

J.K. AGGARWAL
v.
HARYANA SEEDS DEVELOPMENT CORPORATION LTD.
AND ORS.

SEPTEMBER 5, 1990

[M.N. VENKATACHALIAH AND K.N. SAIKIA, JJ.]

Haryana Civil Services (Punishment and Appeal) Rules, 1952—Rule 7(5)—Charges likely to result in dismissal of delinquent Government servant in inquiry—Representation by counsel whether permitted in the disciplinary proceeding.

Civil Service—Disciplinary proceeding—Presenting Officer trained in law—Denial of representation by counsel to delinquent Government servant—Violates natural justice.

Words and Phrases—‘Legal Adviser’, ‘Lawyer’—Construction of.

A disciplinary inquiry was initiated against the appellant, who was the Company Secretary of the Corporation on certain charges which if established might lead to his dismissal from service.

Inquiry-Authority, rejected the appellant’s prayer made at the initial stage of the inquiry for permission to engage the services of a lawyer.

Before the High Court, appellant challenged the inquiry proceedings on grounds of denial of natural justice.

The High Court dismissed the Writ-Petition *in-limine* against which this appeal was filed.

Allowing the appeal, this Court,

HELD: 1. The right of representation by a lawyer may not in all cases be held to be a part of natural justice. No general principle valid in all cases can be enunciated. [15C-D]

In the present case, the matter is guided by the Provisions of Rule 7(5) of the Civil Services (Punishment & Appeal) Rules, 1952. [17C]

A The Rule itself recognises that where the charges are so serious as to entail a dismissal from service, the inquiry-authority may permit the services of a lawyer. This rule vests a discretion. In the matter on exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reason of the appellant being pitted against a presenting-officer, who is trained in law. [17G-H, 18A]

B In the inquiry, the Respondent-Corporation was represented by its Personnel and Administration Manager, who is stated to be a man of law. Moreover, appellant, it is claimed, has had no legal background. The refusal of the service of a lawyer, in the facts of this case, results in denial of natural justice. [17G, 18G]

C *Pett v. Grehound Raling Association Ltd.*, [1969] 1 QB 125; *Pett's case No. 2*, 1970(1) QB 46; *Enderby Town Football Club Ltd. v. Football Association Ltd.*, [1971] Chancery Div. 591; *C.L. Subrahmaniam v. Collector of Customs, Cochin*, [1972] 3 SCR 485, referred.

D *Board of Trustees of the Port of Bombay v. Dilip Kumar*, [1983] 1 SCR 828, followed.

E 2. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include "whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser." [18A-B]

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4632 of 1990.

From the Judgment and Order dated 15.1.1990 of the Punjab and Haryana High Court in Civil Writ Petition No. 13704 of 1989.

M.K. Garg for the Appellant.

G Vishnu Mathur and Ms. Madhu Tewatia for the Respondents.

The following Order of the Court was delivered:

H We have heard Sri Lekhi, learned Senior Advocate for the appellant and Sri Tewatia, learned Senior Counsel for the first-Respondent. Special leave granted.

2. Appellant was the Company Secretary of the Haryana Seeds Development Corporation Ltd., a Government Company. The short question in this appeal is whether in the course of the disciplinary inquiry initiated against the appellant by the Corporation on certain charges, which if established might lead to appellant's dismissal from service, appellant was entitled to engage the services of a legal-practitioner in the conduct of his defence. The proceedings in the inquiry attract and are regulated by the Haryana Civil Services (Punishment and Appeal) Rules, 1952. A
B

Inquiry-Authority, by his order dated 8.8.1989 rejected the prayer made by the appellant even at the initial stage of the inquiry for permission to engage the services of a lawyer. Before the High Court, appellant challenged the proceedings in the inquiry on grounds of denial of natural justice. The High Court dismissed the Writ-Petition *in-limine*. C

3. The right of representation by a lawyer may not in all cases be held to be a part of natural justice. No general principle valid in all cases can be enunciated. In non-statutory domestic tribunals, Lord Denning in the Court of Appeal in England favoured such a right where a serious charge had been made which affected the livelihood or the right of a person to pursue an avocation and observed: D

“I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel or solicitor.” E

(See: *Pett. v. Greyhound Racing Association Ltd.*; [1969] 1 QB 125) F

But this was not followed by Lyell J in *Pett's case No. (2)*, [1970] 1 QB 46.

But the learned Master of Rolls, however, reiterated his earlier view in *Pett's case* in *Enderby Town Football Club Ltd. v. Football Association Ltd.*, [1971] Chancery Div. 591: G

“Is a party who is charged before a domestic tribunal entitled as of right to be legally represented? Much depends on what the rules say about it. When the rules say nothing, then the party has no absolute right to be legally H

A represented? It is a matter for the discretion of the tribunal. They are masters of their own procedure: and, if they, in the proper exercise of their discretion, decline to allow legal representation, the courts will not interfere

B In many cases it may be a good thing for the proceedings of a domestic tribunal to be conducted informally without legal representation. Justice can often be done in them better by a good layman than by a bad lawyer

