assistance in departmental inquiry or not. (Para 6)

The Board of Trustees of the Port of Bombay v. Dilipkumar R. Nadkarni (1), referred to.

C. L. Subramaniam v. The Collector of Customs, Cochin (2), Dr. Jinendra Nath Das v. State of Orissa (3) and Jagmohandas Jagjivandas Mody v. State of Bombay (Now Gujarat State) (4), relied on.

K. C. Zaveri, for the Petitioner.

K. S. Nanavati, with *M. B. Buch*, for the Respondents.

VAIDYA, J. The question that arises for determination in this writ petition is — "Whether there can be any hard and fast rule - or a straight-jacket formula whereby incidentally because the 'Enquiry Officer' happens to be a trained personnel that by itself automatically vests any right in a delinquent facing the departmental proceedings to have a legal assistance of the lawyer ?"

2. The facts situation giving rise to the above question to be briefly stated is to the effect that the petitioner Mr. K. C. Mani was appointed as a Technical Assistant in the year 1961, and thereafter, was selected as Superintendent in the year 1962. In the year 1968, a departmental inquiry was instituted against him wherein by an Order dated 30-1-1980, he was given punishment of compulsory retirement. The said order of the respondent-Corporation was challenged before the High Court of Andhra Pradesh at Hyderabad by way of a writ petition, the same being Writ Petition No. 5693 of 1980 which ultimately came to be allowed by a judgment and order dated 30-9-1986, quashing and setting aside the order of respondent without granting any backwages to the petitioner. As against the impugned

(1) AIR 1983 SC 109. (2) AIR 1972 SC 2178. (3) AIR 1961 SC 241, (4) 1962 GLR 492 : AIR 1962 Guj. 197.

judgment and order, the respondent-Corporation preferred an Appeal, the same being L.P.A. No. 149 of 1987 whereas the petitioner preferred an appeal being L.P.A. No. 184 of 1987 before the Division Bench of Andhra Pradesh High Court. Out of these two cross-appeals, the appeal of respondent-Corporation was dismissed, whereas the appeal of the petitioner was allowed by a common judgment and order dated 19-10-1990 with the direction that petitioner was entitled to full salary from the date of the judgment of the learned single Judge and also difference in salary payable to him, etc. According to the petitioner, in view of the aforesaid judgment, though he was entitled to get many promotions and was likely to jump over many senior executives who are in high position, yet, only with a view to see that he is ultimately scuttled out from earning his rightful promotion, the respondent-Corporation has racked up totally false and bogus charge and instituted the departmental proceedings against him by issuing charge-sheet dated 24-5-1990 and started the departmental proceedings by appointing a person junior to him. The alleged charge framed against the petitioner reads as under :

> "That while functioning as Warehouse Manager, C.W., Khopoli in the year 1989, Shri K. C. Mani, Superintendent committed gross misconduct inasmuch as he misused his position and unauthorisedly collected Rs. 10,000/- towards donation from M/s. Zenith Limited in favour of Santhome Church Trust of Kalyan by resorting to coercion and threats of stopping release of their stocks and by deliberately remaining absent from the Warehouse on 16-6-1989 to delay release of their stock.
>
> Shri K. C. Mani, by his above acts committed gross misconduct, exhibited lack of absolute integrity and devotion to duty and acted in a manner unbecoming to an employee of the Corporation thereby violating Regulation 39(1) read with Regulation 40 (v), (iv), (xv), (xviii) and (xx) of C.W.C. (Staff) Regulations, 1986."

After the issuance of charge-sheet, respondent No. 2 appointed Mr. N. C. Banerjee, respondent No. 3 herein, as an Enquiry Officer, by an order dated 11-2-1991, and Mr. C. T. Thomas, Deputy Manager (General) as a Presenting Officer working with the Central Warehousing Corporation in Regional Office at Bombay, having degree of M. Sc. with Chemistry and Bachelor of General Law from Annamali University, Madras (Tamil Nadu). Further according to the petitioner, preliminary hearing of the departmental inquiry was held at Ahmedabad on 2-7-1991 and at that time, he gave an application for supply of documents and also an application seeking permission of the Enquiry Officer to permit him to engage an Advocate for conducting the departmental inquiry. This request of the petitioner for legal assistance came to be refused on the ground of regulations. It is under these circumstances that the petitioner has moved this Court challenging the impugned order dated 2-7-1991, *inter alia* praying for (2) quashing and setting aside the same, and (ii) the issuance of direction to the respondents to permit him to have the assistance of a lawyer during the course of the departmental proceedings, giving rise to the present writ petition.

