Karnataka High Court G.R. Venkateshwara Reddy vs Karnataka State Road Transport ... on 24 June, 1994 Equivalent citations: ILR 1994 KAR 2736, 1995 (1) KarLJ 298, (1995) ILLJ 1011 Kant Author: R Raveendran Bench: R Raveendran ORDER R.V. Raveendran, J. 1. This matter which is listed for orders is heard finally by consent and disposed of by this order. 2. The petitioner is an employee of the Karnataka State Road Transport Corporation (KSRTC) the first respondent, working as Divisional Traffic Officer in Mysore Division. An articles of charge dated 17-5-1991 (Annexure-A) was issued to him charging him with certain misconducts. The petitioner duly replied the said charges. Thereafter, an 27-11-1991 an enquiry as ordered against the petitioner and the third respondent was appointed as the Enquiry Officer. The enquiry was commenced on 1-9-1992. At the hearing on 29-1-1993, it is stated that several witnesses were examined. After examination of six witnesses the petitioner made an application requesting for permission to engage a legal practitioner for his defence, relying on Regulation 23(8) of the Karnataka State Road Transport Corporation (Conduct and Discipline) Regulations, 1971 (hereinafter referred to as 'the Regulation'), contending that the charges levelled against him were complicated and serious and for a proper and effective defence, it was necessary to engage a legal practitioner. This request was rejected by the Enquiry Officer on 29-1-1993 on the ground that the rules do not permit engaging a legal practitioner and the presenting officer was not a person having any legal background. 3. Thereafter there were several sittings but it was only on 21-2-1994 further evidence was recorded. After examination of one of the witnesses, the petitioner gave an application stating that certain records were necessary for the purpose of examination and requested for their production by the employer. The enquiry Officer rejected the said request on the ground that there is no provision authorising the Enquiry Officer to direct production of documents required by the charge-sheeted employee or to produce copies for perusal of the charge-sheeted employee. 4. At this stage, the petitioner has filed this petition contending that the aforesaid decisions are arbitrary and violative of the principles of natural justice. He seeks quashing of the enquiry proceedings dated 29-1-1993 rejecting the request to engage a legal practitioner and the proceedings dated 21-2-1994 rejecting the application calling for production of some documents (Vide Annexures E and G). He has also sought a direction to the Inquiring Authority to reopen the inquiry and proceed with the same by permitting the petitioner to engage the services of a legal practitioner to defend him in the enquiry and by directing the first respondent to produce the documents sought by the petitioner. 5. Therefore the following points arise for consideration : (i) Whether the petitioner is entitled to claim that he should be permitted to engage the services of a Legal Practitioner to defend him in the inquiry; (ii) Whether rejection of request for production of documents is justified; (iii) Whether the progress of the enquiry could be interfered with on theses grounds. Re : Point (i) : 6. Having regard to the principles of natural justice, whether a delinquent employee is entitled to be represented by a legal practitioner, was considered by the Supreme Court in Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi 1993 I CLR 253. The Court held that the

law in India does not concede and absolute right of representation as an aspect of the right to be heard, one of the elements of principles of natural justice. The Supreme Court posed the following questions : "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 of natural justice ?" The Supreme Court answered the question in the following manner : "There can be no doubt that a delinquent must be given an opportunity of presenting his case in such a way suitable to the character of the enquiry which would ensure a fair hearing resulting in fair dispensation of justice. But, does that extend to the right to be represented through counsel or agent is the question which we are called upon to answer." "A delinquent employee appearing before a tribunal may feel that the right to representation is implied in the large 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." "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, if the charge is of a serious and complex nature, the delinquent's request to be represented through a counsel or agent could be conceded." After a detailed reference to the case law, the Court ultimately held : "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 employee has not 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." 6.1 In Kalindi v. Tata Locomotive and Engineering Company Ltd., , the Supreme Court observed : "When the general practiced adopted by domestic tribunal is that the person accused conducts his own case, it is not possible to accept an argument that natural justice demands that in the case of enquiries into a charge-sheet of misconduct against a workman be 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. A workman against whom an enquiry is being held by the management has therefore 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 ..... 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 straight forward questioning which a person of fair intelli-

