

Crescent Dyes and Chemicals Ltd.

Vs

Ram Naresh Tripathi

Civil Appeal No. 5358 of 1992

(A.M. Ahmadi, M.M. Punchhi, K.R. Ramaswamy JJ)

16.12.1992

JUDGMENT

A. M. AHMADI, J. -

1. Special leave granted.

2. The short question which falls for determination in this appeal is whether a delinquent is entitled to be represented by an office-bearer of other Trade Union, who is not a member of either a recognised union or a non-recognised union functioning within the undertaking in which the delinquent is employed, notwithstanding the statutory limitation contained in the certified Standing Orders and clause (ii) of Section 22 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereafter called 'the Act'). The High Court has answered this question in the affirmative on the following line of reasoning :

"[F]or the purpose of the domestic enquiry to be fair and impartial it is very much necessary that the delinquent workman be allowed to be represented by a person of his choice and if an employee is refused such a fair opportunity of putting forward his case by a representative of his choice, even if the representative is an outsider, it could be well said that the principles of natural justice were violated. There is nothing in Section 22 to deny such a basic and fundamental right to a workman. Section 22 only provides for the rights of an unrecognised union. The enquiry officer in our case, therefore, violated the principles of natural justice in not allowing the petitioner to be defended by Talraja.

If he was allowed to be defended by Talraja, no prejudice would have been caused to the third respondent (the appellant herein)."

On this line of reasoning the High Court quashed the order of dismissal as violative of the principles of natural justice and remitted the matter to the Labour Court with a direction to permit both parties to adduce whatever evidence they may desire to place on record and decide on merits whether or not the misconduct alleged the delinquent was proved.

3. Feeling aggrieved by the said order passed by the High Court, original respondent 3, M/s Crescent Dyes and Chemicals Ltd., the employer, has preferred this appeal by special leave. The facts which we may notice for the disposal of this appeal are as under.

4. The workman, Ram Naresh Tripathi, was charge-sheeted on November 29, 1980 for misconduct.

A domestic enquiry was ordered and an Enquiry Officer was appointed to enquire into the alleged acts of misconduct of the delinquent. The delinquent requested the Enquiry Officer to permit him to be defended by one Talraja who claimed to be an office-bearer of the Bombay Mazdoor Union of which the delinquent was a member. The delinquent contended before the Enquiry Officer that the said Talraja was authorised to defend members of his union at domestic enquiries but the Enquiry Officer did not permit the delinquent to be represented and defended by the said Talraja since he was not a member of the recognised union or the unrecognised union functioning in the employer's establishment. Thereupon the delinquent did not participate in the enquiry and the Enquiry Officer concluded the enquiry ex parte. That led to the ultimate dismissal of the delinquent by an order dated January 28, 1981. The delinquent thereupon filed a complaint (ULP) No. 33 of 1981 in the Labour Court, Bombay making a grievance that the employer was guilty of unfair labour practice enumerated at Item 1(f) of Schedule IV to the Act, in that, he was not allowed to be defended by a person of his own choice in violation of the principles of natural justice. Item 1(f) of Schedule IV deals with discharges or dismissal of employees in utter disregard of the principles of natural justice in the conduct of a domestic enquiry. The Labour Court relying on Section 22(ii) of the Act concluded that the delinquent was not entitled to be defended by Talraja who was not a member of either a recognised or a nonrecognised union functioning within the undertaking of the appellant company. The Labour Court, therefore, came to the conclusion that the dismissal order did not suffer from any violation of the principles of natural justices and dismissed the complaint on June 30, 1982. The delinquent filed a Revision Application (ULP) No. 28 of 1982 in the Industrial Court, Bombay. The Industrial Court agreed with the view taken by the Labour Court and found no merit in the revision application and dismissed the same by its order dated June 14, 1983. Thereupon the delinquent moved the High Court under Article 227 of the Constitution. The High Court, for the reasons extracted hereinabove, came to the conclusion that refusal to permit Talraja to defend the delinquent amounted to unfair labour practice within the meaning of Item 1(f) of Schedule IV to the Act as it violated the principle of natural justice. The High Court, therefore, quashed the judgments of the authorities below and remitted the matter to the Labour Court for disposal in accordance with law after permitting both the sides to adduce evidence on their behalf. The High Court directed the Labour Court to determine if the charges of misconduct leveled against the delinquent were proved on merits on the evidence that may be placed before it and to dispose of the complaint of unfair labour practice on the findings so recorded latest by the end of December 1991. It is the correctness of this order of the High Court which is impugned in this appeal.

