BHARAT PETROLEUM CORPORATION LTD. A

v.

MAHARASHTRA GENERAL KAMGAR UNION AND ORS.

DECEMBER 14, 1998

[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.] B

Labour Law :

Standing Orders—Certified by the Certifying Authority and Model standing Orders framed by the Central Government under Industrial C *Employment (Standing Orders) Act, 1946—Inconsistency—Domestic enquiry-Representation of the delinquent by another person-Right to—Held, available to the delinquent only to the extent specifically provided in the service rules—Provision in the Draft Standing orders permitting the delinquent to be represented by a fellow workmen of the same establishment—Held, neither* D *unreasonable nor unfair nor lacked consonance with Model Standing Orders which permitted representation of the delinquent by a Member of the union of which the delinquent was a member, although that member was employed elsewhere—Industrial Employment (Standing Orders) Act, 1946, Sections 5,6,2(ee), 12-A 7, 10 and 15(2)(b)—Industrial Employment (Standing Orders) Central Rules, 1946-Model Standing Orders, para 14(4)(ba)—Railway* E *Establishment Code, Rule 1712—Central Civil Services (CCA) Rules, 1965, Rule 14(8)- Departmental Enquiry-Natural Justice-Hearing.*

Industrial Employment (Standing Orders) Act, 1946, Section 4 (as amended in 1965), 5 and 6—Jurisdiction of Certifying Officer and Appellate Authority—Held, is not limited to examining whether the Draft Standing F *Order conformed to the Model Standing Orders but extends to determination of fairness and reasonableness of the provisions of the Standing Orders. Industrial Employment (Standing Orders) Act, 1946—Nature and scope of—Held, is a beneficent piece of legislation—Interpretation of Statutes—Beneficent legislation.*

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Industrial Employment (Standing Orders) Act, 1946 Sections 5(2) & (3)—Certification of Standing Orders—Effects of—Held, Certified Standing Orders constitute the conditions of service binding upon the management and new employees.

Draft Standing Orders were submitted by the appellant to the Certifying H

A Officer for certification under Industrial Employment (Standing Orders) Act, 1946. It was certified with various modifications . One of the clauses of the Draft Standing Orders which was not certified related to the representation of an employee, during departmental proceedings and as a result of which provisions as contained in the Model Standing Orders framed by the Central Government continued to apply to the appellant's Establishment. B On appeal filed on behalf of the appellant as well as by Respondent 1 before the Appellate Authority the clause relating to the representation of an employee during the departmental proceedings, as set out in the Draft Standing Orders, was approved. The order of the Appellate Authority was challenged by Respondent 1 before the High Court, was set aside by it. Hence C this appeal.

It was contended by the appellant that Model Standing Orders would operate only during the period of time when the Standing Orders were not framed by the Establishment itself. On the contrary, it was contended by Respondent 1 that Draft Standing Orders as framed by the Establishment D could not depart either in policy or principle from the Model Standing Orders.

Allowing the appeal, this Court

HELD : 1. In departmental proceedings an employee has no right to represent another person or a lawyer unless the Service Rules specifically E provide for the same. The right to representation is available only to the extent specifically provided in the Rules. Under Rule 1712 of the Railway Establishment Code a choice is given to the delinquent to be represented by another railway employee, but the choice is restricted to the Railway on which he himself is working, that is, if he is an employee of the Western F Railway his choice could be restricted to the employees working on the Western Railways. The choice cannot be allowed to travel to other Railways. Similarly, a provision has been made in Rule 14(8) of the Central Civil Services (Classification, Control and Appeal) Rules 1965 where an employee has been given the choice of being represented in the disciplinary proceedings through a co-employee. [527-G; 528-A-B]

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Kalindi & Ors. v. *Tata Locomotive and Engineering Comany Ltd.*, AIR (1960) SC 914 : [1960] 3 SCR 407; *Dunlop Rubber Company* v. *Workmen*, [1965] 2 SCR 139: AIR (1965) SC 1392; (1965) (1) LLJ 426 and *Glaxo Industries (I) Ltd.* v. *Presiding Officer, Labour Court Meerut*, (1983) Lab & Ind. Cases 1909; AIR (1984) SC 505 [1984] 1 SCR 230: [1984] 1 SCC 1, H relied on.