gence 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 workman 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." Similar views were expressed by the Supreme Court in Brooke Bond India (Pvt.) Ltd. v. Subbaraman 1961 (2) LLJ 417 and Dunlop Rubber Company v. Workman . 6.2 In State of Rajasthan v. S. K. Dutt Sharma 1994 SCC (L&S) 177 the Supreme Court reiterated that where the charges were not of such nature that he could not defend them himself or through the assistance of a co-employee and where the presenting officer was not a legal practitioner (but who was earlier a Prosecuting Inspector for several years), refusal by the Enquiry Officer to permit the delinquent employee to engage a legal practitioner, cannot be said to prejudice the case of the delinquent employee. 7. In Board of Trustees v. Dilip Kumar the Supreme Court held : "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." 7.1 In J. K. Aggarwal v. Haryana Seeds Development Corporation Ltd., 1991 I CLR 988, the Supreme Court held that the right of representation by a lawyer may not in all cases, be held to be a part of natural justice; but where the presenting officer is a legal practitioner or a trained prosecutor or a man of legal attainment and experience, refusal of service of a legal practitioner or a Union representative desired by a delinquent employee would amount to denial of natural justice. Dealing with a rule which recognised that where the charges are so serious as to entail a dismissal from service, the inquiring authority may permit the services of a lawyer the Supreme Court held : "This rule vests a discretion. 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 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." 7.2. In G. V. Aswathanarayana v. Central Bank of India 1993 I CLR 631 a Division Bench of this Court while examining a regulation which gave the discretion to the disciplinary authority to grant permission to engage a legal practitioner, having regard to the circumstances of the case, held that where the enquiry relates to numerous charges of serious and complex nature involving several hundreds of documents, to deny the service of a legal practitioner will be a denial of natural justice itself. 8. The above principles were laid down while examining rules or standing orders which were silent on the question of representation through a legal practitioner or which vested a discretion in the disciplinary authority to grant permission to engage the services of a legal practitioner. But what would be the position if the rule

expressly prohibit the delinquent employee being represented by a legal practitioner, but in the enquiry, a legal practitioner or a legally trained prosecutor is appointed as a presenting officer or where the charges are serious and complex in nature ? 9. A rule prohibiting the delinquent employee from engaging the services of a legal practitioner assumes that the presenting officer will not be a legal practitioner or legally trained prosecutor and that when a presenting officer, who is not a legal practitioner or legally trained prosecutor, is able to deal with the matter, the delinquent employee or a co-employee whose assistance he is permitted to take, will also be able to deal with or cope up with the matter. In C. L. Subramaniam v. Collector of Customs, Cochin , the Supreme Court observed : "The fact that the case against the appellant was being handled by a trained prosecutor was a good ground for allowing the appellant to engage a legal practitioner to defend him, lest the scales should be weighed against him." In G. S. Rao v. Hindustan Aeronautics Ltd., 1993(1) Kar. L.J. 456, this Court held that a blanket ban barring entry of a legal practitioner in an administrative enquiry under any circumstances, even where the management was represented by a legally trained officer or legal practitioner, will have to be treated as contrary to principles of natural justice and fair play. It was further held that any procedure which treates the proponent and opponent unequally and exposes the weaker of the two (employee) to a hardship by restricting his right to defend himself and at the same time enables the stronger of the two (employer) to choose their means of organising the prosecution and presentation to the case, would be violative of principles of natural justice. Thus if the presenting officer is a legal practitioner or legally trained or experienced prosecutor, refusal to permit the delinquent employee to be represented by a legal