State Bank Of India vs M/S. Jah Developers Pvt. Ltd. on 8 May, 2019

Equivalent citations: AIR 2019 SUPREME COURT 2854, 2019 (6) SCC 787, 2019 (5) ADR 655, (2019) 204 ALLINDCAS 81, (2019) 2 WLC(SC)CVL 469, (2019) 3 BANKCAS 290, (2019) 3 RECCIVR 114, (2019) 4 CIVLJ 138, 2019 (4) KCCR SN 369 (SC), (2019) 4 MPLJ 290, (2019) 5 ANDHLD 107, (2019) 6 MAH LJ 406, (2019) 7 SCALE 725, AIR 2019 SC (CIV) 2049, AIRONLINE 2019 SC 2624

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Bench: Vineet Saran, R.F. Nariman

REPORTAB

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4776 OF 2019
(Arising out of Special Leave Petition (Civil) No. 8591 of

STATE BANK OF INDIA … APPELLANT

VERSUS

M/S. JAH DEVELOPERS PVT. LTD. & ORS. … RESPONDENTS

WITH
CIVIL APPEAL NO. 4777 OF 2019
(Arising out of Special Leave Petition (Civil) No.10008 of

WITH
CIVIL APPEAL NO. 4778 OF 2019
(Arising out of Special Leave Petition (Civil) No.26329 of

JUDGMENT

R.F. NARIMAN, J.

1. Leave granted.

2. The question that arises in the present appeals is whether, when a person is declared to be a wilful defaulter under the Circulars of the Reserve Bank of India [“RBI”], such person is entitled to be

represented by a lawyer of its choice before such declaration is made.

3. The RBI Circular dated 01.07.2013 is described as a "Master Circular on Wilful Defaulters" ["Master Circular"] and is addressed to all scheduled commercial banks (excluding Regional Rural Banks (RRBs) and Local Area Banks (LABs)), and to All India Notified Financial Institutions. The purpose of the said Master Circular is stated as follows:

> "Purpose:
>
> To put in place a system to disseminate credit information pertaining to wilful defaulters for cautioning banks and financial institutions so as to ensure that further bank finance is not made available to them." Under this Master Circular, "wilful default" has been defined as follows:
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> "2.1. Definition of wilful default The term "wilful default" has been redefined in supersession of the earlier definition as under: A "wilful default" would be deemed to have occurred if any of the following events is noted:-
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> (a) The unit has defaulted in meeting its payment/repayment obligations to the lender even when it has the capacity to honour the said obligations.
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> (b) The unit has defaulted in meeting its payment/repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.
>
> (c) The unit has defaulted in meeting its payment/repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.
>
> (d) The unit has defaulted in meeting its payment/repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property given by him or it for the purpose of securing a term loan without the knowledge of the bank/lender." The Grievance Redressal Mechanism is set out in paragraph 3 of the Master Circular as follows:
>
> "3. Grievance Redressal Mechanism Banks/FIs should take the following measures in identifying and reporting instances of wilful default:
>
> (i) With a view to imparting more objectivity in identifying cases of wilful default, decisions to classify the borrower as wilful defaulter should be entrusted to a Committee of higher functionaries headed by the Executive Director and consisting of two GMs/DGMs as decided by the Board of the concerned bank/FI.

(ii) The decision taken on classification of wilful defaulters should be well documented and supported by requisite evidence. The decision should clearly spell out the reasons for which the borrower has been declared as wilful defaulter vis-à-vis RBI guidelines.

(iii) The borrower should thereafter be suitably advised about the proposal to classify him as wilful defaulter along with the reasons therefor. The concerned borrower should be provided reasonable time (say 15 days) for making representation against such decision, if he so desires, to a Grievance Redressal Committee headed by the Chairman and Managing Director and consisting of two other senior officials.

(iv) Further, the above Grievance Redressal Committee should also give a hearing to the borrower if he represents that he has been wrongly classified as wilful defaulter.

(v) A final declaration as 'wilful defaulter' should be made after a view is taken by the Committee on the representation and the borrower should be suitably advised."