2. The object underlying the Industrial Employment (Standing Orders) Act, 1946, which is a beneficent piece of legislation, is to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging the same and similar work under the industrial establishment and to make the terms and conditions of industrial employees well settled and known to the employees before they accept the employment. [524-C]

3. It is true that originally the jurisdiction of the Certifying Officer as also that of the Appellate Authority was very limited and the only jurisdiction available to them under the Act was to see whether the Standing Orders made by the Establishment and submitted for their certification conformed to the Model Standing Orders. This required the process of comparison of the Draft Standing Orders with the Model Standing Orders and on comparison if it was found that if the Draft Standing Orders are in conformity with the Model Standing Orders, the same will be certified even if they are not reasonable or fair. [530-F]

The workmen practically have no say in the matter and they would not be listened even if they agitate that the Draft Standing Orders are not fair or reasonable. [530-G]

4.1. In 1956, radical changes were introduced in the Act by the Parliament as a result of which not only the scope of the Act was widened, but jurisdiction was also conferred upon the Certifying Officers as also the Appellate Authority to adjudicate upon and decide the question relating to fairness or reasonableness of any provision of the Standing Orders. [530-H; 531-A]

4.2. Model Standing Orders, no doubt, provided that a delinquent employee could be represented in the disciplinary proceeding through another employee who may not be the employee of the parent establishment to which the delinquent belongs and may be an employee elsewhere, though he may be a member of the Trade Union, but this rule of representation has not been disturbed by the certified standing orders, inasmuch as it still provides that the delinquent employee can be represented in the disciplinary proceedings through an employee. The only embargo is that the representative should be an employee of the parent establishment. The choice of the delinquent in selecting his representative is affected only to the extent that the representative has to be a co-employee of the same establishment in which the delinquent is employed. There appears to be some logic behind this as

A **a co-employee would be fully aware of the conditions prevailing in the parent establishment, its Service Rules, including the Standing Orders, and would be in a better position, than an outsider, to assist the delinquent in the domestic proceeding for a fair and early disposal. The basic features of the Model Standing Orders, are thus retained and the right of representation in the disciplinary proceedings through another employee is not altered,**
B **affected or taken away. The Standing Orders conform to all standards of reasonableness and fairness and, therefore, the Appellate Authority was fully justified in certifying the Draft Standing Orders as submitted by the appellant. [531-C-F]**

C **4.3. In the instant case, the Standing Orders as finally certified cannot be said either to be not in consonance with the Model Standing Orders or unreasonable or unfair. [531-B]**

Sudhir Chandra Sarkar **v.** *Tata Iron and Steel Company Ltd.,* **[1984] 3 SCR 325: [1984] 3 SCC 369: AIR (1984) SC 1064;** *Agra Electric Supply*
D *Co. Ltd.* **v.** *Alladdin,* **[1970] 1 SCR 808: [1969] 2 SCC 598: AIR (1970) SC 512:** *Workmen* **v.** *Firestone Tyre & Rubber Co. of India (P.) Ltd.,* **[1973] 3 SCR 587 : [1973] 1 SCC 813: AIR (1973) SC 1227 and** *Glaxo Industries (I) Ltd.* **v.** *Presiding Officer, Labour Court, Meerut,* **(1983) Lab & Ind. Cases 1909: AIR (1984) SC 505 : [1984] 1 SCR 230 [1984] 1 SCC 1, relied on.**

E *Crescent Dyes & Chemicals Ltd.* **v.** *Ram Naresh Tripathy,* **[1992] Supp 3 SCR 559: [1993] 2 SCC 115, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 365-367 of 1997.

F From the Judgment and Order dated 28.6.96 of the Bombay High Court in W.P. Nos. 231, 776 and 1462 of 1994.