practitioner on the strength of a bar in the relevant rules may make a mockery of the right of hearing given to the employee and will be treated as denial of a reasonable opportunity to defend oneself, which is the essence of the principles of natural justice. Thus to save the rule prohibiting the delinquent employee from engaging the services of a legal practitioner under all circumstances, from being branded as invalid, it will have to be read down as applying only to cases where the presenting officer is not a legal practitioner or legally trained prosecutor; and where the presenting officer is a legal practitioner or legally trained prosecutor, the rule should be read as vesting a discretion in the disciplinary authority to permit the employee to avail the services of a legal practitioner or Union representative of his own choice. 9.1. A rule prohibiting the delinquent employee from engaging the services of a legal practitioner also assumes that the charges that will be raised against the employee are of a nature which can be defended by the delinquent employee either by himself or through a co-employee. It has to be borne in mind that normally when an untrained presenting officer is able to deal with and present the charges, it should also be possible to the delinquent employee to deal with the charges, as the delinquent employee and his co-employee defending him will be well conversant with the functioning of the department and the relevant rules and regulations governing or applying to the charges. Further the mere fact that the charge-sheet containing the charges and imputations are lengthy or that the fact the employee may be awarded a

major punishment if the charges are proved, will not make the charges serious and complex. All serious charges are not serious and complex charges. Whether a charge is serious and complex, depends on the nature of the charge and not the consequence of the charge being proved. A matter relating to the procedural aspect of the department where the employee is working or concerning the work of the employee cannot normally be considered as complex. Take for example a charge that an employee misappropriated a large sum of money by manipulating certain entries. The amount involved may be considerable; the charge itself may be serious and may involve serious consequences if proved; but the concerned employee who is familiar with the procedure of the department wherein he is working, relating to debiting, crediting, transferring and making of entries and about the maintenance of records, will be able to effectively deal with the matter either by himself or through a co-employee; such a charge though serious, cannot be considered as complex. The charges will be complex where the employee or assisting co-employee are strangers to the subject-matter and procedures involved intricate and complicated questions of facts and law. Such complex cases are rare. However in cases, where the charges are serious and complex, to deny assistance of a legal practitioner would amount to denying an effective hearing and would make the enquiry an empty formality. Hence in such cases, the rule barring representation by a legal practitioner will have to be read as barring the employee from claiming the services of a legal practitioner as a matter of right, but vesting a discretion in the disciplinary or enquiring authority to consider the request for permission to engage legal practitioner, in the case of charges of serious or complex nature. Once so read, it will be possible to hold that the employee will entitled to be represented by a legal practitioner. 10. Thus the following principles emerge in regard to the employee's right to be defended by a legal practitioner in a domestic/disciplinary enquiry. (a) The right to be represented by a legal practitioner is not an element of principle of natural justice; (b) A delinquent employee will have the right to claim to be defended by a legal practitioner. Where the rules or regulations permit the employee to be represented by a legal practitioner; (c) Where the rules or regulations are silent about representation by a lawyer or vest a discretion in the disciplinary authority or the inquiring authority, to permit the employee to be represented by a legal practitioner or other agent of his choice, denial of such permission on a request made by the employee, would violate the principles of natural justice (i) if the presenting officer is a legal practitioner or a person legally trained or experience; or (ii) if the charges are of serious and complex nature. (d) Where the rules or regulations specifically prohibit the employee from engaging the service of a legal practitioner, such rule or regulations will be read down as vesting a discretion in the disciplinary authority to permit the employee to engage a legal practitioner, where (i) presenting officer is a legal practitioner or legally trained person, or (ii) the charges are of a serious and complex nature. If it is not so read down, the rule itself may have to be held to be invalid as violation Articles 14 of the Constitution." 11. Let me now examine, on the basis of the above principles, whether the petitioner has made out a case for grant of permission to engage the service of a legal practitioner. The