3. Mr. Kalpesh Zaveri, the learned Advocate appearing for the petitioner submitted that the impugned denial of the legal assistance to the petitioner in departmental proceedings against him was on face of it arbitrary, illegal and unjust. Mr. Zaveri further submitted that the petitioner was pitted against his formidable employer which was represented by a legally trained officer in the Inquiry and in such circumstances fight between the employer and the employee being a fight between the two unequals, refusing the petitioner to engage a lawyer is a clear denial of reasonable opportunity of hearing and in that view of the matter, the impugned order rejecting the legal assistance being illegal should be quashed and set aside. In support of this contention, Mr. Zaveri has relied upon decision of the Supreme Court rendered in case of *The Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni*, reported in AIR 1983 SC 109 and has specifically drawn attention of this Court to paragraph Nos. 9 and 10. which reads as under :

> "9. We concerned 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 employee 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.
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> 10. Even in a domestic enquiry there can be very serious charges and 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 enquiry by such a domestic Tribunal. We have moved far away from this stage. This situation is where the employer has on his payrolls labour officers, legal advisers-lawyers in the grap of employees and they are appointed Presenting-cum-Prosecuting Officers and the delinquent employee pitted against such legally trained personel as to defend himself. Now if the rules prescribed for such an enquiry did not take place 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, the 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 this uneven scales, the weight of legally trained minds on behalf of the employer simultaneously denying that opportunity to the delinquent employee. The weighted scales and tilted balance can only be partly resorted if the delinquent is

> given the same legal assistance as the employer enjoys. Justice must not only be done but must seem to be done is not an euphemism for Courts alone, it applies with equal vigour and rigour to all those who must be responsible for fair play in action. And a *quasi-judicial* Tribunal cannot view the matter with equanimity on inequality of representation. This Court in *M. H. Hoskot v State of Maharashtra,* 1978 (3) SCC 544 : (AIR 1978 SC 1548) 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."

On the basis of the above decision, Mr. Zaveri further submitted that in the instant case also, the Presenting Officer being a Law Graduate and had a long experience in the said capacity was indeed a trained personnel and as against that, the petitioner is B.Sc. in Agriculture with no background of law or any other knowledge either of cross-examining the witnesses or prove and/or disprove the documents that may be produced on record. Not only that but further according to Mr. Zaveri for 19 long years, the petitioner was out of job and because of the said mental distress, he was practically broken down and virtually rendered handicapped in defending himself. When such was a position and plight of the petitioner, he should have been granted legal assistance of the lawyer. In support of this submission, Mr. Zaveri has relied upon a decision of the Calcutta High Court, rendered in case of *Anandram Jiandrai Vasvani v. Union of India.* Mr. Zaveri thereafter invited attention of this Court to one more decision of the Supreme Court rendered in case of *C. L. Subramaniam v. The Collector of Customs, Cochin,* reported in AIR 1972 SC 2178, wherein it has been observed as under :

> "22. It is needless to say that Rule 15 is a mandatory rule. That rule regulates the guarantee given to Government servants under Art. 311. Government servants by and large have no legal training. At any rate, it is nobody's case that the appellant had legal training. Moreover, when a man is charged with the breach of a rule entailing serious consequences, he is not likely to be in a position to present his case as best as it should be. The accusation against the appellant threatened his very livelihood. Any adverse verdict against him was bound to be disastrous to him, as it has proved to be. In such a situation he cannot be expected to act calmly and with deliberation. That is why Rule 15(5) has provided for representation of a Government servant charged with dereliction of duty or with contravention of the rule by another Government servant or in appropriate cases by a legal practitioner."

Mr. Zaveri further pointed out that the petitioner was required to cross-examine four highly qualified witnesses which was not an easy job for the petitioner to undertake. Mr. Zaveri further submitted that taking into consideration the prolong suspension and the qualification of the delinquent, the petitioner deserves the legal assistance. Mr. Zaveri further submitted that subsequent withdrawal of Mr. C. T. Thomas as Presenting Officer does not in any way alter the situation as in fact Mr. Sharma who has been replaced is more qualified and trained officer who has taken vigilance training, etc. On the basis of aforesaid submissions, Mr. Zaveri finally urged that the impugned order rejecting legal assistance to the petitioner be quashed and respondents be directed to permit the petitioner to have legal assistance of a lawyer of his choice.

