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Delhi High Court

Case No: Civil Writ Petition No. 1917 of 1989

Municipal Corporation of Delhi	APPELLANT
Vs	
Delhi Municipal Karamchari Ekta Union	RESPONDENT

Date of Decision: Sept. 20, 1990

Citation: (1991) 43 DLT 202 : (1991) 62 FLR 616

Hon'ble Judges: A.B. Saharya, J

Bench: Single Bench

Advocate: J.M. Sabarwal, R. Sabharwal, Ashok Aggarwal and Madha Bald, for the Appellant;

Judgement

Arun B. Saharya, J.

(1) By this petition under Article 226 of the Constitution of India, the petitioner has challenged an award dated 21st of March, 1987 made by the Industrial Tribunal No. Iii, Delhi.

(2) The award has been made on a dispute between the parties in respect of a circular No. 3267/DOI dated 22nd of December, 1975 issued by the petitioner-corporation directing that no municipal employee shall be allowed to act as a defense assistant in more than one case during a year.

(3) Employees of the Corporation, so far as conduct of enquiry and disciplinary action is concerned, are governed by the Delhi Municipal Corporation (Control & Appeal) Regulations, 1959. Regulation 8 prescribes the procedure for imposing penalty. Clause (5) of Regulation 8 is relevant for the present purpose and is set out below :-

"(5)The Disciplinary Authority may nominate any person to present the case in support of the charges before the Inquiring Authority. The municipal officer or other

municipal employee may present his case with the assistance of any other municipal officer or employee approved by the Disciplinary Authority, but shall not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case, so permits."

(4) In the exercise of executive powers conferred upon him, the Commissioner issued the disputed circular dated 22nd of December, 1975. This circular reads as follows :-

"IT has been brought to my notice that in a large number of cases the municipal employees against whom departmental enquiries are in progress request for engaging a particular person only as their defense assistant. The result is that the person who acts as defense assistant in a large number of enquiries simultaneously, cannot properly attend to his normal duties as a municipal employee, and the Corporation work consequently suffers".

In supersession of all previous orders on the subject, the following instructions are, Therefore, issued :-

(I)No municipal employee shall be allowed to act as defense assistant in more than one case during a year ;

(II)Every municipal employee seeking permission to act as defense assistant shall have to furnish a ''no objection certificate'' from the Head of the Department in which he is serving. The aforesaid instructions shall be rigorously enforced with immediate effect."

(5) This circular was challenged by the respondent-Union. Since no settlement could be arrived at in the course of the conciliation proceedings, reference of the dispute was made by the Secretary(Labor ,Delhi Administration to the Industrial Tribunal in the following terms :- Whether the Corporation was justified in issuing circular No. 3267 Doi dated 22.12.75 and if not what directions are necessary in this respect ? .

(6) By the impugned award, the Tribunal has rejected the plea that the Corporation work suffers if a particular person is allowed to act as defense assistant in a number of cases simultaneously. Further, the Tribunal has found that as a result of the disputed circular, a delinquent employee would not be able to get the assistance of an experienced defense assistant ; that the circular restricts the provision made in the Regulation ; that it has an over-riding effect and is inconsistent with the Regulation. Therefore, the Tribunal has held that the Corporation is not justified in issuing the disputed circular and has directed the Corporation to withdraw it.

(7) In order to indicate the nature and scope of proceedings under Article 226 of the Constitution of India with regard to an award made by an Industrial Tribunal, counsel for the Union relied upon observations made in Workmen of Dodsal Private Ltd. Vs. Dodsal Private Ltd. and Another, and Calcutta Port Shramik Union v. The

Calcutta River Transport Association and others 1989 L. I.C. 1215. In Dodsal''s case, the Supreme Court found that the interpretation placed by the Tribunal in its award on the expression "present wage was not an unreasonable interpretation and consequently held that the High Court ought not to have interfered with the award of the Tribunal placing its own interpretation on the award. In the case of Calcutta Port Shrarnik Union, Justice Venkataramiah, in an appeal to the Supreme Court from a judgment of the Calcutta High Court, explained: "The object of enacting the Industrial Disputes Act 947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a Government to an industrial tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by Courts exercising judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hyper-technical grounds". Of course, if an award is found to be unreasonable, the High Court can interfere with it. Whether an award is good or bad, depends upon the facts and circumstances of each case.

(8) Now, let us examine the ambit and object of the Regulation. A bare reading of the Regulation shows that a Municipal employee may present his case with the assistance of "any" employee. This is an important right but, not an absolute right conferred upon the employee. The employee, whose assistance is sought, has to be "approved" by the disciplinary authority. The disciplinary authority also does not have the absolute power to veto the choice of the charged employee. It cannot be said that the earlier part of the Regulation gives and the later part takes away the right of the charged employee to be assisted by a defense assistant of his own choice for, the content of one would become irreconcilable with the content of the other.

(9) As it is, the Regulation restricts the employee''s right to be defended by a legal practitioner, with the object, inter alia, to retain and maintain the domestic character of the enquiry. But, within the orbit of Municipal employees, the charged employee may seek the assistance of any one to present his case.

(10) The provision for a defense assistant is a facet of reasonable opportunity to be given to an employee to defend himself in an enquiry. This is necessary to the maintenance of fair play and to do justice in such matters. This is a part of the legal obligation cast upon the disciplinary authority. It indicates prescription of conduct towards the achievement of that object. For this purpose, the context suggests that the attitude of the disciplinary authority ought to be generally for (not against) grant of approval. Under the said Regulation, the power to approve is really coupled with a duty to exercise it. The disciplinary authority has no right, not to exercise it ; it must do it.