relevant rules do not expressly permit the employee to engage the services of a legal practitioner. On the other hand, they specifically prohibit the employee from engaging the services of a legal practitioner. The petitioner will not therefore be entitled to claim representation through counsel as a matter of right. Hence to become entitled to engage a legal practitioner, the petitioner should either prove that the presenting officer is a legal practitioner or legally trained prosecutor or satisfy that the charges are serious and complex in nature. 12. It is not in dispute that the presenting officer was not a legal practitioner nor is the case of the petitioner that the presenting officer is a legally trained person. Hence the first aground is not available. A reading of the article of charges disclose that the charges are not of complicate nature nor do they involve any legal interpretations that may require the assistance of a legal practitioner, but are charges relating to simple question of fact, which can effectively be defended by the petitioner or any of his co-employee. The charges are extracted below for ready reference : "I. For reprehensible conduct by usurping and ordering Sri K. P. Ali Khanna, Junior Assistant. Chitradurga Depot on 2-3-1988 to remove the tickets of various denominations from the tickets tray of Sri G. Revanasiddappa. Conductor, B. No. 1686 and show them as sold in the above conductor's CWA and ordered to tear off those tickets. Subsequently, you directed Sri K. P. Ali Khanna to hand over those torn pieces of tickets to Sri Rajanna, peon to burn it. You have thereby abused your official position, besides betrayed the confidence reposed in you by the Corporation and intimating the others by engineering to destroy the tickets to suit you will-designed motive, which acts of yours is unbecoming a servant of the Corporation. II. For gross misconduct of abusing your official position by exercising the authority not vested in you in entering into a contract with M/s. Mahaveer Enterprises, Mysore for supply of 33 T.V. Sets and one Two-in-one Set to the KSRTC Employees Co-operative Society, Chitradurga, although the Board of Directors of the above society have not authorised to do so. You have thereby deliberately stepped out of jurisdiction and betrayed the confidence reposed in you by the Corporation, which act of yours exhibits an unworthy conduct. III. For failure to intimate the Corporation in accepting a commission of Rs. 6,000/- from M/s. Ganga Electronics, Bangalore, for having placed an order for supply of 33 T.V. Sets to the KSRTC Employees Co-operative, Society, Chitradurga Depot. You have thereby contravened the provisions of Regulations 4(5) of the KSRTC Servants (C&D) Regulations, 1971, besides failed to maintain devotion to duty in the discharge of your official duty." Thus having regard to the nature of charges, it cannot be said that this is a case where the petitioner should be permitted to be defended by a legal practitioner. Consequently, the refusal to permit the petitioner to engage the services of legal practitioner is not opposed to the principles of natural justice. 13. At this juncture, it is necessary to deal with the submission of the petitioner's counsel that the regulations specifically provide for a delinquent employee engaging the services of legal practitioner. 14. Regulation 23(8) of the Regulations which is relevant, reads as follows : "The Corporation servant may take assistance of any of other Corporation servant to present the case on hi behalf, but may not engage a legal practitioner for the purpose. A

plain reading of this regulation would mean that in an enquiry, a delinquent employee will be entitled to take the assistance of another co-employee, but not a legal practitioner. In other words, it prohibits the employee from engaging a legal practitioner. But Sri K. Subba Rao, learned counsel for the petitioner contents that the words 'but may not engage a legal practitioner' has been the subject of judicial interpretation by two decisions of this Court and that this Court has held that the said words mean that a delinquent employee is entitled to engage the services of a legal practitioner and refusal to grant such permission vitiates the enquiry. 