C But I would emphasise that the discretion must be properly exercised. The tribunal must not fetter its discretion by rigid bonds. A domestic tribunal is not at liberty to lay down an absolute rule: 'We will never allow anyone to have a lawyer to appear for him.' The tribunal must be ready, in a proper case, to allow it. That applied to anyone in authority who is entrusted with a discretion. He must not fetter his discretion by making an absolute rule from which he will never depart That is the reason why this court intervened in *Pett v. Greyhound Racing Association Ltd.*, [1969] 1 Q.B. 125. Mr. Pett was charged with doping a dog—a most serious offence carrying severe penalties. He was to be tried by a domestic tribunal. There was nothing in the rules to exclude legal representation, but the tribunal refused to allow it. Their reason was because they never did allow it. This court thought that that was not a proper exercise of their discretion. Natural Justice required that Mr. Pett should be defended, if he so wished, by counsel or solicitor. So we intervened and granted an injunction. Subsequently Lyell J. thought we were wrong. He held that Mr. Pett had no right to legal representation: see *Pett v. Greyhound Racing Association* (No. 2) [1970] 1 Q.B. 46. But I think we were right. May be Mr. Pett had no positive right, but it was case where the tribunal in their discretion ought to have allowed it. And on appeal the parties themselves agreed it. They came to an arrangement which permitted the plaintiff to be legally represented at the inquiry: see (1970) 1 Q.B. 67. The long and short of it is that if the court sees that a domestic tribunal is proposing to proceed in a manner contrary to natural justice, it can intervene to stop it. The court is not bound to wait until after it has happened: see *Dickson v. Pharmaceutical Society Great Britain*, [1970] A.C. 403, 433, per Lord Upjohn."

D

E

F

G

H

In *C.L. Subramaniam v. Collector of Customs, Cochin*, [1972] 3 SCR 485 this Court did not accept the enunciation in *Pett's* case. Referring to *Pett's* case it was observed:

“ The rule laid down in *Pett's* case has not commended itself to this Court. In *Kalindi and Ors. v. Tata Locomotive and Engineering Co. Ltd.* a question arose whether in an enquiry by management into misconduct of a workman, the workman was entitled to be represented by a representative of the Union. Answering this question this Court observed that a workman against whom an enquiry is being held by the management has no right to be represented at such an enquiry by a representative of the Union though the employer in his discretion can and may allow him to be so represented”

4. In the present case, the matter is guided by the Provisions of Rule 7(5) of the Civil Services (Punishment & Appeal) Rules 1952 which says:

“7(5) Where the punishing authority itself enquires into any charge or charges or appoints an enquiry officer for holding enquiry against a person in the service of the Government, it may, by an order, appoint a Government servant or a legal practitioner to be known as a “presenting officer” to present on its behalf the case, in support of the charge or charges.

The person against whom a charge is being enquired into, shall be allowed to obtain the assistance of a Government servant, if he so desires, in order to produce his defence before the enquiring officer. *If the charge or charges are likely to result in the dismissal of the person from the service of the Government, such person may, with the sanction of the enquiry officer, be represented by counsel.*”

(Underlining Supplied)

It would appear that in the inquiry, the Respondent-Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to entail a dismissal from service the inquiry-authority may permit the services of a lawyer. This rule vests a discre-

A tion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reason of the appellant being pitted against a presenting-officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include "whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser". In the last analysis, a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question "whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner" which was kept open in *Board of Trustees of the Port of Bombay v. Dilipkumar*, [1983] 1 SCR 828. However, it was held in that case:

D "..... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated"

(p. 837)

5. On a consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the inquiry was not a proper exercise of the discretion under the rule resulting in a failure of natural justice; particularly, in view of the fact that the Presenting-Officer was a person with legal attainments and experience. It was said that the appellant was no less adept having been in the position of a Senior-Executive and could have defended, and did defend, himself competently; but as was observed by the learned Master of Rolls in *Pett's* case that in defending himself one may tend to become "nervous" or "tongue tied". Moreover, appellant, it is claimed, has had no legal background. The refusal of the service of a lawyer, in the facts of this case, results in denial of natural justice.

H The question remains as to the manner of remedying the situa-

tion. Some circumstances require to be noticed in this behalf. The inquiry was proceeded with and as many as 13 witnesses have been examined. The Examination-in-Chief as well as such cross-examination as the appellant himself attempted are on record. They shall remain part of the record. The Examination-in-Chief of these witnesses is not vitiated by a reason alone of the circumstance that the appellant did not then have the assistance of a lawyer to cross-examine them. The situation could be remedied now by tendering the witnesses for further cross-examination by a lawyer to be engaged by the appellant. In order that further protraction of the inquiry proceedings is avoided as required the appellant to state the names of the witnesses he wants to be so tendered for further cross-examination. Appellant has filed a list of eight such witnesses. viz., J.L. Sah Thulgharia, Production Manager; Joginder Singh, Sr. Scale Stenographer, D.M. Tyagi, Executive Engineer; Vakil Singh, Ex-driver; B.P. Bansal, Chief Accounts Officer; Randhir Singh, Manager (Personnel) and R.S. Malik, Ex-Managing Director. The further proceedings of the inquiry shall be commenced on 20th October and continued from day to day.

There shall be no necessity for the inquiry-authority to issue fresh notices to the appellant in respect of the further proceedings on that day. The appellant shall appear along with his lawyer before the inquiry-authority on that date and the subsequent dates to which the proceedings may stand adjourned. Appellant's lawyer shall be entitled to cross-examine these witnesses and to address arguments. The inquiry-officer shall be at liberty to refuse any prayer for adjournment which he thinks unreasonable and which in his opinion is intended to protract the proceedings. The inquiry shall be completed within one month from 20th of October 1990. The appeal is disposed of accordingly. No costs.

V.P.R.

Appeal allowed.