4. On 01.07.2015, the RBI issued another Master Circular consolidating instructions on how all scheduled commercial banks and notified financial institutions are to deal with wilful defaulters ["Revised Circular"]. The definition of "wilful default" is substantially the same as in the earlier Master Circular. However, the mechanism for identification of wilful defaulters has been substituted as follows:

"3. Mechanism for identification of Wilful Defaulters The mechanism referred to in paragraph 2.5 above should generally include the following:

(a) The evidence of wilful default on the part of the borrowing company and its promoter/whole-time director at the relevant time should be examined by a Committee headed by an Executive Director or equivalent and consisting of two other senior officers of the rank of GM/DGM.

(b) If the Committee concludes that an event of wilful default has occurred, it shall issue a Show Cause Notice to the concerned borrower and the promoter/whole-time director and call for their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. An opportunity should be given to the borrower and the promoter/whole-time director for a personal hearing if the Committee feels such an opportunity is necessary.

(c) The order of the Committee should be reviewed by another Committee headed by the Chairman/Chairman & Managing Director or the Managing Director & Chief Executive Officer/CEOs and consisting, in addition, to two independent directors/non-

executive directors of the bank and the Order shall become final only after it is confirmed by the said Review Committee.

However, if the identification Committee does not pass an order declaring a borrower as a wilful defaulter, then the Review Committee need not be set up to review such decisions.

xxx xxx xxx"

5. Considering that nobody appeared on behalf of the respondents in the Civil Appeal arising out of SLP (C) No. 8591 of 2016, we appointed Shri Parag Tripathi, learned Senior Advocate, to assist us as Amicus Curiae. Shri Tripathi has forcefully argued that Section 30 of the Advocates Act, 1961 ["Advocates Act"] makes it clear that an advocate has the right to practice before any tribunal or person legally authorised to take evidence. Secondly, he spoke about the consequences, both civil and criminal, of being classified as a wilful defaulter, and stated that as serious consequences ensue, the fundamental right of the borrower under Article 19(1)(g) of the Constitution of India would be impacted, as a result of which, it would be necessary to read into the aforesaid guidelines a right to be represented by a lawyer. The only possible objection that banks can have is that lawyers might unnecessarily delay the process of declaration of a borrower as a wilful defaulter by seeking adjournments and otherwise protracting arguments. He submitted that this can be curtailed and it can be made clear that no adjournment under any circumstances shall be given and a maximum period of half an hour for argument may be given. According to him, the borrower may not be competent to represent himself and issues of discrimination may also arise. He therefore supported the impugned judgment of the Delhi High Court in State Bank of India v. M/s. Jah Developers Pvt. Ltd. and Ors., LPA No. 113 of 2015. He pointed out that the Bombay High Court, in Kingfisher Airlines Ltd. v. Union of India and Ors., WP (L) No. 1684 of 2015, and the Calcutta High Court, in Kingfisher Airlines Ltd. v. Union of India and Ors., AST No. 320 of 2014, have taken a different view which was not in consonance with the Delhi High Court's view and the Delhi High Court's view ought to prevail. Shri Tripathi's submission was supported by Shri Rakesh Kumar, learned Advocate appearing on behalf of the respondent in Civil Appeal arising out of SLP (C) No. 10008 of 2017.

6. On the other hand, Shri Neeraj Kishan Kaul and Shri B.B. Sawhney, learned Senior Advocates appearing on behalf of the appellants in Civil Appeals arising out of SLP (C.) No. 8591 of 2016 and SLP (C.) No. 10008 of 2017 respectively, and Shri Preetesh Kapur, learned Senior Advocate appearing on behalf of the intervenor in Civil Appeal arising out of SLP (C.) No. 26329 of 2017, cited a number of judgments to show that the right to legal representation is no part of the right of natural justice. They also assailed the judgment of the Delhi High Court, stating that by no stretch of imagination could the in-house committees referred to in the RBI Circulars be said to be "tribunals" inasmuch as there is no investment of any judicial power by the State in these in-house committees. They buttressed this submission also by reference to several judgments. According to them, therefore, the Calcutta and Bombay High Courts' view is preferable to the Delhi High Court's view. It will be noted that the Master Circular dated 01.07.2013 first entrusted cases of wilful default to a Committee of higher functionaries, which Committee would then take a preliminary decision which should be well documented and supported by evidence ["First Committee"]. Thereafter, the concerned borrower should be provided 15 days' time for making a representation to the Grievance

