

Muniswami (T.) Vs. State of Mysore

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Court : Karnataka

Decided On : Jun-06-1963

Reported in : (1963)IILLJ694Kant

Judge : A.R. Somnath Ayyar and ;Iqbal Husain, JJ.

Acts : Union Assessment Committee Act, 1862; Commonwealth Public Service Act, 1902-1915; [Advocates Act, 1961](#); Gas Companies (Amendment) Act, 1880 - Sections 12

Appeal No. : Writ Petition No. 605 of 1961

Appellant : Muniswami (T.)

Respondent : State of Mysore

Judgement :

ORDER

Somnath Ayyar, J.

1. This case presents the question whether a Government servant can as of right claim legal representation in disciplinary proceedings falling within Art. 311(2) of the Constitution. The argument that he could, is advanced on behalf of the petitioner before us who was dismissed from the post of a Commercial Tax Officer on the accusation that he received a bribe.

2. The material facts are these :

On 27 March, 1959, when a certain Krishnamurthi Rao, a hotel-keeper of Chitradurga, complained at Bangalore to the Efficiency Audit and Anti-Corruption Department that the petitioner demanded a bribe, an Assistant Superintendent of Police of that department proceeded to Chitradurga and decided to set a trap. The currency notes proposed to be used at the trap were treated with a chemical and Krishnamurthi Rao was asked to deliver them to the petitioner and to make a signal when the bribe was received. On the night of 28 March, 1959, Krishnamurthi Rao, according to his story, walked into the room of the petitioner, gave the bribe and made the pre-arranged signal which brought the Assistant Superintendent of Police and his companions to the room. It was said that the currency notes were recovered from a portion of the petitioner's dhoti and that that part of dhoti and his fingers when dipped in water gave it a pink coloration attributable to the chemical employed. After the completion of the investigation, the petitioner was placed by Government under suspension at the instance of the Special Officer of the Anti-Corruption Department. But the next step was not a criminal prosecution but the commencement of disciplinary proceedings under the Mysore Civil Services (Classification, Control and Appeal) Rules. The Special Officer of the Anti-Corruption Department whose staff had laid the trap and made the investigation was himself appointed to conduct the enquiry and a police inspector of that department was nominated by the Government which were the disciplinary authority, to lead evidence in support of charge by an order reads :

'Proceedings of the Government of Mysore

[Subject. - Acceptance of illegal gratification of Rs. 300 by T. Muniswami, Commercial Tax Officer, Chitradurga - caught red-handed on the night of 28 March, 1956 in pursuance of the trap.]

READ :

(1) G.O. No. RD. 130 CSE/59, dated 4 April, 1959.

(2) Letter No. AC. 3038-550/58-59, dated 22 May, 1959, from the Special Officer, Efficiency Audit.

Order No : RD. 130 CSE/59, Bangalore, dated 30 May, 1959.

Government directs that an enquiry should be conducted against T. Muniswami, Commercial Tax Officer (under suspension). The Special Officer, Efficiency Audit, should conduct the departmental enquiry in accordance with the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, and send a report to Government. He is requested to frame suitable charges against the delinquent officer.

2. Sri Narahari Sastri, police inspector of the Efficiency Audit, is nominated to lead the evidence as provided under rule 11(5) of the (Classification, Control and Appeal) Rules.

3. The enquiry should be completed as early as possible.

By order and in the name of the

Government of Mysore,

(Sd.) -----,

Secretary to Government,

Revenue Department.'

The Special Officer appointed to conduct the enquiry framed the necessary charge against the petitioner which reads : 'Charge You, T. Muniswami, Commercial Tax Officer, Chitradurga, while being in additional charge of the office of the Assistant Commercial Tax Officer, No. 1, Sub-Circle, Chitradurga, from 20 March, 1959, in pursuance of your demand for an illegal gratification of Rs. 500 on 23 March, 1959 from Sri K. S. Krishnamurthi, proprietor, District Office Tiffin Rooms, Chitradurga town, accepted an illegal gratification of Rs. 300 from the said Sri K. S. Krishnamurthi on 28 March, 1959 in the room in the kitchen block, attached to the Pravasi Mandira, Chitraduraga, in consideration of showing him an official favour

in determining the turnover for the year 1958-59 and thereby rendered yourself liable for grave misconduct as a Government servant.'

3. When the petitioner sought permission from Government to engage counsel in defence, he was informed that he would not be permitted to do so. The communication addressed to him reads :

'To T. Muniswami, Commercial Tax Officer, (under suspension), No. 38, Theobald Road, Nazarbad, Mysore.

Sir

With reference to your letter dated 9/12 September 1959 addressed to the Minister for Finance, I am directed to inform you that your request for permission to engage a legal practitioner to defend your case in the departmental proceedings against you cannot be granted.

Yours faithfully,

(Sd.) N. J. GOREPEERZADE

Under Secretary to Government

Revenue Department.'

4. A police inspector of the Anti-Corruption Department examined nine witnesses in support of the charge and the petitioner examined five in defence. The witnesses examined by the police inspector were cross-examined by the petitioner while the witnesses examined by the petitioner were cross-examined by the police inspector.