15. The first decision relied on by him is the decision in R. Janardhan Naidu v. Cauvery Grameena Bank and Others 1989(1) B.L.J. 84 dealing with Regulation 30(3) of Cauvery Grameena Bank (Staff) Service Regulations, 1980 which reads as follows :"The inquiry under this regulation and the procedure with the exception of the final order, may be delegated in case the persons against whom proceedings are taken is any officer who is senior to such officer and in the case of an employee, to any officer. For purposes of the inquiry, the officer or employee may not engage a legal practitioner." Interpreting the said regulation and on the wording of the said regulation, this Court held that the wording of the regulation does not prohibit the delinquent employee from engaging a legal practitioner, but left it to the discretion of the employee to engage or not to engage a legal practitioner and therefore the disciplinary authority could not refuse permission to engage a legal practitioner. This Court did not lay down a proposition that irrespective of the wording of the regulation or rule, the words 'may not' should always be read as 'may'. 16. The second decision relied on by the petitioner is a decision of this Court in an earlier writ petition filed by the petitioner herein relating to another enquiry in G. R. Venkateshwara Reddy v. KSRTC Writ Petition No. 28043 of 1993, DD : 10-11-1993. Dealing with regulation 23(8) with which we are concerned, this Court held that the said regulation gave the employee a right to engage the services of a legal practitioner following the decision in Janardhan Naidu's case (supra). 17. It is however seen the wordings of regulation considered in Janardhan Naidu (supra), is not the same as the wording of Regulation 23(8). While Regulation 23(8) provides that an employee may take the assistance of another Corporation servant, but may not engage a legal practitioner (thereby meaning only a co-employee and not a legal practitioner can be engaged), Regulation 30(3) examined in Janardhan Naidu's case (supra), merely states for the purpose of the enquiry, an officer or employee may not engage a legal practitioner. The first part of Regulation 23(8) which makes it clear that what is permitted is assistance of a co-employee, but not a legal practitioner, is not found in the regulation examined in Janardhan Naidu's case (supra). Regulation 23(8) when read as a whole, makes it clear that an employee was entitled to be represented by a co-employee but not a legal practitioner. It gives a discretion to the employee to engage or not to engage a co-employee, but it prohibits the engaging of a legal practitioner. On the other hand, the regulation that was considered in Janardhan Naidu's case did not contain such contraindication and therefore is of no assistance to interpret Rule 23(8). The wording of Regulation 23(8) is clear and specific. When a rule says you may do some thing, but may not do

something else, it is crystal clear that the first thing is authorised and permitted and the second thing is prohibited. In such context the Words 'but may not' mean 'shall not'. 18. In regard to the decision in G. R. Venkateshwara Reddy's case (supra), it is stated by the learned counsel for the respondent that the respondent has challenged the said decision in an appeal and an interim order of stay of operation of the decision in G. R. Venkateshwara Reddy (supra), has been granted. Learned counsel for the petitioner confirmed that not only the decision was stayed, but further enquiry in the said case was also stayed. The decision in G. R. Venkateshwara Reddy (supra), is contrary to the decision of the Supreme Court in Crescent Dyes and Chemical's case (supra), which holds that a delinquent has no right to be represented through counsel or agent unless the law or rules specifically confers such a right. Rule 23(8) does not confer specifically, such a right. Hence the petitioner cannot rely on the decision in G. R. Venkateshwara Reddy (supra), nor is the said decision a binding precedent. 19. Mr. K. Subba Rao, however contended that what was stayed was the 'implementation' of the decision in G. R. Venkateshwara Reddy (supra), and not the ratio decidendi or the 'reasoning' in that case and as long as the decision in G. R. Venkateshwara Reddy (supra), was not reversed, judicial propriety requires that this Court should follow the decision in G. R. Venkateshwara (supra). He relied on the decision of the Supreme Court in Ayyaswami Gounder v. Muniswamy Gounder and Shridhar v. Nagar Palika, Naunpur , to contend that a single Judge not agreeing with an earlier decision of another single Judge of the same Court, should refer the matter to a larger bench and propriety and decorum did not warrant the single Judge to hold contrary to the earlier decision of the same High Court. There is no doubt that a single Judge is bound by the decision of another single Judge of the same Court. But where the earlier decision has been stayed, it means that the decision is not in operation, but kept in abeyance and should not be acted upon. Thus, where the earlier decision of the single Judge is stayed in appeal, there is in effect no decision to be followed. Therefore the contention that I am bound to follow the earlier decision or refer the matter to a larger bench is untenable. Re : Point No. (ii) : 20. The second question is whether an employee is entitled to summon or demand production of documents from the management in a domestic or department enquiry. It is now well settled that the doctrine of natural justice as applied to enquiries consists of the following three principles : (a) No person shall be the Judge of his own cause : (b) No person shall be condemned unheard; and (c) there should not be any procedural unreasonableness in the enquiry. 