Redressal Committee headed by the Chairman and the Managing Director and consisting of two other senior officers ["Review Committee"]. Further, such Committee must give a hearing to the borrower if he represents that he has been wrongly classified as a wilful defaulter, and it is only after such hearing that a final declaration as wilful defaulter should be made. On the other hand, the Revised Circular dated 01.07.2015 circumscribes the right of borrowers, as paragraph 3 of the Revised Circular replaces the aforesaid scheme by making an Executive Director and two other senior officers examine evidence of wilful default on the part of the borrower. If this Committee finds that an event of wilful default has occurred, it should first issue a show cause notice to the concerned borrower and call for his submissions, and after considering his submissions, issue an order recording the fact of wilful default and reasons for the same; a personal hearing can be given only if the Committee feels that such hearing is necessary. Thereafter, the order of the Committee is to be reviewed by another Committee headed by the Chairman/Chairman and Managing Director or CEO, in addition to two independent directors/non-executive directors of the bank and the order will become final only after it is confirmed by the said Review Committee.

7. It will be noted that whereas the earlier Master Circular dated 01.07.2013 granted a hearing before the Grievance Redressal Committee headed by the Chairman/Managing Director, and also provided that the borrower should be provided 15 days' time for making a representation against the preliminary decision of the First Committee, this situation does not now obtain. Under paragraph 3 of the Revised Circular dated 01.07.2015, it is only at the first stage that the First Committee is to issue a show cause notice and to consider the submissions of the borrower, a discretion being left with the aforesaid Committee to give or not to give a personal hearing. It may be noticed that the Review Committee consisting of the higher officials and independent directors is completely in-house. Neither does the order of the First Committee have to be given to the borrower, nor is any representation required against the aforesaid order, nor is there any personal hearing before the Review Committee, which goes through the First Committee's order by itself and then comes to a conclusion without involving the borrower at all.

8. At this stage, it is necessary to mention that serious consequences follow after a person has been classified as a wilful defaulter. These consequences are as follows:

> (a) No additional facilities to be granted by any bank/financial institution [paragraph 2.5(a)].
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> (b) Entrepreneurs/Promoters would be barred from institutional finance for a period of 5 years [paragraph 2.5(a)].
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> (c) Any legal proceedings can be initiated, including criminal complaints [paragraph 2.5(b)].

(d) Banks and financial institutions to adopt proactive approach in changing the management of the wilful defaulter [paragraph 2.5(c)].

(e) Promoter/Director of wilful defaulter shall not be inducted by another borrowing company [paragraph 2.5(d)].

(f) As per section 29A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot be a resolution applicant.

9. It is in this background that we have to consider the question as to whether a lawyer ought to be allowed to represent the borrower before the First Committee and/or Review Committee under the Revised Circular dated 01.07.2015.

10. Since the judgment of the Delhi High Court has held that the two in-house committees can be considered to be tribunals, and that therefore, a lawyer has the right to represent his client before such in- house committees, it is first necessary to determine whether these in- house committees can be said to be tribunals for the purpose of Section 30 of the Advocates Act. Section 30 of the Advocates Act reads as follows:

> "30. Right of advocates to practise.—Subject to the provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which this Act extends,—
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> (i) in all courts including the Supreme Court;
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> (ii) before any tribunal or person legally authorised to take evidence; and
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> (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise."