5. After the completion of the enquiry a finding was recorded by the Special Officer that the accusation was true and that finding, which the Government accepted, resulted in the dismissal of the petitioner.

6. The grounds on which we are asked to quash the punishment are :

(1) that there was an infraction of the petitioner's right to engage counsel;

(2) that even otherwise the refusal of permission to be defended by counsel resulted in the deprivation of the reasonable opportunity claimable under Art. 311(2) of the Constitution;

(3) that the commencement of disciplinary proceedings which deprived the petitioner of advantages which would have been available to him had he been arraigned before a criminal Court, offended against Art. 14 of the Constitution;

(4) that the appointment of the Special Officer of the Anti-Corruption Department whose staff had laid the trap and made the investigation, to conduct the enquiry, violated rules of natural justice;

(5) that the punishment rested on findings influenced by inadmissible evidence; and

(6) that the finding that the petitioner had taken a bribe was an impossible finding.

7. The first submission touching the claim to legal representation rests on Art. 311 of the Constitution, the material part of which reads :

'Article 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. - (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

* * *' While the assertion for the petitioner is that he had an absolute right to be defended by counsel, in defence of refusal of permission to do so, Mr. Advocate-General depended on rules 28 and 11(5) of the Mysore Civil Services (Classification, Control and Appeal) Rules made by the Governor under the proviso to Art. 309 of the Constitution. Those rules read :

'Rules 28. Appearance of legal practitioners. - Save as otherwise provided in these rules, no legal practitioner or agent shall be allowed to appear in any proceedings under these rules.'

'Rule 11. Procedure for imposing major penalties. -

* * * (5) The disciplinary authority or specially empowered authority as the case may be may nominate any person to present the case in support of the charges before the authority inquiring into the charges (hereinafter referred to as the inquiring authority). The Government servant may present his case with the assistance of any other Government servant approved by the disciplinary authority or specially empowered authority as the case may be but may not engage a legal practitioner for the purpose unless the person nominated by the disciplinary authority or specially empowered authority as the case may be is a legal practitioner or unless the disciplinary authority or specially empowered authority as the case may be, having regard to the circumstances of the case, so permits. * * *'

8. If the provisions of these rules are not open to the criticism that they are repugnant to Clause (2) Art. 311, it would be clear that no Government servant can claim representation through counsel as of right. While rule 28 declares that no Government servant has an absolute right to be so defended, rule 11(5) authorizes the appointment of any person selected by the appropriate authority to conduct the impeachment, although if the person so appointed is a legal practitioner, the Government servant also becomes entitled to appoint counsel to defend him. Rule 11(5), however, confers power on the appropriate authority to permission to the Government servant in a proper case to be defended by counsel even if the case against him is not conducted by counsel.

9. The two questions are whether the Governor could by a rule forbid or regulate legal representation and whether even if he could, introduction of counsel was improperly prohibited in this case.

10. Whether there is a right to legal representation in a disciplinary proceeding falling within Art. 311(2) of the Constitution is a question not easy to answer. Now, Art. 311 of the Constitution forbids the imposition of a punishment of dismissal,

removal or reduction in rank without affording the civil servant a reasonable opportunity to defend himself. Since the punishment which was imposed in this case was one of those three punishments, that punishment could not have been imposed unless he had been afforded a reasonable opportunity to establish his innocence. The question whether that opportunity claimable by the civil servant confers on him the right to be defended by counsel assumes importance for the reason that if it does, there can be no defeasance of that constitutional right by a rule made by the Governor under the proviso to Art. 309.

11. Articles 245 and 309 of the Constitution make it clear that a legislature can make no law in derogation of the Constitution, not even when it makes a law regulating conditions of service of persons serving the Union or a State. If Art. 309 expressly states that the power to make a law for that purpose is controlled by the other provisions of the Constitution, the power of the Governor to make on that subject transitional rules which operate only until the appropriate legislature makes legislation, cannot be wider. It should therefore follow that a right created by Art. 311 of the Constitution cannot be abridged by a law made by the legislature or by a rule made by the Governor.

12. Article 311 which enjoins a reasonable opportunity for defence does not in terms speak of an opportunity personal to him. Nor does it expressly forbid its exercise through counsel. It brings into being bestows that opportunity on the civil servant without restricting the manner of its exercise, whatever may be its measure.

13. It may not, in my opinion, be possible to deduce from the employment of the word 'he' occurring in the expression 'until he has been given a reasonable opportunity' in Art. 311 that the opportunity is personal to the civil servant. That pronoun has no purpose to serve beyond the identification of the person who should be afforded the opportunity to defend himself, and, it is plain that whether the civil servant engages counsel or not, the opportunity afforded in either event is to the civil servant whose counsel is no more than his agent. If Art. 311 does not in terms forbid representation by counsel, the question is whether a civil servant can claim such representation as of right or whether Art. 311 on its proper construction

leaves the door open to the Governor or the legislature as the case may be, to regulate such representation.