5. The Act was enacted to provide for the recognition of trade unions for facilitating collective bargaining for certain undertaking; to confer certain powers on unrecognised unions; to define and provide for the prevention of certain unfair labour practices; to constitute courts for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair practices and to provide for matters connected with the purposes aforesaid. The Act was made applicable to industries to which the Bombay Industrial Relation Act, 1946 applied and also to any industry defined in clause (j) of Section 2 of the Industrial Disputes Act, 1947, except where otherwise provided. It is an admitted fact that the provisions of the Act apply to the appellant-company. The expression 'recognised union' defined in Section 3(13) means a union which has been issued a certificate of recognition under Chapter III. Chapter III comprises Sections 10 to 18. Section 11 provides that any union which has for the whole of the period of six calendar months immediately preceding the calendar month in which it has applied under this section a membership of not less than 30 per cent of the total number of the employees employed in any undertaking, may apply in the prescribed form to the Industrial Court for being registered as a recognised union for such undertaking. Section 12 says that on receipt of such an application for recognition and on

payment of the prescribed fees, the Industrial Court shall, if it finds the application to be in order, cause notice to be displayed on the notice-board of the undertaking, declaring its intention to consider the said application on the date specified therein and call upon the other union or unions, if any, having membership of employees in that undertaking and the employers and employees affected by the proposal to show cause within a prescribed time as to why recognition should not be granted to the applicant-union. After considering the objections, if any, received by it and after holding such enquiry as it deems fit, the Industrial Court may grant recognition under the Act and issue a certificate of such recognition in the prescribed form. Section 13 empowers the Industrial Court to cancel the recognition in certain circumstances. Provision is also made in Section 14 to enable any union to make an application to the Industrial Court for being registered as a recognised union in place of a recognised union already registered as such for an undertaking if it is shown that it has the largest membership of employees employed in such undertaking provided a period of two years has elapsed since the date of registration of the recognised union. Sections 19 and 20 spell out the obligations and rights of a recognised union. Section 20(1)(d) confers a right on the authorised officers, staff-members and members of a recognised union "to appear on behalf of any employee or employees in any domestic or departmental inquiry held by the employer". Then come Sections 21 and 22 which may be reproduced at this stage. They read as under :

"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 of 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."

Chapter VI deals with unfair labour practices which have been listed in Schedules II, III and IV of the Act. Section 27 mandates that no employer or union and no employee shall engage in any unfair labour practice. Section 28 sets out the procedure for dealing with the complaints relating to unfair

labour practices. Section 30 inter alia empowers the court, meaning thereby the Industrial Court or the Labour Court, as the case may be, to direct all those engaged in such practice to cease or desist from such unfair labour practice and take such affirmative action (including payment of reasonable compensation to the employee affected thereby of reinstatement of the employee with or without backwages) as may, in the opinion of the court, seem necessary to effectuate the policy of the Act. This, in brief, is the scheme of the Act.

6. As pointed out earlier the complaint made to the Labour Court by the workman was that the employer was guilty of unfair labour practice, in that, his employment was terminated in utter disregard of the principles of natural justice in the conduct of the domestic enquiry by refusing to allow Talraja to defend him in the domestic enquiry conducted by the enquiry officer. The question is whether the Enquiry Officer was justified in refusing to permit Talraja to defend the delinquent in the enquiry conducted by him.

7. It is clear from the scheme of the Act that with a view to facilitating collective bargaining in certain undertakings, the concept of recognition of trade unions was introduced and certain obligations/rights came to be imposed/conferred on the recognised unions. Certain powers have also been conferred on unrecognised unions by the Act. Clause (d) of sub-section (1) of Section 20 states that such officers, members of the staff and members of a recognised union as may be authorised, shall have a right to appear on behalf of any employee or employees in any domestic or departmental enquiry held by an employer. Section 21 says that no employee in an undertaking to which the provisions of the Industrial Disputes Act applies, shall be allowed to appear or act or be allowed to be represented in any proceeding relating to unfair labour practices specified in Items 2 and 6 of Schedule IV to the Act, except through a recognised union. The proviso clarifies that in the absence of a recognised union, the employee may himself appear or act in any proceeding relating to any such unfair labour practices. Sub-section (2) of that section further provides that no employee to which the provisions of the Bombay Industrial Relations Act applies shall be allowed to appear or act or be allowed to be represented in any proceeding referred to in sub-section (1) except through representatives of employees entitled to appear under Section 30 of the said Act. Section 30 of that Act specifies the representatives of employees who shall be entitled to appear or act on behalf of the employees. Item 2 of Chapter IV reads :

"To abolish the work of a regular nature being done by employees and to give such work to contractors as a measure of breaking a strike."