Altaf Ahmad, Addititonal Solicitor General, P.H. Parekh, Krishan Venugopal and Amit Dhingra for the Appellant.

G N.B. Shetye, (Farookh Rasheed) for Ashok Kumar Gupta, A.M. Khanwilkar and V.D. Khanna for the Respondents.

The Judgment of the Court was delivered by

S. SAGHIR AHMAD, J. The legal battle which started on a larger plane
H between the parties to this appeal. in 1984, has now narrowed down to only

one question, namely, the question relating to the representation of an employee in the disciplinary proceedings through another employee who, though not an employee of the appellant-corporation was, nevertheless, a member of the Trade Union. A

Bharat Petroleum Corporation Ltd., which is the appellant before us, was incorporated in 1976. B

On 4.12.1985, the appellant submitted Draft Standing Orders to the Certifying Officer for certification under the Industrial Employment (Standing Orders) Act, 1946 (for short, 'the Act') which were intended to be applicable to the Marketing Division, Western Region, including its Head Office at Bombay. On receipt of the Draft Standing Orders, the Certifying Officer issued C notices to various employees' Unions and after following the statutory procedure and after giving the parties an opportunity of hearing, certified the Draft Standing Orders 14.10.1991 by an order passed under Section 5 of the Act. The Draft Standing Orders, as submitted by the appellant, were not certified in their entirety but were modified in various respects. D

One of the Clauses of the Draft Standing Orders, which was not certified by the Certifying Officer, related to the representation of an employee in the disciplinary proceedings. The result was that the provision relating to the representation of an employee, during departmental proceedings, as contained in the Model Standing Orders, continued to apply to the appellant's E Establishment.

Aggrieved by the order passed by the Certifying Officer, two appeals; one by the present appellant and the other by respondent No.1, were filed before the Appellate Authority and the latter, by its order dated 23rd of November, 1993, certified the Standing Orders as final. The Clause relating to F the representation of an employee during disciplinary proceedings, as set out in the Draft Standing Orders, was approved and the order of the Certifying Officer, in that regard, was set aside. The Standing Orders, as finally certified by the Appellate Authority, were notified by the appellant on 30.11.1993 and it was with effect from this date that they came into force.

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The order of the Appellant Authority was challenged by respondent No.1 in Writ Petition No.231 of 1994 in the Bombay High Court which admitted the petition on 15.3.1994 but refused the interim relief with the direction that during the pendency of the Writ Petition, a charge-sheeted workman would be permitted to be represented at the departmental enquiry, at his option, by an office bearer of the Trade Union of which he is a member. Since this order H

A was contrary to the Standing Orders, as certified by the Appellate Authority, the appellant filed Special Leave Petition (Civil) No. 12274 of 1994 in which this Court, on 30.9.1994. passed the following Order:-

> "Issue notice. Interim stay of the direction of the High Court by which any Office bearer of the Union who may not be a workman of
B the petitioner corporation is permitted to represent the delinquent workman. It is made clear that in the meanwhile, the workman may be represented by any other workman who is an employee of the petitioner corporation."

By its judgment dated 18.9.1995, this Court set aside the interim order
C passed by the Bombay High Court and directed the High Court to pass a fresh interim order in the Writ Petition after hearing the parties.

In December, 1995, respondent No. 1 took out a Notice of Motion but the High Court, by its order dated 11.12.1995, rejected the same, However, the
D High Court, by its final judgment dated 28.6.1996, allowed the Writ Petition and the order dated 23.11.1993, passed by the Appellate Authority, by which the Clause relating to the representation of an employee during the disciplinary proceedings, as contained in the Draft Standing Orders, was certified, was set aside and the order dated 14.10.1991, passed by the Certifying Officer, was maintained. It is against this judgment that the present appeals have been
E filed and the only question with which we are concerned in these appeals is as to whether an employee, against whom disciplinary proceedings have been initiated, can claim to be represented by a person, who, though, is a member of a Trade Union but is not an employee of the appellant.