11. The impugned judgment has held that the expression "legally authorised to take evidence" goes with the word "person" and not with the word "tribunal". While this may be correct, it is clear that before a body can be said to be a "tribunal", it must be invested with the judicial power of the State to decide a lis which arises before it. This would necessarily mean that all "tribunals" must be legally authorised to take evidence by statute or subordinate legislation or otherwise, the judicial power of the State vesting in such tribunal. This Court, in Jaswant Sugar Mills Ltd., Meerut v. Lakshmi Chand and Ors., [1963] Supp (1) SCR 242, held that a Conciliation Officer under clause 29 of an Order promulgated under the U.P. Industrial Disputes Act, 1947, has to act judicially. However, he cannot be regarded as a "tribunal" within the meaning of Article 136 of the Constitution of India as such tribunal must be a body invested with the judicial power of the State, which a Conciliation Officer was not so invested with. Similarly, in Engineering Mazdoor Sabha and Anr. v. Hind Cycles Ltd., [1963] Supp (1) SCR 625, this Court held that an arbitrator appointed under Section 10-A of the Industrial Disputes Act, 1947 could not be said to be a tribunal because the State has not invested him with judicial power. His position may be stated to be higher than that of a private arbitrator, but lower than that of a tribunal.

12. Similarly, in Associated Cement Companies Ltd. v. P.N. Sharma and Anr., [1965] 2 SCR 366, this Court held that the State of Punjab is a tribunal when it exercises its authority under Rule 6(6) of the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952. Hence, an order passed by the State of Punjab would be appealable, as the State of Punjab is a "tribunal" within the meaning of Article 136(1) of the Constitution of India. The majority judgment, through Gajendragadkar, C.J., held that the basic test is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function, can be said to be satisfied on the facts of the case. In a separate concurring judgment, Bachawat, J., held:

> "44. An authority other than a Court may be vested by statute with judicial power in widely different circumstances, which it would be impossible and indeed inadvisable to attempt to define exhaustively. The proper thing is to examine each case as it arises, and to ascertain whether the powers vested in the authority can be truly described as judicial functions or judicial powers of the State. For the purpose of this case, it is sufficient to say that any outside authority empowered by the State to determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them satisfies the test of an authority vested with the judicial powers of the State and may be regarded as a tribunal within the meaning of Article 136. Such a power of adjudication implies that the authority must act judicially and must determine the dispute by ascertainment of the relevant facts on the materials before it and by application of the relevant law to those facts. This test of a tribunal is not meant to be exhaustive, and it may be that other bodies not satisfying this test are also tribunals. In order to be a tribunal, it is essential that the power of adjudication must be derived from a statute or a statutory rule. An authority or body deriving its power of adjudication from an agreement of the parties, such as a private arbitrator or a tribunal acting under Section 10-A of the Industrial Disputes Act, 1947, does not satisfy the test of a tribunal within Article
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> 136. It matters little that such a body or authority is vested with the trappings of a Court. The Arbitration Act, 1940 vests an arbitrator with some of the trappings of a Court, so also the Industrial Disputes Act, 1947 vests an authority acting under Section 10-A of the Act with many of such trappings, and yet, such bodies and authorities are not tribunals." Applying the aforesaid tests to the facts of the present case, it cannot be possibly said that either in-house committee appointed under the Revised Circular dated 01.07.2015 is vested with the judicial power of the State. The impugned judgment's conclusion that such Circulars have statutory force, as a result of which the State's judicial power has been vested in the two committees, is wholly incorrect. First and foremost, the State's judicial power, as understood by several judgments of this Court, is the power to decide a lis between the parties after gathering evidence and applying the law, as a result of which, a binding decision is then reached. This is far from the present case as the in-house committees are not vested with any judicial power at all, their powers being administrative powers given to in-

house committees to gather facts and then arrive at a result. Secondly, it cannot be said that the Circulars in any manner vests the State's judicial power in such in-house committees. On this ground, therefore, the view of Delhi High Court is not correct, and no lawyer has any right under Section 30 of the Advocates Act to appear before the in-house committees so mentioned. Further, the said committees are also not persons legally authorised to take evidence by statute or subordinate legislation, and on this score also, no lawyer would have any right under Section 30 of the Advocates Act to appear before the same.