14. What can sustain the absolute right to representation claimed for the petitioner is the familiar rule of English common law that every person who is sui juris has the common law right to appoint an agent to act on his behalf and that such appointment for the exercise of a statutory right is permissible unless the statute creating the right directs its personal exercise by the person on whom it is conferred.

15. In *Jackson & Co. v. Napper, in re : Schmidt's Trade-Mark* [35 Ch. D. 162], the rule was stated by Stirling, J., in these words :

'And I understand the law to be that in order to make out that a right conferred by statutes is to be exercised personally, and not by an agent, you must find something in the Act, either by way express enactment or necessary implication, which limits the common law right of any person who is sui juris to appoint an agent to act on his behalf. Of course the legislature may do so, but, prima facie, when there is nothing said about it, a person has the same right of appointing an agent for the purpose of exercising a statutory right as for any other purpose.'

16. In *the Queen v. Assessment Committee of St. Mary Abbots, Kensington* [(1891) 1 Q.B. 378], a householder objected to a valuation list at a hearing before the assessment committee empowered to determine his objection under the Union Assessment Committee Act, 1862 [25 and 26 Vict. c. 103]. The householder did not appear personally but was represented by another person, who claimed to be heard as his agent in support of the objection. On the committee refusing to hear that person on the ground that their rule not to hear anyone other than the objector himself or a member of his family or household, or a member of the legal profession, the householder applied for mandamus to compel the committee to hear the agent. Pollock, B., thought that the assessment committee could not decline to hear the agent appointed by the householder and said :

'Section 19 of 25 and 26 Vict. c. 103 does not provide that they are to hear the objector, but that they are to hear the objection. It becomes necessary, therefore,

to consider what the rule is as to the right to appoint an agent in such cases. The person taking the objection may be absent from the country, or may be unable or incompetent to conduct the appeal, and there may be some other person both able and willing to act in his place. Take, for instance, the case of a number of persons living in the same street who all take the same objection. The person who is best fitted to do the business - for instance, a surveyor - may be deputed to represent all the others. Could the assessment committee decline to hear him I am of opinion that they could not.'

17. Charles, J., concurred in that view and relied in that context on the observations of Stirling, J., in *Jackson & Co. v. Napper* [35 Ch. D. 162] (vide supra).

18. This decision was affirmed by the Court of Appeal, and, Fry, L.J., observed :

'I agree. It does not appear to me that the assessment committee have any power to limit the common law right of a person, whom the statute entitles to appear in support of his objection to the list, to appear by an agent.'

19. The rule of English common law authorizing the appointment of an agent for the exercise of a statutory right through that agent if such exercise is not forbidden by the statute creating it, was more fully stated in the *King against the Board of Appeal* under S. 50 of the 'Commonwealth Public Service Act, 1902-1915' [(1916) 2 Com. L.R. 183]. The question which the High Court of Australia had to consider in that case whether is an appeal by an officer of the Commonwealth Public Service to a board appointed under S. 50 of the Commonwealth Public Service Act, the appellant was entitled to be represented by counsel. Three Judges of that High Court who heard that case delivered separate judgments but were unanimously of the view that the appellant was entitled to the legal representation claimed by him. Griffith, C.J., who was of opinion that the appellant who had the common law right to be heard by an agent, was equally entitled to be heard by counsel, remarked :

'But on the whole, the better opinion appears to me to be the appellant is entitled to be heard by an agent and, if so, then she had just as much right to demands to

be heard by counsel as to be heard by any other agent.'

20. Issacs, J., who deduced the right to such representation, from the decision in *R. v. Assessment Committee of St. Mary Abbots* [(1891) 1 Q.B. 378.] (vide *supra*), stated :

'I also originally had doubts about the first alternative, but the case of *R. v. Assessment Committee of St. Mary Abbots, Kensington* [(1891) 1 Q.B. 378] cited by Mr. Hager, determines those doubts, because that case establishes the *prima facie* common law right of any person who has a statutory right to appear before a non-judicial tribunal to conduct his business before the tribunal by an agent as well as personally.

Then, looking at S. 50 by itself, there is nothing in it which, by force of the section itself, takes away the common law right.'

21. Many years before this view which Griffith, C.J. called the 'better opinion' was expounded, the expression of a somewhat contrary view is discernible in some English cases. In *Collier v. Hicks* [(1931) 2 B. & Ad. 663 : 109 E.R. 1290] according to Parke, J., there was no absolute right of representation by counsel, unless there was a custom to the contrary, and, at p. 671 of the report said thus :

'Now it is impossible to say that all the King's subjects have a right to act as professional assistants, in the way in which this plaintiff has claimed to do it, either to the party accusing or accused. All may be present, and either of the parties may have a professional assistant, to confer and consult with, but not to interfere in the course of the proceedings. No person has a right to act as an advocate without the leave of the Court, which must of necessity have the power of regulating its own proceedings in all cases where they are not already regulated by ancient usage. In the superior Courts, by ancient usage, persons of a particular class are allowed to practise as advocates, and they could not lawfully be prevented; but justices of the peace, who are not bound by such usage, may exercise their discretion whether they will allow any, and what persons, to act as advocates before them. Here, the plaintiff having insisted upon the right to act as advocate, the defendants were justified in committing the alleged trespass.'