Para 14(4)(ba) of the Model Standing Orders, as framed by the Central
F Government under the Act for Industrial Establishments, not being Industrial Establishments in coal-mines, provides as under:-

> "In the enquiry, the workman shall be entitled to appear in person or to be represented by an office bearer of a trade union of which he is a member."

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Clause 29(4) of the Draft Standing Orders, as certified by the Appellate Authority by its judgment dated 23.11.1993, provides as under:-"

> 29.4 (para-3) : If it is decided to hold an enquiry the workman concerned will be given an opportunity to answer the charge/charges and
H permitted to be defended by a fellow workman of his choice, who must

be an employee of the Corporation, The workman defending shall be given necessary time off for the conduct of the enquiry." A

The vital difference between the Model Standing Orders, as set out above, and the Draft Standing Orders, as certified by the Appellate Authority, is that while under the Model Standing Orders, a workman can be represented in the departmental proceedings by an office bearer of a Trade Union of which B he is a member, he does not have this right under the Draft Standing Orders, as certified by the Appellate Authority, which restrict his right of representation by a fellow workman of his choice from amongst the employees of the appellant-Corporation. The contention of the learned counsel for the appellant is that the Model Standing Orders, framed by the Central Government under C the Industrial Employment (Standing Orders) Central Rules, 1946 can operate only during the period of time when the Standing Orders are not made by the Establishment itself. If and when those Standing Orders are made which, in any case, have to be compulsorily made in terms of the Act, they have to be submitted to the Certifying Officer and if they are certified, they take effect from the date on which they are notified and effectively replace the Model D Standing Orders. The order of the Certifying Officer is appealable before the Appellate Authority and the Appellate Authority can legally interfere with the order passed by the Certifying Officer and set it aside or uphold it. There is no restriction under the Act that the Management or the Establishment, or, for that matter, the employer would, adopt the Model Standing Orders. It is E contended that the Standing Orders have only to be in consonance with the Model Standing Orders besides being fair and reasonable.

The submission of the learned counsel for the respondent No.1, on the contrary, is that the Standing Orders, as framed by the Management, have to be on the lines indicated in the Model Standing Orders and there cannot be F a departure either in principle or policy from the Model Standing Orders. It is contended that once it was provided by the Model Standing Orders that an employee of the Corporation can be represented by an employee of another Establishment with the only restriction that he should be an office-bearer of a Trade Union, it was not open to the appellant to have made a G provision in their Standing Orders that an employee of the Corporation would be represented in the disciplinary proceedings only by another employee of the Corporation. It is contended that this departure is impermissible in law and, therefore, the High Court was justified in setting aside the order of the Appellate Authority which had certified the Draft Standing Orders submitted by the appellant. H

A The Industrial Employment (Standing Orders) Act, 1946 was made by the Parliament to require employers of all industrial Establishments to define formally the conditions of employment on which the workmen would be engaged as pointed out by this Court in *Salem Erode Electricity Distribution Company Pvt. Ltd.* v. *Employees Union,* (1966) 1 LLJ 443 = AIR (1966) SC 808 = [1966] 2 SCR 498, followed by its other decision in *Glaxo Laboratories (I) Ltd.* v. *Presiding Officer, Labour Court, Meerut,* (1983) Labour & Industrial Cases 1909 = AIR 1984 SC 505 = [1984] 1 SCR 230 = [1984] 1 SCC 1.

B

The object underlying this Act, which is a beneficent piece of legislation, is to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging same and similar work under the industrial Establishment and to make the terms and conditions of industrial employees well-settled and known to the employees before they accept the employment.

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The Act applies to every Industrial Establishment wherein hundred or more workmen are employed.

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"Model Standing Orders" have been defined in Section 2(ee). They mean standing Orders prescribed under section 15 which gives rule-making power to the appropriate Government and provides, inter alia, that the Rules so made by the Government may set out Model Standing Orders for the purpose of this Act.