21. The right to be heard, by following a reasonable procedure in an enquiry necessarily envisages and involves the following, subject to any special provisions relating to procedure in the relevant rules/regulations/standing orders or statute : (a) the employee shall be informed of the exact charges which he is called upon meet : (b) he should be given an opportunity to explain any material relied on by the management to prove the charges; (c) the evidence of the management witness should be recorded in the presence of the delinquent employee and he should be given an opportunity to cross-examine such witnesses; (d) the delinquent employee shall either be furnished with copies of the documents relied on by

the management or be permitted to have adequate inspection of the documents relied on by the management; (e) the delinquent employee should be given the opportunity to produce relevant evidence - both documentary and oral which include the right to examine self and other witnesses; and to call for relevant and material document in the custody of the employer; (f) whenever the enquiring authority is different from disciplinary authority, the delinquent employee shall be furnished with a copy of the enquiry report and be permitted to make a representation to the disciplinary authority against the findings recorded in the enquiry report. 22. If the documents necessary to prove the innocence of the employee or the documents necessary to defend himself against the charges or to explain the evidence of the management, are in the custody of the management, to deny access to such documents, on the ground that they were not documents relied on the management would amount to denial of the right to defend himself. Though the Enquiry Officer may not have the right to summon third parties to give evidence or to produce documents, he has the authority to direct the parties to the enquiry to produce any relevant documents, as such a direction will be an inherent part of the enquiry process itself. 23. Therefore, whenever a delinquent employee requests for production of documents from the management, the Enquiring Officer is bound to examine such request. If it is found that the documents are not relevant or that the documents are not in the custody of the management, he cannot direct production thereof. But if he finds that the documents are relevant and are in the custody of the management, the Enquiry Officer has to direct production thereof. An Enquiry Officer cannot, even without seeking the views of the management on the matter, straightway reject the request of the employee on the ground that he has no power to direct. 24. In this case the petitioner has sought the production of the following documents : 1. WBA No. 019057 of Sri G. Revenasiddappa, Conductor No. 1866. 2. ST-1 of date 2-3-1989. 3. Original copy of the receipt for having received Rs. 6,000/-. 4. Board resolution copies of the society. 5. Society receipts, proceedings book. 6. Application forms of the employees who required for T.V. supply. 7. Attendance and duty report of witnesses listed. 8. Original documents which R 10 will be presented in next hearing. The Enquiry Officer is therefore found to consider the request, after hearing the management, in the light of relevancy and availability with management. I hasten to add and I am not expressing any opinion in regard to the relevancy of the documents sought by the petitioner in this case. All that is pointed out is that the Enquiry Officer cannot bypass his duty to consider the petitioner's request by observing that he has no power to direct production of documents. He has to consider the request of the petitioner and give his decision in the matter : Re : Point (iii) : 25. The question that arises next for consideration is whether this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, should interfere with the interlocutory orders passed by the Enquiry Officer during the pendency of the enquiry. 26. Domestic enquiries are not suit ending in Courts. Nor enquiry Officers, Judges. Nor the jurisdiction under Article 226 is intended to be used like an appellate or revisional jurisdiction in regard to disciplinary proceedings. Domestic enquiries are intended to be prompt and quick. Delays prejudice both