13. The next question that arises is whether an oral hearing is required under the Revised Circular dated 01.07.2015. We have already seen that the said Circular makes a departure from the earlier Master Circular in that an oral hearing may only be given by the First Committee at the first stage if it is so found necessary. Given the scheme of the Revised Circular, it is difficult to state that oral hearing is mandatory. It is even more difficult to state that in all cases oral hearings must be given, or else the principles of natural justice are breached. A number of judgments have held that natural justice is a flexible tool that is used in order that a person or authority arrive at a just result. Such result can be arrived at in many cases without oral hearing but on written representations given by parties, after considering which, a decision is then arrived at. Indeed, in a recent judgment in Gorkha Security Services v. Govt. (NCT of Delhi) and Ors., (2014) 9 SCC 105, this Court has held, in a blacklisting case, that where serious consequences ensue, once a show cause notice is issued and opportunity to reply is afforded, natural justice is satisfied and it is not necessary to give oral hearing in such cases [see paragraph 20].

14. When it comes to whether the borrower can, given the consequences of being declared a wilful defaulter, be said to have a right to be represented by a lawyer, the judgments of this Court have held that there is no such unconditional right, and that it would all depend on the facts and circumstances of each case, given the governing rules and the fact situation of each case. Thus, in Mohinder Singh Gill and Anr. v. Chief Election Commissioner, New Delhi and Ors., (1978) 1 SCC 405, in the context of election law, this Court held:

> "63. In Wiseman v. Borneman [(1967) 3 All ER 1945] there was a hint of the competitive claims of hurry and hearing. Lord Reid said: "Even where the decision has to be reached by a body acting judicially, there must be a balance between the need for expedition and the need to give full opportunity to the defendant to see material against him" (emphasis added). We agree that the elaborate and sophisticated methodology of a formalised hearing may be injurious to promptitude so essential in an election under way. Even so, natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. To burke it altogether may not be a stroke of fairness except in very exceptional circumstances. Even in Wiseman where all that was sought to be done was to see if there was a prima facie case to proceed with a tax case where, inevitably, a fuller hearing would be extended at a later stage of the proceedings, Lord Reid, Lord Morris of Borth-y-Gest and Lord Wilberforce suggested "that there might be exceptional cases where to decide upon it ex parte would be unfair, and it would be the duty of the tribunal to take appropriate steps to eliminate unfairness" (Lord Denning, M.R.,

> in Howard v. Borneman [(1974) 3 WLR 660] summarised the observations of the Law Lords in this form). No doctrinaire approach is desirable but the Court must be anxious to salvage the cardinal rule to the extent permissible in a given case. After all, it is not obligatory that Counsel should be allowed to appear nor is it compulsory that oral evidence should be adduced. Indeed, it is not even imperative that written statements should be called for. Disclosure of the prominent circumstances and asking for an immediate explanation orally or otherwise may, in many cases, be sufficient compliance. It is even conceivable that an urgent meeting with the concerned parties summoned at an hour's notice, or in a crisis, even a telephone call, may suffice. ....." (emphasis in original)

15. In Kavita v. State of Maharashtra and Ors. (I), (1981) 3 SCC 558 ["Kavita"], this Court held, in the context of preventive detention, that even when a detenu makes a request for legal assistance before the Advisory Board, the Advisory Board is vested with a discretion whether to allow or disallow such legal assistance. This was despite the fact that adequate legal assistance may be essential for the protection of the fundamental right to life and personal liberty guaranteed by Article 21 of the Constitution. On facts, it was held that since the detenu had not made any request to the Advisory Board for any such permission, the Court was not prepared to hold that the detenu was denied the assistance of counsel so as to lead to the conclusion that procedural fairness under Article 21 of the Constitution was denied to him. Likewise, in Nand Lal Bajaj v. State of Punjab and Anr., (1981) 4 SCC 327, this Court referred to Article 22(3)(b) of the Constitution of India which states that the right to consult and be defended by a legal practitioner of his choice is denied to a person who is arrested or detained under any law providing for preventive detention. This Court then went on to hold that normally, lawyers have no place in proceedings before the Advisory Board, and then went on to refer to Kavita (supra). It was finally held that since the detaining authority was allowed to be represented by counsel before the Advisory Board, whereas the detenu was not, the order of detention would be quashed as this would be discriminatory.