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Section 12(a) provides as under:-

"12-A. Temporary application of model standing orders:- (1) Notwithstanding anything contained in Sections 3 to 12, for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Act came into operation under Section 7 in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of section 9, sub-section (2) of Section 13 and Section 13-A shall apply to such model standing orders as they apply to the standing orders so certified.

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(2) Nothing contained in sub-section (1) shall apply to an Industrial Establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra."

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This section provides that the Model Standing Order will be applicable to an Industrial establishment during the period commencing on the date on which the Act becomes applicable to that Establishment and the date on which the standing orders, as finally certified under this Act, come into operation.

Section 7 of the Act sets out the date on which the Standing Orders or amendments made thereto would become operative. It provides as under:-

> "7. *Date of operation of standing orders or amendments.*— Standing Order of amendments shall, unless an appeal is preferred under Section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of Section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellant authority are sent under sub-section (2) of Section 6."

The Standing Orders are certified under Section 5. The procedure for certification of the Standing Orders is set out therein and it will be useful to quote Section 5 at this stage:-

> "5. *Certification of amendments.*—(1) On receipt of the draft under Section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed or the employer, as the case may be, together with a notice in the prescribed form requiring objections, if any, which the workmen, or employer may desire to make to the draft amendments to be submitted to him within fifteen days from the receipt of the notice.
>
> (2) After giving the employer, the workmen submitting the amendments and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard the certifying officer shall decide whether or not any modification of the draft submitted under sub-section (1) of Section 3 is necessary, and shall make an order in writing accordingly.
>
> (3) The Certifying Officer shall thereupon certify the draft amendments after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the model standing orders together with copies of the certified amendments thereof, authenticated in the

A prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen."

The order certifying the Standing Orders is made under Sub-section (2) and (3) of the Act.

B

After certifying the Standing Orders or the Draft Amendments, the Certifying Officer is required to send copies of the Certified Standing Orders, authenticated in the prescribed manner, to the employer as also to the Trade Union or other prescribed representatives of the workmen. Once the Standing Orders are certified, they constitute the conditions of service binding upon, the employment or who may be employed after certification as was laid down by this Court in *Sudhir Chandra Sarkar* v. *Tata Iron and Steel Company Ltd. and Ors.*, AIR (1984) SC 1064 = [1984] 3 SCC 369 = [1984] 3 SCR 326, wherein reliance was placed on an earlier decision in *Agra Electric Supply Company Ltd.* v. *Alladin*, AIR (1970) SC 512 = [1970] 1 SCR 808 = [1969] 2 SCC 598, in which also it was laid down that the Certified Standing Orders bind all those in employment at the time of service as well as those who are appointed thereafter, (see also: *Workmen Firestone Trye and Rubber Company of India Pvt. Ltd.* v. *Management*, AIR (1973) SC 1227 = [1973] 3 SCR 587 = [1973] 1 SCC 813 and *Glaxo Laboratories (I) Ltd.* v. *Presiding Officer, Labour Court, Meerut, 1983 Labour and Industrial* Cases (1909) = AIR (1984) SC 505 = [1984] 1 SCR 230 = [1984] 1 SCC 1.

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The order of the Certifying Officer is appealable under Section 8.

Section 10 provides as under:-"

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10. *Duration and modification of standing orders.* (1) Standing Orders or the amendments finally certified under this Act shall not, except on agreement between the employer and the workmen or a trade union or other representative body of the workmen be liable to modification until the expiry of six months from the date on which the standing orders or the amendments or the last modifications thereof came into operation and where model standing orders have not been amended as aforesaid, the model standing orders shall not be liable to such modification until the expiry of one year from the date on which they were applied under Section 2-A.

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(2) Subject to the provision of sub-section (1), an employer, or

workman or a trade union or other representative body of the workmen or any prescribed representative of workmen desiring to modify the standing orders of the model standing orders together with the amendments, as finally certified under this Act, or the model standing orders applied under Section 2-A, as the case may be, shall make an application to the certifying Officer in that behalf, and such application shall be accompanied by five copies of the standing orders, or the model standing orders, together with all amendments thereto as certified under this Act or model standing orders in which shall be indicated the modifications proposed to be made and where such modifications are proposed to be made by agreement between the employer and workmen or a trade union or other representative body of the workmen certified copy of the agreement shall be filed along with the application.