Then Item 6 of that chapter reads :

"to employ employees as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees."

These two items would not necessitate any domestic or departmental enquiry although a complaint in regard to such unfair labour practices can be envisaged under Section 28 of the Act. In the case of employees governed by the Industrial Disputes Act, only the recognised union can represent them if the complaint is in regard to the unfair labour practices stated in the said two entries and in the case of employees who are governed by the Bombay Industrial Relations Act, only the representatives specified in Section 30 of the said Act can represent the employees if the alleged unfair labour practices relate to the said two entries. Thus while Section 20(1)(d) confers a right on the authorised officers, staff-members and members of the recognised union to represent a delinquent in any

domestic or departmental enquiry held by the employer, in the case of unfair labour practices falling within Items 2 and 6, the right is further restricted, in that, in the case of employees governed under the Bombay Industrial Relations Act only those representatives mentioned in Section 30 of that Act will be entitled to represent while employees governed by the Industrial Disputes Act would have to appear in person and conduct the proceeding relating to such unfair labour practices in the absence of a recognised union. In the case of an unrecognised union, officers staff-members and members of the union authorised by the State Government shall have a right to appear on behalf of any employee in domestic or departmental enquiry held by the employer. The expressions 'union' and 'employees' have been defined in Sections 3(17) and 3(5), respectively. It will thus be seen that in the case of an employee facing a domestic or departmental enquiry, officers, office staff members or members of a recognised or unrecognised union may appear and act on behalf of the delinquent provided they are authorised by the State Government. In the present case it is not in dispute that Talraja claimed to be an office-bearer of a trade union which did not have employees working in the appellant's establishment (except the delinquent) as its members. Since Talraja was not authorised by the State Government he could not represent the delinquent at the domestic or departmental enquiry under Section 22(ii) and hence the Enquiry Officer was justified in law in refusing him permission to represent the delinquent.

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 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 SCC 369 : 1984 SCC (L&S) 540 : (1984) 3 SCR 325,336) 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 and 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 Section 21 and 22 of the Act and the decisions of this Court to which we shall presently refer.

9. Counsel for the workman argued that the limitation imposed by the Standing Orders and section 22(ii) runs counter to the principles of natural justice, in that, it violates the right to hearing and a fair trial and must, therefore, be ignored.

10. The doctrine of natural justice embodies two principles, namely : (i) no one can be a judge in his own cause, and (ii) a judicial or quasi-judicial tribunal ought not and shall not condemn any person unheard. In the present case we are not concerned with the first principle and must, therefore, confine ourselves to the second which recognises the right to be heard. The second principle

envisages that the right to be heard in order to be effective must be preceded by notice as to the exact charge which a delinquent is called upon to meet. Does then the right to be heard include the right to be represented through counsel or agent of the choice of the delinquent? If a Domestic Tribunal refuses permission to a delinquent appearing before it to be represented by an agent would that amount to infringement of the rule natural justice ? There can be no doubt that a delinquent must be given an opportunity of presenting his case in such way suitable to the character the enquiry which would ensure a fair hearing resulting in fair dispensation of justice. But does that extent to the right to be represented through counsel or agent is the question which we are called upon to answer.

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 Order. In the present case the Standing Order 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 *Macleane v. Workers' Union* ((1929) 1 Ch 602,621 : 1929 All ER Rep 468) Maugham, J. observed that counsel have no right of audience before a Tribunal. However, in *Pett v. Greyhound Racing Association Ltd., (No.1)* ((1968) 2 All ER 545 : (1969) 1 QB 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 Pett'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 truck 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. This is what the learned Judge observed :

"The plaintiff is here facing a serious charge. He is charged either with giving the dog drugs or with not exercising proper control over the dog so that someone else drugged it. If he is found guilty, he may be suspended or his licence may not be renewed. The charge concerns his reputation and his livelihood. On such an enquiry I think that he is entitled not only to appear by himself but also to appoint an agent to act for him."