(11) The importance of this provision can be visualised from the observation made by D.A. Desai and RB. Misra.JJ. in Bhagat Ram Vs. State of Himachal Pradesh and Others, that a delinquent employee has a right to take help of another employee and justice and fair play demand that it is incumbent upon the disciplinary authority, while appointing Presenting Officer to appear on his behalf simultaneously to inform the delinquent employee of this fact.

(12) It is now well-settled that statutory rules and regulations can be supplemented by executive instructions. The question is whether the disputed circular abridges or curtails the provision made in the Regulation, or supplements it.

(13) In this backdrop, the findings of the Tribunal have to be considered to decide whether the same are reasonable or otherwise.

(14) The first finding of the tribunal has been reached by putting to test the fundamental reason stated in the disputed circular that a particular person who acts as defense assistant in. a number of enquiries simultaneously cannot properly attend to his normal duties as a municipal employee and "the Corporation work consequently suffers". The Tribunal has rejected this plea as it felt that if this instruction was to be followed, more persons would be required to defend their co-employees in the various enquiries and the net result would be that instead of a few, "many persons would be away on enquiry leaving the work of their own seats".

(15) To support the award, counsel for the Union has contended that it would be wrong to assume that a person who acts as a defense assistant performs any work. other than "the Corporation work". According to him, the Corporation being "the State", it is under an obligation under Article 39-A of the Constitution of India to provide free legal aid to a delinquent employee in an enquiry ; and the provision for a defense assistant made under the Regulation is really the fulfillment of that obligation. Article 39-A directs as follows : -

"THE State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

(16) In order to advance his plea on the basis of Article 39-A, he has cited the case of Centre of Legal Research and another v. State of Kerala AIR 1986 S.C. 2195, wherein Bhagwati, C.J. has explained: "The State Government undoubtedly has an obligation under Art. 39-A of the Constitution which embodies a Directive Principle of State Policy to set up a comprehensive and effective legal aid programme in order to ensure that the operation of the legal system promotes justice on the basis of equality". He has also relied upon Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, where Bhagwati, J. has explained that this Article emphasises that free legal service is an unalienable element of reasonable, fair and

just procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice and that this right must be held implicit in the guarantee of Article 21.

(17) This shows that the Corporation is under an obligation to provide free legal aid, and that to make available any municipal employee as a defense assistant in an enquiry is the Corporation''s responsibility. Thus, it appears that a municipal employee who assists the charged employee in an enquiry does so as a part of "the Corporation work".

(18) In any event, the view of the Tribunal that the disputed circular would really be counter-productive, cannot be said to be unreasonable. Even if another view is also possible, this Court should not interfere with the impugn- ed award on this ground.

(19) Next, the Tribunal has found that as a result of the disputed circular, a delinquent employee would not be able to get the assistance of an experienced defense assistant. The Tribunal has noticed that the persons nominated as Presenting Officers are law graduates, well-trained and are experts in their field. The defense assistants also get some training by handling a number of enquiries. Ordinarily, such employees should be available to defend a charged officer. But, if the circular is to be enforced, an accused employee would be deprived of the opportunity to be defended by an experienced and competent defense assistant merely because such a person may be handling any other case during the year. This possibility cannot be ruled out.

(20) Lastly, the question is whether the disputed circular regulates the exercise of power of approval vested in the disciplinary authority, so as to exclude arbitrariness.

(21) It is, no doubt, true that the person who acts as a defense assistant has to devote a lot of time to render any meaningful assistance to a delinquent employee. Yet, the Regulation envisages such assistance. The object is, as earlier discussed, to give a reasonable opportunity to an accused employee to defend himself in the enquiry. The disciplinary authority must bear in mind the object of this provision which is meant for the benefit of the employee, while exercising the power of approval. It must enable the employee to be represented by any other Municipal employee of his own choice. The disciplinary authority ought not disable the concerned employee to be represented by a defense assistant chosen by him merely on the ground that such a person "cannot properly attend to his normal duties".

(22) In a given case, however, the person whose assistance is sought, may be engaged in the performance of some extra-ordinary work due to which he may not be available at the relevant time to serve as a defense assistant. Indeed, in this kind of a situation, it would not be in the interest of the charged employee to bank on the assistance of that person. In such an exceptional case, the disciplinary authority may be justified in not granting approval. The opportunity envisaged under the

Regulation must not be denied to the concerned employee except in extra-ordinary circumstances.

(23) The disputed circular, rather than laying down any guidelines for the proper discharge of the obligation by the disciplinary authority to grant approval, or indicating the extra-ordinary kind of situations in which approval may be refused, so as to avoid prejudice to the accused employee in an enquiry, curtails his right to be represented by an experienced and competent defense assistant of his own choice. The statutory Regulation makes available to him the unlimited zone of any municipal employee to choose a defense assistant. But, the disputed circular, by an executive fiat. cuts it down to naught. It is obviously inconsistent with the object sought to be achieved by the Regulation.

(24) The Tribunal has found that the circular has the effect of restricting the provisions of Control and Appeal Regulations. In this sense, description of the impact of the circular as ''inconsistent'' with and ''over-riding'' the Regulation is understandable. No fault can be found with it.

(25) Therefore, the impugned award directing the petitioner to withdraw the disputed circular dated 22nd of December, 1975, cannot be said to be unreasonable Consequently, the writ petition is dismissed with costs. Counsel''s fee Rs. 2,200.00 .