22. This dictum of Parke, J., was followed in the year 1861 in *In re MacQueen and Nottingham Caledonian Society* [(1861) 9 C.B. (N.S.) 793 : 142 E.R. 312] in which the claim advanced in an arbitration proceeding was that there was a right to be represented by counsel. Erle, C.J., rejected that postulate in the following words :

'Mr. Yeatman puts it on the ground that it was an unfair exercise of discretion on the part of the arbitrators to refuse to allow the party the assistance of counsel : and he contends that the interests of justice require that the parties upon such arbitration as this should be heard by counsel. I am of opinion that the argument fails. I am not aware of any authority for it; and none has been cited. As far as the interests of justice are concerned, I can foresee that there might be great failure of justice if counsel were allowed to interfere in all cases. The intention of the legislature is plainly expressed, that dispute of this sort should be terminated speedily and finally; and, so far from the interests of justice being advanced by hearing counsel, I am inclined to think it would be allowing an unfair advantage if counsel were heard for the complainant, and imposing a hardship on the trustees if they were called upon to pay counsel out of the funds of the society, and might make the decision of the arbitrators to depend rather upon the relative merits of the counsel than upon the intrinsic merits of the case. I have already quoted the language of Parke, J., in *collier v. Hicks*, where that learned Judge lays down in wide terms, that, in the absence of ancient usage to the contrary, every tribunal has a discretion as to who shall be permitted to appear as advocates before it. And I see the same point substantially came under the consideration of this Court in *Tillam v. Copp* [5 C.B 211], where the Court refused to set aside the award, on the ground that the arbitrator had declined to permit a stranger to be present for the purpose of assisting the defendant's attorney with practical hints for the conduct the defence, - holding that an arbitrator has a general discretion as to the mode of conducting the inquiry before him.'

23. Although Williams, J., agreed with this enunciation, one can see a manifest and striking contrariety between what the two Judges thought about the expediency of allowing assistance of counsel. The Chief Justice felt persuaded to take the somewhat extreme view that more often than not introduction of counsel into a case was fraught with the possibility of delay and deflection. It will be

enough to say that time and experience have contributed to a more progressive view and the most effective answer to the animadversions of Erle, C.J., is what is supplied by the Advocates Act (Act 25 of 1961), S. 30 of which confers on an advocate governed by its provisions the right of audience before a tribunal or person authorized to take evidence.

24. Nearly two decades after the decision in *In re MacQueen and Nottingham Caledonian Society* [(1861) 9 C.B (N.S.) 793 : 142 E.R. 312] (vide supra) in *Reg. v. Williamson* [(1890) 63 L.T. 276], the true position was explained with great clarity by Pollock, B., in a case which involved the interpretation of the Gaslight and Coke and other Gas Companies Acts Amendment Act, 1880, under S. 12 of which an appeal could be preferred from the decision of the Gas Examiner functioning under that Act to the Chief Gas Examiner who had to decide that appeal 'after hearing the parties.' The Chief Gas Examiner to whom an appeal was preferred under its provisions interpreted that section as making it his duty to hear an agent of the parties and not a counsel whom the parties engaged. Pollock, B., who fully shared this view of the Chief Gas Examiner, made the following elucidation :

'Now, I can have no doubt whatever that the Gaslight and Coke Company desire to assert their right to be heard by counsel, but I am of opinion that they have no such absolute right, and that the Chief Gas Examiner has a discretion in the matter. My judgment proceeds on this, that for a long time in this country it has been a well-known distinction when persons apply to a Court by themselves or by counsel, I cannot believe that counsel would allow themselves to be mere agents or machines in the matter. Professor Williamson says I am bound by Act of Parliament to hear you by some agent, but it is in my discretion whether I shall hear you by counsel or not. It is clear to my mind that that is the proper view of the case, and on this ground it seems to me, without going into the question as to the advantage of counsel in this particular case, this mandamus ought not to go.'

25. That the English common law right to appoint an agent for the exercise of a statutory right when such appointment is not forbidden being reasonably clear, the question is whether that right which could be asserted in English or in a country

like Australia where that rule of common law is part of the law of that country, was available to the petitioner in this case. Now, it is well-known that English common law rules were progressively introduced into our country during the seventeenth and eighteenth centuries and that with appropriate modification, those rules became part of the fabric of modern Indian law and that even when there was a codification of some of the laws of our country the codes did no more than to assemble those rules with appropriate changes. Cases not governed by personal laws were decided in accordance with principles of justice, equity and good conscience, and, in *Waghela Rajsanji and Shekh Masludin* [(1887) 14 I.A. 89], Lord Hobhouse pointed out that 'justice, equity and good conscience' could be 'interpreted to mean the rules of English law if found applicable to Indian society and circumstances.' So it is that during a long tract of the time Judges of this country have freely imbibed in matters not occupied by codified or personal law, principles found in the common law of English and received guidance from decisions of English Courts. Decisions of English Courts are even today cited and followed by the Court of our country and it can be truly said as observed by Page, J., in *Sundermull v. Ladhuram Kaluram* [I.L.R. (1923) 50 Cal. 667], that except to the extent that the common law of England has been abrogated or is inapplicable to Indian conditions, its rules are part of the law of our country. Whether those rules are applied as constitution the principles of justice, equity and good conscience or to fill a gap in the substantive law, it is plain that they were recognized as forming part of the law of the land except in cases where those rules have been displaced by statute law or could be pronounced inapposite.