16. In J.K. Aggarwal v. Haryana Seeds Development Corporation Ltd. and Ors., (1991) 2 SCC 283, this Court, after discussing the case law, held in paragraph 4, that the right of representation by a lawyer cannot be held to be a part of natural justice. No general principle valid in all cases can be enunciated. In the last analysis, a decision has to be reached on a case to case basis on situational particularities and the special requirements of justice of the case [see paragraph 8].

17. In Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi, (1993) 2 SCC 115, this Court held that a workman under the Industrial Disputes Act, 1947 has no right, under principles of natural justice, that he must be represented by counsel. After discussing several judgments, this Court concluded:

> "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, 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.

> 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." xxx xxx xxx "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 clerk or a workman working with him in the same department to represent him and this right stood expanded on Sections 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 despatch 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. In D.G., Railway Protection Force and Ors. v. K. Raghuram Babu, (2008) 4 SCC 406, this Court, in the context of a domestic/departmental enquiry held:

"9. It is well settled that ordinarily in a domestic/departmental enquiry the person accused of misconduct has to conduct his own case vide N. Kalindi v. Tata Locomotive and Engg. Co. Ltd. [AIR 1960 SC 914]. Such an inquiry is not a suit or criminal trial where a party has a right to be represented by a lawyer. It is only if there is some rule which permits the accused to be represented by someone else, that he can claim to be so represented in an inquiry vide Brooke Bond India (P) Ltd. v. Subba Raman [(1961) 2 LLJ 417 (SC)].

10. Similarly, in Cipla Ltd. v. Ripu Daman Bhanot [(1999) 4 SCC 188 : 1999 SCC (L&S) 847] it was held by this Court that representation could not be claimed as of right. This decision followed the earlier decision Bharat Petroleum Corpn. Ltd. v. Maharashtra General Kamgar Union [(1999) 1 SCC 626 : 1999 SCC (L&S) 361] in which the whole case law has been reviewed by this Court.

11. Following the above decision it has to be held that there is no vested or absolute right in any charge- sheeted employee to representation either through a counsel or through any other person unless the statute or rules/standing orders provide for such a right. Moreover, the right to representation through someone, even if granted by the rules, can be granted as a restricted or

controlled right. Refusal to grant representation through an agent does not violate the principles of natural justice." Ultimately, the Court upheld the validity of Rule 153.8 of the Railway Protection Force Rules, 1987, which permitted a friend to accompany a delinquent, who will not, however, be allowed to address the inquiry officer or be allowed to cross-examine witnesses.

19. It has also been argued before us that the present case, being a case where "wilful default" consists of facts which are known to the borrower, and as "wilful default" would only be the borrower's version of facts, no lawyer is needed as no complicated questions of law need to be presented before the in-house committees. Thus, in Krishna Chandra Tandon v. Union of India, (1974) 4 SCC 374, this Court held:

> "17. It was next argued that the appellant had asked for the assistance of an advocate but the same was refused.
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> It was submitted that having regard to the intricacies of the case and particularly the ill-health of the appellant, he should have been given the assistance of an advocate, and since that was not given there was no reasonable opportunity to defend. The High Court has rejected this submission and we think for good reasons. The appellant was not entitled under the Rules to the assistance of an advocate during the course of the enquiry. The learned Judges were right in pointing out that all that the appellant had to do in the course of the enquiry was to defend the correctness of his assessment orders. Clear indications had been given in the charges with regard to the unusual conduct he displayed in disposing of the assessment cases and the various flaws and defaults which were apparent on the face of the assessment records themselves. The appellant was the best person to give proper explanations. The circumstances in the evidence against him were clearly put to him and he had to give his explanation. An advocate could have hardly helped him in this. It was not a case where oral evidence was recorded with reference to accounts and the petitioner required the services of a trained lawyer for cross-examining the witnesses. There was no legal complexity in the case. We do not, therefore, accede to the contention that the absence of a lawyer deprived the appellant of a reasonable opportunity to defend himself."