(3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first amendments.

(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat."

Section 10 provides for duration and modification of Model Standing Orders. The Standing Orders finally certified under the Act cannot be modified except on an agreement between the employer and the workmen or a Trade union or other representative body of the workmen until the expiry of six months from the date on which they came into operation.

Before coming to the core question, we may first consider the right of an employee to be represented in the disciplinary proceedings and the extent of the right.

The basic principle is that an employee has no right representation in the departmental proceedings by another person or a lawyer unless the Service Rules specifically provide for the same. The right to representation is available only to the extent specifically provided for in the Rules. For example, Rule 1712 of the Railway Establishment Code provides as under:

"The accused railway servant may present his case with the assistance of any other railway servant employed on the same railway (including a railway servant on leave preparatory to retirement) on which he is working."

A The right to representation, therefore, has been made available in a restricted way to a delinquent employee. He has a choice to be represented by another railway employee, but the choice is restricted to the Railway on which he himself is working, that is, if he is an employee of the Western Railway, his choice would be restricted to the employees working on the Western Railway. The choice cannot be allowed to travel to other Railways.
B

Similarly, a provision has been made in Rule 14(8) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, where too, an employee has been given the choice of being represented in the disciplinary proceedings through a co-employee.

C In *Kalindi and Ors.* v. *Tata Locomotive & Engineering Company Ltd.,* AIR (1960) SC 914 = [1960] 3 SCR 407, a Three-Judge Bench 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
> D examination and cross-examination of witnesses, or first inclination is to think that a fair enquiry demands that the person accused of an act should have the assistance of some person, who even if not a lawyer may be expected to examine and cross-examine witnesses with a fair amount of skill. We have to remember however in the first place that
> E these are not enquiries in a court of law. It is necessary to remember also that in these enquiries, fairly simple questions of fact as to whether certain acts of misconduct were committed by a workman or not only fall to be considered, *and straightforward questioning which a person of fair intelligence and knowledge of conditions prevailing*
> F *in the industry will be able to do will ordinarily help to elicit the truth.* It may often happen that the accused workman will be best suited, and fully able to cross-examine the witnesses who have spoken against him and to examine witnesses in his favour.
>
> It is helpful to consider in this connection the fact that ordinarily
> G in enquiries before domestic tribunals the person accused of any misconduct conducts his own case. *Rules have been framed by Government as regards the procedure to be followed in enquiries against their own employees. No provision is made in these rules that the person against whom an enquiry is held may be represented by anybody else. When the general practices adopted by domestic*
> H *tribunals is that the person accused conducts his own case, we are*

unable to accept an argument that natural justice demands that in the case of enquiries into a charge-sheet of misconduct against a workman he should be represented by a member of his Union. Besides it is necessary to remember that if any enquiry is not otherwise fair, the workman concerned can challenge its validity in an industrial dispute.

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

In another decision, namely *Dunlop Rubber Company* v. *Workmen*, [1965] 2 SCR 139 = AIR (1965) SC 1392 = 1965 (1) LLJ 426, it was laid down that there was no right to representation in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same.

The matter again came to be considered by a Three-Judge Bench of this Court in *Crescent Dyes and Chemicals Ltd.* v *Ram Naresh Tripathi.* [1993] 2 SCC 115 = [1992] Suppl. 3 SCR 559 = (1992) 3 Scale 518, and Ahmadi, J. (as he then was) in the context of Section 22(ii) of the Maharashtra Recognition of Trade Unions and Unfair Labour-Practices Act, 1971, as also in the context of domestic enquiry, upheld the statutory restrictions imposed on delinquents choice of representation in the domestic enquiry through an agent. It was laid down as under:-

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 Orders. In the present case the Standing Orders 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."