26. This migration of the common law of England into this country is ascribable to historical reasons. It was the conquest of our country by the Britishers that brought within its wake the establishment of a legal system which had for its foundation those rules of English common law, in all matters not regulated by personal laws. The influence of the rules of English common law on the community of this country was as great as its influence on the people of countries like Australia and the United States of America, and whether or not it was right to suppose as some jurists did that there was really no rule of law when the British assumed the reigns of administration in this country, English Judges in our country who appear to have fully shared that opinion, freely drew on the principles of English common law

equating those principles with the principles of justice, equity and good conscience. Thus grew a system of law on which dependence was placed by Court and lawyers alike regulating all matters falling within its domain with those modifications demanded by the conditions of this country. That the position remains unaltered even after the emergence of an independent India and its emancipation from foreign domination is discernible from Art. 372 of the Constitution which directs the continuance of all existing laws in force before the commencement of the Constitution and in consequence preserves those rules of English common law which had attained the statute of the law of our land.

27. This discussion demonstrates that those rules of English common law which became part of the law of this land still continue to be so. If that is the true position, the question is whether that rule of English common law which entitled a person to exercise a statutory right through an agent unless such exercise was statutorily forbidden, was and is part of the law of our country. If it is and if in the exercise of the opportunity for defence created by Clause (2) of Art. 311 that common law right can be asserted, the right to legal representation in disciplinary proceedings falling within that clause would be an absolute right.

28. Now, it is a firmly established rule that rules of common law which have become part of the law of the land are safe guides not merely for the interpretation of a statute but also for a proper construction of the Constitution. The makers of the Constitution must be credited with familiarity with the rules of common law operating in the country, and in the interpretation of a constitutional provision brought into being by them and for the ascertainment of the true meaning and scope of the terms employed in wording that provision, it would be the clear duty of the Court to invoke the assistance of the appropriate common law rule, remembering that the Constitution-makers should be presumed to have expressed themselves in terms of the common law with the confidence that the provisions in the Constitution would be understood and interpreted in that way. That that would be the correct way of understanding the Constitution was what was pointed out by Taft, C.J., in *Ex Parte : Grossman* [267 U.S. 87]. This is what he said at p. 108 of the report :

'The language of the Constitution cannot be interpreted safely by reference to the common law and to British institutions as they were when the instrument was framed and adopted. The statement and lawyers of the convention, who submitted it to the ratification of the convention of the thirteen States, were born and brought up in the atmosphere of the common law, and thought and spoke in its vocabulary. They were familiar with other forms of Government, recent and ancient, and indicated in their discussions earnest study and consideration of many of them, but when they came to put their conclusions into the form of fundamental law in a compact draft, they expressed them in terms of the common law, confident that they could be shortly and easily understood.'

29. The same view was expressed by the renowned author Cooley in his book on Constitutional Limitations (8th Edn.), the relevant passage in which is to be found at p. 133 which reads :

'It is so also a very reasonable rule that a State Constitution shall be understood and construed in the light and by the assistance of the common law, and with the fact in view that its rules are still left in force. By this we do not mean that the common law is to control the Constitution, or that the latter is to be warped and perverted in its meaning in order that no inroads, or as few as possible, may be made in the system of common law rules, but only for its definition we are to draw from that great fountain, and that in judging what it means, we are to keep in mind that it is not the beginning of law for the State, but that it assumes the existence of a well-understood system which is still to remain in force and be administered, but under such limitations and restrictions as that instrument imposes.'

30. It would therefore be right to think that if the Constitution-makers created by Art. 311 of our Constitution a right in a civil servant to defend himself and did not regulate the manner of its exercise, that right is exercisable in the same way in which any other statutory right unless statutorily forbidden is exercisable through an agent, and, that, is the rule of common law, that rule equally enables the exercise of a constitutional right unless forbidden by the Constitution in the same way. But the question is whether Art. 311(2) which creates the right to an opportunity for defence does not also regulate the manner of its exercise.

31. But it was said that a common law right if any appoint counsel was not available in proceedings regulated by Art. 311(2) which we were asked to say by an exhaustive provision created in the context of Art. 310 and by way of a limitation on its provisions, no more than a reasonable opportunity for defence and that the reasonable opportunity so claimable should be equip rated with the opportunity ordained by the rules of natural justice.

32. Now, if a 'reasonable opportunity' according to its proper concept is an opportunity which measured by standards of sound judgment is just and fair without being excessive or extravagant, that opportunity has reference to all the protection which the civil servant needs to save himself from the danger of condemnation without the just and essential preliminary requirements such as notice and a proper hearing. But the question is whether the expression. 'reasonable opportunity' when correctly comprehended, merely defines the area of that opportunity without making reference to the channel or instrument through which it could be exercised, or whether it takes within its ambit all those processes by the employment of which a civil servant may defend the charge and manifest his innocence without circumscribing the instrumentality through which such defence or manifestation may be made.