20. Also, in National Seeds Corporation Ltd. v. K.V. Rama Reddy, (2006) 11 SCC 645, this Court laid down:

> "7. The law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognise such a right and provide for such representation: see Kalindi v. Tata Locomotive & Engg. Co. Ltd. [(1960) 3 SCR 407 : AIR 1960 SC 914], Dunlop Rubber Co. v. Workmen [(1965) 2 SCR 139 : AIR 1965 SC 1392], Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi [(1993) 2 SCC 115 : 1993 SCC (L&S) 360] and Indian Overseas Bank v. Officers' Assn. [(2001) 9 SCC 540 : 2002 SCC (L&S) 1043]."

The Court then held:

> "10. Learned counsel for the appellant Corporation has brought to our notice office memorandum dated 21-11- 2003 by which the prayer to engage a legal practitioner to act as a defence assistant was rejected. Reference was made to the Rules, though no specific reference has been made to the discretion available to be exercised in particular circumstances of a case. The same has to be noted in the background of the basis of prayer made for the purpose. The reasons indicated by the respondent for the purpose were: (a) amount alleged to have been misappropriated is Rs 63.67 lakhs, (b) a number of documents and number of witnesses are relied on by the respondent, and (c) the prayer for availing services of the retired employee has been rejected and the respondent is unable to get any assistance to get any other able co- worker. None of these factors are really relevant for the purpose of deciding as to whether he should be granted permission to engage the legal practitioner. As noted earlier, he had to explain the factual position with reference to the documents sought to be utilised against him. A legal practitioner would not be in a position to assist the respondent in this regard. It has not been shown as to how a legal practitioner would be in a better position to assist the respondent so far as the documents in question are concerned. As a matter of fact, he would be in a better position to explain and throw light on the question of acceptability or otherwise and the relevance of the documents in question. The High Court has not considered these aspects and has been swayed by the fact that the respondent was physically handicapped person and the amount involved is very huge. As option to be assisted by another employee is given to the respondent, he was in no way prejudiced by the refusal to permit engagement of a legal practitioner. The High Court's order is, therefore, unsustainable and is set aside."

21. Given the above conspectus of case law, we are of the view that there is no right to be represented by a lawyer in the in-house proceedings contained in paragraph 3 of the Revised Circular dated 01.07.2015, as it is clear that the events of wilful default as mentioned in paragraph 2.1.3 would only relate to the individual facts of each case. What has typically to be discovered is whether a unit has defaulted in making its payment obligations even when it has the capacity to honour the said obligations; or that it has borrowed funds which are diverted for other purposes, or siphoned off funds so that the funds have not been utilised for the specific purpose for which the finance was made available. Whether a default is intentional, deliberate, and calculated is again a question of fact which the lender may put to the borrower in a show cause notice to elicit the borrower's submissions on the same. However, we are of the view that Article 19(1)(g) is attracted in the facts of the present case as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate. This is for the reason that no additional facilities can be granted by any bank/financial institutions, and entrepreneurs/promoters would be barred from institutional finance for five years. Banks/financial institutions can even change the management of the wilful defaulter, and a promoter/director of a wilful defaulter cannot be made promoter or director of any other borrower company. Equally, under Section 29A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot even apply to be a resolution

applicant. Given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably. This being so, and given the fact that paragraph 3 of the Master Circular dated 01.07.2013 permitted the borrower to make a representation within 15 days of the preliminary decision of the First Committee, we are of the view that first and foremost, the Committee comprising of the Executive Director and two other senior officials, being the First Committee, after following paragraph 3(b) of the Revised Circular dated 01.07.2015, must give its order to the borrower as soon as it is made. The borrower can then represent against such order within a period of 15 days to the Review Committee. Such written representation can be a full representation on facts and law (if any). The Review Committee must then pass a reasoned order on such representation which must then be served on the borrower. Given the fact that the earlier Master Circular dated 01.07.2013 itself considered such steps to be reasonable, we incorporate all these steps into the Revised Circular dated 01.07.2015. The impugned judgment is, therefore, set aside, and the appeals are allowed in terms of our judgment. We thank the learned Amicus Curiae, Shri Parag Tripathi, for his valuable assistance to this Court.

.....J.
(R.F. Nariman)

.....J.
(Vineet Saran)

New Delhi
May 08, 2019.