A The earlier decisions in *Kalindi & Others* v. *Tata Locomotive & Engineering Co, Ltd.* (supra); *Dunlop Rubber Co.* v. *Workmen* (supra) and *Brooke Bond India (P.) Ltd.* v. *Subba Raman (S.) and Another,* 1961 (2) LLJ 417, were followed and it was held that the law in this country does not concede an absolute right of representation to an employee as part of his right to be heard. It was further specified that there is no right to representation B as such unless the company, by its Standing Orders, recognizes such a right. In this case, it was also laid down that a delinquent employee has no right to be represented in the departmental proceedings by a lawyer unless the facts involved in the disciplinary proceedings were of a complex nature in which case the assistance of a lawyer could be permitted.

C

We have seriously perused the judgment of the High Court which, curiously, has treated the decision of this Court in *Crescent Dyes and Chemicals Ltd.'s* case (supra) as a decision in favour of the respondent No.1. The process of reasoning by which this decision has been held to be in favour of respondent No.1 for coming to the conclusion that he had a right D to be represented by a person who, though an office-bearer of the Trade Union, was not an employee of the appellant is absolutely incorrect and we are not prepared to subscribe to this view. Consequently, we are of the opinion that the judgment passed by the High Court in so far as it purports to quash the order of the Appellate Authority, by which the Draft Standing E Orders were certified, cannot be sustained.

The contention of the learned counsel for Respondent No. 1 that the Standing Orders as made by the appellant must conform to the Model Standing Orders cannot be accepted. It is true that originally the jurisdiction of the Certifying Officer as also that of the Appellate Authority was very limited and F the only jurisdiction available to them under the Act was to see whether the Standing Orders made by the Establishment and submitted for their certification conformed to the Model Standing Orders. This required the process of comparison of the Draft Standing Order with the Model Standing Orders and on comparison if it was found that the Draft Standing Orders, were in G conformity with the Model Standing Orders, the same would be certified even if they were not reasonable or fair. The workmen practically has no say in the matter and they would not be listened even if they agitated that the Draft Standing Orders were not fair or reasonable.

In 1956, radical changes were introduced in the Act by the Parliament H as a result of which not only the scope of the Act was widened, but jurisdiction

was also conferred upon the Certifying Officer as also the Appellate Authority to adjudicate upon and decide the question relating to fairness or reasonableness of any provision of the Standing Orders. A

In the instant case, the Standing Orders as finally certified cannot be said either to be not in consonance with the Model Standing Orders or unreasonable or unfair. B

Model Standing Orders, no doubt, provided that a delinquent employee could be represented in the disciplinary proceedings through another employee who may not be the employee of the parent establishment to which the delinquent belongs and may be an employee elsewhere, though he may be a member of the Trade Union, but this rule of representation has not been disturbed by the Certified Standing Orders, inasmuch as it still provides that the delinquent employee can be represented in the disciplinary proceedings through an employee. The only embargo is that the representative should be an employee of the parent establishment. The choice of the delinquent in selecting his representative is affected only to the extent that the representative has to be a co-employee of the same establishment in which the delinquent is employed. There appears to be some logic behind this as a co-employee would be fully aware of the conditions prevailing in the parent establishment, its Service Rules, including the Standing Orders, and would be in a better position, than an outsider, to assist the delinquent in the domestic proceedings for a fair and early disposal. The basic features of the Model Standing Orders are thus retained and the right of representation in the disciplinary proceedings through another employee is not altered, affected or taken away. The Standing Orders conform to all standards of reasonableness and fairness and, therefore, the Appellate Authority was fully justified in certifying the Draft Standing Orders as submitted by the Appellant. C D E F

The appeals are consequently allowed. The impugned judgment dated 28.6.1996, passed by the Bombay High Court, in so far as it relates to the Clauses in question which is the subject matter of these appeals, is set aside and the order passed by the Appellate Authority certifying the Draft Standing Orders is upheld. There will be no order as to costs. G

R.K.S. Appeal allowed.