33. If Art. 311(2) insists, as it plainly does, on a just and fair hearing in which the civil servant has a right to show cause against the action proposed to be taken which includes the right to himself against the accusation, the manifold methods which he employs for exoneration from the accusation are endeavours in his defence in the exercise of a reasonable opportunity through which he shows cause against the proposed action, and, what in effect the Constitution forbids is that which cramps such effort at exculpation. The right of the civil servant to know the charges, to produce a statement in defence, to an inspection of the relevant documents, to be present when evidence in support of the charge is brought on record by whatever process it is done, to cross-examine witnesses giving such evidence, to produce evidence in defence, to address the disciplinary authority if defence, to address the disciplinary authority if he so chooses, to an adjournment of the proceedings for sufficient cause and the like are all concomitants of the reasonable opportunity claimable by him provided he does not forfeit any part of it

by misuse, laches or intransigence.

34. But, Art. 311 which directs that opportunity which consists of what may be done in disproof of the accusation does not say by whom it may be done. Its aim and purpose is to provide an opportunity for defence which in truth is no more than the freedom to do everything reasonably necessary for the displacement of the accusation. One possible view is that when it bestows that freedom what it does is to create in the civil servant a right to take every necessary step to demonstrate his innocence without requiring him to exercise that right personally and there being an essential distinction between the content of an opportunity and the manner of its exercise when that article speaks of a reasonable opportunity, it only delimits the content of the opportunity without placing fetters on the mode of its exercise and so long as the steps in defence cannot be condemned as unreasonable, it does not forbid their employment though counsel.

35. If this view is sound, it should follow that while the disciplinary authority in a proceeding falling Clause (2) of Art. 311 can regulate its proceedings so that they are not impeded by the subterfuges of a refractory civil servant and for that purpose can decide what that civil servant or his counsel may not do in his defence, that authority is not the repository of the power to say that what may properly be done in defence, shall be done only by him and not his counsel and that if what is reasonably permissible in defence is what may be done in the exercise of a reasonable opportunity, so long as the defence rests within the confines of that opportunity the disciplinary authority would be powerless, to further control its exercise by excluding counsel from the proceedings.

36. But, in support of a contrary view our attention was asked to a trilogy of cases decided by the Supreme Court. It was said that while the decision in *Kalindi v. Tata Locomotive and Engineering Company, Ltd., Jamshedpur* [1960 - II L.L.J. 228] assumes the validity of a rule similar to rule 11(5) of the Mysore Civil Services (Classification, Control and Appeal) Rules, and that view is followed in *Brooke Bond (India) (Private), Ltd. v. Subba Raman* [1961 - II L.L.J. 417] the decision in *Union of India v. T. R. Varma* [1958 - II L.L.J. 259] supports the postulate that Art. 311(2) merely enjoins adherence to rules of natural justice. That on at least three

occasions the High Court of Madras consistently negated claim to an absolute right to appoint counsel in a disciplinary proceeding was the other submission made and we were referred in that context to *T. Rajagopala Ayyangar v. Collector of Salt-Revenue (Outports), Madras* [A.I.R. 1937 Mad. 735], *Manuaru Veerasami v. Provincial Government of Madras* [A.I.R. 1948 Mad. 379] and *Karuppa Udayar v. State of Madras* [1956 - II L.L.J. 343]. It was also urged that the common law right if any to introduce counsel, stood abrogated by rules 28 and 11(5) of the Mysore Civil Services (Classification, Control and Appeal) Rules, the argument being that since Art 311(2) does not expressly confer a right of representation, that right of representation is what can flow only from the rule of common law and that if that of common law was abrogated by a rule under the proviso to Art. 309, what remained in Art. 311 was the reasonable opportunity denuded of the right of representation.

37. But it seems to me that on the question whether the petitioner had a common law right to introduce counsel and whether the decisions of the Supreme Court referred to above could be understood to have pronounced against its availability, we should say nothing in this case and that we should also abstain from expressing any opinion on the correctness of the view expressed in the three decision of the High Court of Madras, although there can be little doubt that if the right to introduce counsel was born with the Constitution and became imbedded in it, there can be no impairment of that right except by a constitutional provision.

38. I would, therefore, not express any opinion on the question whether in the exercise of the reasonable opportunity ensured by Art. 311(2) counsel can as of right be appointed in every such proceeding. In this case which can be decided on another ground, it would not be material to consider whether the incorporation of a comprehensive direction in Art. 311(2) for an opportunity for defence without any express prohibition against counsel for the protection of a civil servant facing demotion or extermination from service demonstrates the constitutional intent to bestow on him an absolute right for legal representation without leaving that matter which is of such great concern to him for regulation by a subsidiary agency. It would be like wise unnecessary to consider the effect of the selection of the three major punishments referred of in that constitutional provision for express