In taking this view reliance was placed on the observation of Sterling, J. in *Jackson & Co. v. Napper* ((1886) 35 Ch D 162,172) to the following effect :

"[S]ubject to certain well-known exceptions every person who is sui juris has a right

to appoint an agent for any purpose whatsoever and that he can do so when he is exercising a statutory right, no less that when he is exercising any other right."

This principle was applied to hearing before an Assessment Committee in *Queen v. Assessment Committee of St. Mary Abbots, Kensington* ((1891) 1 QB 378) wherein it was held that as the ratepayer had right to appear and be heard and as there was no prohibition from appearing by an agent a surveyor could appear for him. However, when *Pett* case ((1968) 2 All ER 545 : (1969) 1 QB 125) came up for trial, Lyell, J. found it difficult to confirm the prima facie view of Lord Denning, J. in view of the Privy Council decision in *University of Ceylon v. E.F.W. Fernando* ((1960) 1 WLR 23). Lyell, J. refused to concede that legal representation before a Tribunal constituted an elementary feature of fair dispensation of justice. see *Pett v. Greyhound Racing Association Ltd.* ((1971) Ch 591 : (1971) 1 All ER 215) In *Enderby Town Foot Ball Club Ltd., v. Football Association Ltd.*, ((1971) Ch 591 : (1971) 1 All ER 215) a rule of the Football Association prohibited clubs which appealed to it against decisions of Country Football Associations from being legally represented. The appellant having appealed to the Football Association sought an injunction to prevent the appeal being heard unless it was allowed legal representation. While *Fenton Atkinson L.J. & Cairns L.J.* were inclined to take the view that the clubs might exclude legal representation by an absolute rule, lord Denning, M.R. posed the question : Is a party who is charged before a domestic tribunal entitled as of right to be legally represented ?' and answered it by saying 'much depends on what the rules say about it'. He then proceeded to add that when the rules are silent, then the party has no absolute right to be legally represented : it is a matter left to the discretion of the tribunal which must be properly exercised. He then observed :

"[I]t may be a good thing for the proceedings on 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."

It can, therefore, be seen that Lord Denning did not strictly adhere to the view expressed by him in *Pett* (No.1) case ((1968) 2 All ER 545 : (1969) 1 QB 125). He felt that the right to representation depends on the discretion of the Tribunal which must be genuinely exercised and explained. In *Pett* case ((1968) 2 All ER 545 : (1969) 1 QB 125) he had intervened because the *Greyhound Racing Association Ltd.* had developed an inflexible practice of refusing representation regardless of the seriousness and complexity of the charges levelled against a delinquent. In *R. v. Race Relations Board, Ex parte Selvarajan* ((1975) 1 WLR 1686) the question of legal representation though not strictly in issue was discussed by lord Denning, M. R. generally and it was observed that there was a duty to act fairly although each body could lay down its own procedure. He also observed that what fairness requires would depend on the nature of the investigation and the consequences it may have on persons affected by it, thereby keeping open for courts in any particular case to grant the right of legal representation. Again in *Maynard v. Osmond* ((1977) QB 240 : (1977) 1 All ER 64) a police constable claimed a right to be legally represented when appearing before his chief constable. This was spurned by the court of appeal which held that the *Police (Discipline) Regulation, 1965* made under the *Police Act, 1964* expressly provided for representation only by another policeman Lord Denning, M.R. held that the regulations were entirely fair since the prosecution was presented by a police constable not a lawyer, and the delinquent could be effectively represented by another police officer because of his knowledge of the inner working of the police force.

12. From the above decisions of the English Courts it seems clear to us that the right to be represented by a counsel or agent of one's own choice is not an absolute right and can be controlled, restricted or regulated by law, rules or regulations. However, in the charge is of a serious and

complex nature, the delinquent's request to be represented through a counsel or agent could be conceded.

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) v. Tata Locomotive & Engineering Co., Ltd., Jamshedpur* ((1960) 3 SCR 407 : AIR 1960 SC 914), (ii) *Brooke Bond India (P) Ltd. v. Subba Raman (S.)* ((1961) 2 LLJ 417) and (iii) *Dunlop Rubber Co., v. Workmen* ((1965) 2 SCR 139 : AIR 1965 SC 1392) that there is no right to representation as such unless the company by its Standing Orders recognises such a right.