4. Countering the above submissions, Mr. Mayank Buch, the learned Advocate for the respondents vehemently submitted that much ado has been done about nothing by the petitioner in the instant case. Mr. Buch making good his submission has first of all invited the attention of this Court to the charge framed against the petitioner [Ref. para-2; above] and submitted that the same was plain and simple enough, and that, any man of average intelligence can understand the same. Mr. Buch further submitted that once having read the entire charge, if he successfully satisfies the judicial conscience of this Court that it is so, the refusal made for not allowing the petitioner to get legal assistance will immediately become insignificant. Mr. Buch further submitted that two Supreme Court decisions in cases of (2) *The Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nudkarni,* and (ii) C. *L. Subramaniam v. The Collector of Customs, Cochin* (supra) are the decisions in the facts of those two particular cases only, and the same cannot be mechanically applied to the facts of the present case. Apart this, Mr. Buch in support of his submission has relied upon certain decisions of the Supreme Court and some of the High Courts. Accordingly, Mr. Buch has firstly relied upon a decision rendered by the Supreme Court in case of *Dr. Jinendra Nath Das v. State of Orissa,* reported in AIR 1964 SC 241, the relevant observation reads as under :

> "In an enquiry against a public servant before the Administrative Tribunal, the case did not present any complexity of facts or volume of evidence which could not be properly handled by him by his educational attainments and experience as a public servant; he had his education abroad and was fairly senior in age, the charges levelled against him in respect of different items were of simple nature, he also elaborately cross-examined the witness for the prosecution and gave a long explanation meeting each of the charges and the evidence connected therewith."

Thereafter, Mr. Buch has relied upon a decision of this Court rendered in case of *Jagmohandas Jagjivandas Mody v. State of Bombay [Now Gujarat State}* reported in AIR 1962 Gujarat 197 : (1962 GLR 492) wherein it has been held as under :

> "Nodoubt, there is no provision in the Constitution or anywhere else making it obligatory on the officer holding the enquiry to give permission to a Government servant to engage a lawyer at an inquiry preceding the order of his dismissal. The main question in such a case is whether the provisions of Art. 311 of the Constitution have been complied with, in other words, whether a Government servant had been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The question whether the refusal to give permission to engage a lawyer would amount to failure to give a reasonable opportunity to show cause for purposes of Art. 311 of the Constitution would depend on the facts and the circumstances of each case."

4.1 In the alternative, Mr. Buch submitted that Mr. Thomas who was the Presenting Officer at the earlier stage has ceased to be on the said post by virtue of an Order dated 8th April, 1992, and in his place, Mr. A. K. Sharma, Deputy Manager (General) has been appointed. He further submitted that a copy of this Order was already forwarded to the petitioner. In this view of the matter also, the contention raised by Mr. Zaveri does not survive.

4.2 Mr. Buch on the basis of the above submissions finally urged that no case was made out on behalf of the petitioner to interfere with the impugned order refusing the legal assistance to the petitioner.

5. Having heard the learned Advocates appearing for the respective parties vehemently canvassing their points, this Court has to see and find out as to on what side the scale of justice ultimately tilts. Both M/s. Zaveri and Bush have taken recourse to the decisions of the Supreme Court and various other High Courts in their own way, by emphasizing particular decision from the strength point of the facts of their respective cases. Now had indeed the facts situation in any of the above reported decisions been identical, then in that case, there would not have been any difficulty whatsoever in straightway accepting and relying upon the same. But that is not so. It is too well-known that no finger print/impression of two different persons are ever found to be identical ! Similarly, by and large, no facts and circumstancss of two different cases have identical facts and situation. In fact, each case reflects its own facts, circumstances, light, shade, angles and contours, giving it distinct entity of its own, and therefore, in this view of the matter to mechanically rely upon any decision without oneself fully applying to the nacked facts of the case on hand and those of the reported decisions can as well result into injustice. All the decisions are good at their respective place from the stand point of facts and circumstances of those particular cases, therefore, instead of taking a straight-jacket and mechanical view, reeling under the pressure and complex of authorities, it would be quite just and proper, in the first place, to screen the facts situation of the present case and then to find out where indeed lies the justice so that grievance of the petitioner can be properly attended to and redressed.

5.1 Accordingly, in the present case also, in order to find out whether the petitioner in facts needs a legal assistance or not to defend his case, one has to find out - (i) Whether it is really a fight between the two unsquals ? (ii) Whether the charge is simple, plain and understandable enough to any average man of ordinary understanding or is it of complex nature ? (iii) Whether the charge against the delinquent is such where some documents are required to be proved or disproved either because they are false or fabricated ? (iv) Is it a case where there are number of witnesses to be examined and cross-examined ? (v) Is it a case wherein some expert witness is required to be cross-examined ? and; (vi) What is the intellectual capacity, status and experience of the delinquent facing the departmental proceedings ? On the basis of the data furnished by way of answer to the above questions lie the key-to answer the main question as to - whether in fact the legal assistance should be given to the delinquent facing departmental inquiry or not ? Thus applying the above tests, turning to the facts of the present case, if one first of all looks at the charge, it is amply clear that the same is as simple and plain as it could be. Now let us analyse the charge.