employer and employee. Hence as a normal rule, there should be no interference during the profess of a domestic enquiry and examination by a Court should be only after the enquiry is completed and the disciplinary authority gives his decision on the charges (subject to any appeal). As observed by Supreme Court in Kalinidi's case (supra). "It is necessary to remember that if any enquiry is not otherwise fair, the workman concerned can challenge its validity in an industrial dispute." Similarly, even non-workmen can challenge the validity of the enquiry on the ground of unfairness and denial of natural justice, at the end of the enquiry and the Court or Tribunal can at that stage examine, from an overall point of view, as to whether there are any violations of principles of natural justice or other material irregularities. If the Court should entertain petitions against each and every interlocutory order that may be passed in an enquiry or against each and every perceived violation of principles of natural justice during the course of an enquiry, there is every likelihood of delinquent employees challenging the enquiry at every given opportunity, on alleged procedural irregularities and thereby defeat the enquiry itself. In an proceedings under Article 226, the Court is only concerned with the decision making process, that is whether the disciplinary authority is competent to hold an enquiry; whether the charges framed disclosed a misconduct; whether in holding the enquiry, the procedural requirements and principles of natural justice have been complied with. The Court cannot however, review or re-examine the evidence nor substitute its views, finding, in place of the views and findings of the disciplinary authority. 27. In Union of India v. Upendra Singh 1994 I CLR 534, the Supreme Court was concerned with a matter where as soon as the memo of charges was served upon the delinquent employee, he challenged it before the Administrative Tribunal and sought quashing of the charges. The Supreme Court held that the jurisdiction of the tribunal was akin to the jurisdiction of the High Court under Article 226 of the Constitution and observed thus : "In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation of particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H. B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath and Sons. 1992 Supp. (2) SCC 312. The Bench comprising M. N. Venkatachaliah, J. (as he then was) and A. M. Ahmadi, J., affirmed the principle thus : (SCC p. 317 para 8)."Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the

examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself." Now, if a Court cannot interfere with the truth of the charges even in a proceeding against the final order, it is understandable how can that be done by the tribunal at the stage of framing of charges ?" 28. In State Bank of India v. Samarendra Kishore Endow 1994 I CLR 663, the Supreme Court, after referring to the decision in State of Andhra Pradesh v. S. Sree Rama Rao ; State of Orissa v. Bidyabhushan Mohapatra ; Union of India v. Parmananda 1989 II CLR 1, held as follows : (a) Imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority and the same should not normally be interfered while exercising the power under Article 226 as the power is one of judicial review and not appellate power; (b) The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment, reaches on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of court; (c) The High Court may undoubtedly interfere where the departmental authorities have held the proceedings in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by consideration of extraneous to the evidence. 29. Thus if the enquiry is conducted in accordance with the principles of natural justice and prescribed procedure, this Court will not interfere, in a petition under Article 226 of the Constitution, with the final decision. When that is so, the Court will be more reluctant to interfere with interlocutory orders made in the course of enquiry. But where there is flagrant violation of principles of natural justice or where there is an apparent lack of jurisdiction to initiate the disciplinary proceedings or where the charges on the face of it do not disclose any misconduct, courts have, with due care and caution interfered during the course of the disciplinary proceedings itself, without awaiting the final decision. In what cases, the court can interfere is answered by the Supreme Court in Aggarwal's case (supra), thus : "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." 30. In this case, the authority has rejected the request for production of documents on the threshold on the ground that he has no power to direct the management to produce the documents. This is obviously an attitude which is wholly unreasonable and contrary to the principles of natural justice. Hence this Court can interfere and direct the authority to consider the request of the petitioner. This Court cannot, however decide whether the request is to be granted and if so, to what extent. 31. Hence this petition is allowed partly. The Enquiry Officer

is directed to consider the petitioner's application for production of documents in the light of the above observations and decide the question. The request for engaging the service of a legal practitioner, is however, rejected.