14. The first was the case ((1960) 3 SCR 407 : AIR 1960 SC 914) in which Kalindi along with some other workmen was charge-sheet on four counts. An enquiry was ordered into their alleged misconduct and they were ultimately dismissed from service. They filed applications under section 33-A of the Industrial Disputes Act complaining of the action taken against them by the company. These application were, however, dismissed. Against that order an appeal was preferred to this Court in which the common contention urged was that the enquiry was not a proper and a valid enquiry inasmuch as the workmen were not allowed to be represented at the said enquiry by a representative of the Jamshedpur Union to which these workmen belonged. It was urged that the concerned workmen should have been allowed reasonable assistance for examination and cross-examination of witnesses and for seeing that the proper records were made of the proceedings. It was further contended that a representative of the workmen's union was best suited to give such assistance and in the absence of such assistance a fair hearing was denied. The question which arose for consideration was whether the refusal of the workmen's request to be represented at the enquiry by a representative of their union vitiated the enquiry. This Court while rejecting the contention observed as under :

"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 accepted 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 question of fact 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 workmen will be best suited and fully able to cross-examine the witnesses who have spoken against him and to examine the witnesses in his favour."

This Court concluded that in the concerned rules no provision was made that the person against whom an enquiry is held may be represented by anyone else. This Court further held that then the general practice adopted by domestic Tribunal is that the delinquent must conduct his own case, it is difficult to accept the submission that natural justice demands that in such enquiries the workman should be represented by a member of his union. If any enquiry is not otherwise fair, the workman concerned can always challenge its validity in an industrial dispute. This Court, therefore, concluded 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 union though of course an employer in his

discretion can and may allow his employee to avail himself of such assistance.

15. In the second case also the management of Brooke Bond (P) Ltd., ((1961) 2 LLJ 417) framed charges against two workmen involving gross negligence of duty and moral turpitude and ordered separate enquiries against them. The workman Subba Raman appeared before the Enquiry Officer with counsel and insisted that he should be permitted to be represented by counsel. The Enquiry Officer refused this request whereupon the workman withdrew from the enquiry. The enquiry was then concluded ex parte resulting in the dismissing the workman. In the case of the other workman what happened was that he appeared at the enquiry with an outsider and insisted that he should be permitted to represent him at the enquiry. He was told that no outside would be allowed to do so were upon he too withdrew from the enquiry. The enquiry proceeded ex parte and ended in his dismissal. This Court relying on the decision in Kalindi case ((1960) 3 SCR 407 : AIR 1960 SC 914) concluded that the workmen had no right to be represented at such enquiry by a counsel or by an outsider agent and the refusal of the Enquiry Officer to permit such representatives at the domestic enquiry did not offend the rule of natural justice. 16. In the third case ((1965) 2 SCR 139 : AIR 1965 SC 1392) the management, Dunlop Rubber Company, dismissed certain workmen after a domestic enquiry finding them guilty of 'go slow' action. An industrial dispute was raised wherein the Industrial Tribunal found that the dismissal of the workmen could not be sustained since there was denial of natural justice inasmuch as the workmen were not allowed to be represented by a person of their choice. On the Tribunal setting aside the orders of dismissal the company appealed to this Court by special leave. This Court held that there was no denial of natural justice because the workmen had asked for being represented by a member of a union which was not recognised since the Standing Orders clearly provided that only a representative of a registered and recognised union could assist the workmen in the enquiry; there was no absolute right to representation as such except that recognised by the Standing Orders.

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 clear or a workman working with him in the same department to represent his and this right stood expanded on Section 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 dispatch 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.

18. For the above reasons we are of the view that the learned Judge in the High Court was in error in holding that the proceedings before the Enquiry Officer were vitiated as violative of the principles of natural justice and in setting aside the dismissal order. We are of the opinion that the Enquiry Officer was legally justified in refusing the workman's agent Talraja from participating in the domestic enquiry. The workmen's action in withdrawing from the proceedings was ill-advised. We, therefore, allow this appeal and set aside the impugned order of the High Court. Consequently

the order remanding the case to the Labour Court for disposal on merits must also be set aside and any order made by the Labour Court will be void and inoperative. If the Labour Court has not disposed of the case, it will forthwith drop the proceedings as infructuous. In the facts and circumstances of the case, there will be no order as to costs.

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