constitutional regulation which reveals a recognition by the Constitution-makers of the severity of those punishments and of the consequent importance for an opportunity for defence. Whether the authors of the Constitution who should be imputed with knowledge of the usual provision for legal representation even in matters of little consequence, such as, a small cause suit or a petty offence which on a comparison with a disciplinary proceeding government by Art. 311(2) recedes into insignificance, should be presumed to have believed in the reasonableness of the right to appoint counsel in every proceeding which is likely to affect a person or this property, or whether what was merely ordained by the provisions of Art. 311(2) was obedience to the rules of natural justice, is also not a matter on which we need speculate in this case. Nor would it be necessary to consider whether there could be no safer standard for measuring the scope of a reasonable opportunity than that applied in proceedings before Courts between which a disciplinary proceeding there is such striking similitude, or whether an opportunity for representation in a civil or criminal proceeding which cannot even in a trumpety proceeding invite the challenge that it is extravagant or excessive becomes or can be considered excessive in a disciplinary proceeding which is not an inquisition but has to be conducted in conformity with the same standards of fairness observable in a judicial proceeding although not controlled by the rigid rules of procedure or evidence which a Court of law cannot disregard. Nor would this case require us to discover the principle on which the desire of a civil servant accused of a grave misdemeanour meriting a major punishment to appoint counsel can be condemned as unreasonable.

39. In this case, it appears to me to be sufficient to examine the soundness of the submission that refusal of permission to appoint counsel, resulted in a deprivation of the reasonable opportunity created by Art. 311(2) of the Constitution. Although it was not so expressly stated, it is clear that permission sought by the petitioner was refused under the provisions of rule 11(5) of the Mysore Civil Services (Classification, Control and Appeal) Rules. Now, although between rule 28 of these rules which declares that there is no absolute right to engage Counsel, and Art. 311 which according to the State bears the same construction, there may be no disharmony or repugnancy, it would not be possible to say the same thing of rule 11(5). That sub-rule consists in the main of four parts which when separated

from one another yield the undermentioned analysis :

(a) The disciplinary authority or a specially empowered authority who will also be referred to as a disciplinary authority is free to appoint anyone in any case to conduct the impeachment of the civil servant, and that person may be a legal practitioner or a police officer or a prosecuting inspector or any other person of his choice. The power of the disciplinary authority so conferred is absolute and uncontrolled and may be exercised in any case, whatever may be its complexion.

(b) If the person so appointed by the disciplinary authority is a legal practitioner, then and only then does the civil servant also acquire the right to appoint counsel to defend him. But if the person appointed is not a legal practitioner but someone else, even if he be a police officer or a prosecuting inspector, the right to be defended by counsel does not accrue.

(c) If the disciplinary authority does not choose to appoint counsel to support the charge and therefore the civil servant cannot as of right appoint one in defence, he should seek the permission of the disciplinary authority to appoint one, which he can obtain only if the disciplinary authority considers that the circumstances of the case justify its grant.

(d) In any event impeached civil servant can defend himself through another civil servant provided the selection of that civil servant has the approval of the disciplinary authority.

40. The question to be examined is whether the above provisions incorporated in rule 11(5) impinge to any extent on the protection afforded by Clause (2) of Art. 311. Even if it can be said that that clause does not authorize the appointment of counsel by the civil servant as of right, but only entitles him to an opportunity for defence commensurate with the nature of the proceeding, the provisions of rule 11(5) would be beyond criticism only if they do no more than to implement that constitutional protection.

41. Now rule 28 which prohibits the appearance of legal practitioners in disciplinary proceedings opens with the words 'save as otherwise provided' and

the provision to the contrary in the nature of an exception to the embargo created by that rule is what is contained in rule 11(5) which authorizes the disciplinary authority to 'nominate any person' to present the case against the civil servant. This plenary power conferred on the disciplinary authority, it is clear, includes the power to appoint a legal practitioner to conduct the case against the civil servant and while no limitation is placed on the exercise of this power and the disciplinary authority is thus free to introduce counsel at its option in any case, the civil servant has no similar or corresponding right but can introduce counsel only if the disciplinary authority introduces one, if the disciplinary authority considers proper to permit representation.

42. This is not the only oddity of this part of rule 11. It empowers the disciplinary authority to nominate any person of its choice to support the charge and that person could be a police inspector or a prosecuting inspector of the police. Indeed, the person who was so nominated in this case was a police inspector of the Anti-Corruption Department. But the strange feature of rule 11(5) is that if the case in support of the charge is not conducted by counsel but by another, such as a police or prosecuting inspector, the civil servant cannot insist on assistance of counsel although in truth it makes no difference in one sense whether a practising lawyer or a prosecuting inspector who is not a practising lawyer supports the charge, both of them being persons specially trained in conducting prosecutions. Indeed, the civil servant is in greater jeopardy and peril if the person who appears against him is one who is not accustomed to observe the same standards of fair play, propriety and objectivity which a practising lawyer guided by well-known codes of professional conduct observes. But rule 11(5), while entitling a civil servant to claim professional assistance as of right when the disciplinary authority chooses to appoint counsel, denies him that protection in a more dangerous situation when his impeachment is entrusted to an agency endowed with all the requisite skill but uncontrolled by the chastening influence of professional ethics.