Question : What is the alleged misconduct ?

Answer : The petitioner misused his position and unauthorisedly collected Rs. 10,000/- towards donation from M/s. Zenith Limited in favour of Santhome Church Trust of Kalyan.

Question : How ?

Answer : By resorting to coercion and threats of stopping release of their stocks.

Question : What was the *modus operandi?*

Answer : By deliberately remaining absent from the Warehouse on 16-6-1989 to delay release of their stocks.

5.2 Now from the above simple analysis of the charge, it could be seen that there is nothing in it on the basis of which it can ever be said that the same was complex enough to make it difficult to understand and thereby to defend it without assistance of the lawyer. When the charge alleged is so simple and the nature of evidence to sustain the same is also simple where indeed is the need for legal assistance when the petitioner can understand and deal with the same independently. Apart this, it is a matter of common knowledge that quite often when delinquents are befaced with deparmental inquiry, they secure legal assistance from outside and on the basis of the same, prepare defence statement, and many a times, also take tips as to what type of questions be put to the witnesses and nobody is debarred from that. The question is only whether the legal assistance should be allowed at the time when inquiry is being conducted. Thus, having regard to the facts and circumstances of this case where firstly the charge is simple and plain enough, secondly, the evidence in support of the same being not complex in nature, and thirdly, the petitioner is even fairly qualified, aged and experienced, there appears to be no ground whatsoever to imagine even that he would suffer for want of legal assistance in defending his case, if the same was not given. Thus, merely asserting that because legal assistance by way of lawyer was not given to petitioner, he was totally rendered helpless and that be was at sea to defend himself is a story difficult to gulp down.

5.3 It may further be stated that incidently only because the Presenting Officer happens to be a trained legal personnel that by itself does not make the petitioner entitled to have legal assistance. The question is not to be seen from the only angle whether the Presenting Officer is a trained personnel or not. In a given case, the Presenting Officer may incidentally only be a legally trained one and at the same time, if the charge is so plain and simple where there is no need of his expertise and merely because he is so trained, that does not mechanically vest any right in the employee to have the legal assistance. For example, in a given case if the charge is that the employee gave abuses and slapped his superior, and in that case also, the Presenting Officer was a legally trained man, does it mean that merely because the Presenting

Officer was legally trained man, the delinquent also should be given the legal assistance ? The answer would obviously be ‘’No” for the simple reason that so far as the charge is concerned, there is neither any ambiguity nor any complexity which the delinquent could not understand to defend himself while facing the departmental proceedings. Now, in the present case it is pointed out that for 19 years, the petitioner was out of the job and was shocked and stunned when he was called upon to face yet another departmental inquiry. But this reaction of shock is always momentary and it cools down with the passage of time, more particularly, when one comes to know as to what the charge was about. Now, in the instant case, petitioner is a Graduate who was holding post of Superintendent [Stores] drawing salary of Rs. 4000/ - p.m. and in any case, not an employee who holds Class-IV position; who may under some inferiority complex not be capable enough to face the enquiry. Moreover, as seen above, the charge levelled against the petitioner is absolutely simple. When such is the situation, it is difficult for this Court to agree with Mr. Zaveri that the petitioner would be seriously handicapped and thereby prejudiced, if he is not allowed to take legal assistance to defend his case. Thus, examining the case from all angles, there being no substance in the submissions made by Mr. Zaveri, the same deserve to be rejected and are rejected accordingly.

6. In short, ultimately the ratio that boils down from the aforesaid discussion is - that merely because in any departmental proceedings, the Enquiry Officer happens to be a ‘trained personnel’ that by itself does not mechanically vests any right in the delinquent to have a legal assistance of a lawer, irrespective of the facts and circumstances of that particular case, Thus, the ultimate answer as regard the right of delinquent to have legal assistance in matter of departmental inquiry rests entirely upon the facts and circumstances of that particular case, and more particularly, on the answer to the following two questions; namely (i) Whether the case against the delinquent employee presents any legal and factual complexity, making him totally handicapped to defend his case ? and (ii) Whether the delinquent facing the inquiry proceedings is academically and psychologically fit and competent enough to defend himself in absence of an outside legal assistance ? The answer to above two questions holds a key to the problem whether the delinquent is entitled to legal assistance in departmental inquiry or not.

7. In the result, this petition fails. The impugned order refusing legal assistance passed by the Enquiry Officer is hereby confirmed. At this stage, Mr. Zavuri, the learned Advocate for the petitioner seeks time to file an appeal. Time is granted upto *26th July, 1993* in view of the fact that petitioner is to retire by the end of September, 1993.

Petition rejected.

[END OF VOL. XXXIV (2)]