43. But it was said that this rule provides for the assistance of another Government servant. But it is easy to see that the right to be so defended by another Government servant to whose selection the disciplinary authority's assent is made necessary, does not improve that sub-rule which can in its application so greatly

erode the opportunity claimable under the Constitution, and, in a case where the impeachment is entrusted, as it generally is, to someone endowed with the required proficiency such as a police or prosecuting inspector, the right to seek the assistance of another Government servant in defence becomes chimerical and mere moonshine.

44. If the charge in the disciplinary proceeding as in the present case is the acceptance of a bribe and that charge is pressed by a prosecuting inspector experienced in the conduct of prosecution before a criminal court or by a police inspector who normally has some degree of familiarity with that technique, it would be futile for the impeached civil servant to seek the disciplinary authority's permission to engage another police or prosecuting inspector in defence, even if with great optimism he hopes to secure such assistance which a police or prosecuting inspector will seldom be prepared to offer. What he is generally able to do is to enlist the sympathy of some good samaritan in his own or other department with no higher attainments and whose performance with all his ardour can only as feeble as that of the person impeached. No one can venture the suggestion that such Government servant who may only spend labour without advantage and whose selection should also escape the unguided veto of the disciplinary authority can be any kind of a substitute for a member of the legal profession or a match for a police or prosecuting inspector.

45. A Government servant being generally one who has little proficiency in the art of defending a disciplinary proceeding and has as little talent in that sphere as the delinquent civil servant the assistance permitted by sub-rule (5) is in reality no assistance. To ask the delinquent civil servant to defend himself through another Government servant would be as unmeaning as the insistence on an engineer getting treatment for his illness only from another engineer or on a member of the medical profession getting his engineering difficulties solved only by another member of the medical profession. The consequence in each case would be equally unfortunate.

46. Now, if Art. 311(2) throws a cloak of protection round the civil servant, the opportunity for defence should at least be equal to the opportunity for

impeachment. But the two rules made by the Governor assist the impeachment in every possible way and cripple the defence in an equal measure. If one of these rules permits the impeachment to be entrusted to any agency selected by the disciplinary authority and empowers him to do so in any case, there can be small reason for the refusal of that right to the Government servant or for the prescription of the permission of the disciplinary authority to engage counsel. The bestowal of power on the disciplinary authority to decide whether the case is one for the grant or refusal of such permission without placing any such restriction on the power of the disciplinary authority to arrange for the conduct of the impeachment, is as unreasonable and discriminatory as the prohibition against the engagement of anyone other than an approved Government servant for the conduct of the defence without any corresponding restraint on the selection by the disciplinary authority. Further, although a disciplinary authority is a tribunal to whom the power to pronounce on the guilt or innocence of the Government servant is confided, rule 11(5) very strangely makes it his duty to arrange for the presentation of the case in support of the charge, which is not known to be the concern of a quasi-judicial tribunal which the disciplinary authority is. If the exercise of the power to nominate a person to conduct the impeachment involves the application of the mind of the disciplinary authority to the selection of a suitable person for that purpose, the disciplinary authority does not, when making such selection, function as a tribunal but as a statutory authority entrusted with the duty to arrange for the establishment of the accusation, and in that role, it occupies a position similar to that of the Government servant both of whom should therefore be treated alike and afforded equal opportunities in their respective pursuits which rule 11(5) does not, and is therefore susceptible to the criticism that its provisions are not in consonance with the spirit of Clause (2) of Art. 311, and, neither the ill-informed view that a lawyer always protracts litigation or employs ingenuity for the deflection of the course of justice nor the availability of an appeal to another tribunal can save them from that reproach. But when I say this, I say nothing on the validity of rule 11(5) since the real and material question in each case would be whether what was done under its provisions transgressed the Constitution.

47. I shall, therefore, now turn to consider the validity of the submission that even if there be no absolute right to legal representation and rule 11(5) is impervious to

criticism, the refusal of permission to the petition to appoint counsel was, in the circumstances of this case, refusal of reasonable opportunity for defence. This argument assumes the soundness of the postulate that introduction of counsel is possible only in a proper case in the exercise of a reasonable opportunity and that rule 11(5) which permits counsel in a proper case is no more than an explanation to Clause (2) of Art. 311. It was contended that rule 11(5) makes it the duty of the disciplinary authority to consider the circumstances of the case when permission for representation is sought and that the circumstances of the petitioner's case made it impossible for the authority to refuse representation which, we were asked to say, was refused without any application of the mind of anyone to those circumstances.

48. Now, although the communication sent to the petitioner does not state the reason for the rejection of that request, it has been explained to us that it was thought that the case was so simple the petitioner could defend himself satisfactorily without counsel. The refusal of legal representation was also defended on the ground that the power to permit or refuse such representation being entirely discretionary, its exercise by the disciplinary authority under rule 11(5) was not justiciable.

49. The second submission can be briefly disposed of. If we were concerned in this case only with rule 11(5) and that sub-rule confers discretion to refuse or permit legal representation, the argument that the exercise of that power was above judicial review, might have been a useful submission. but since the question does not turn on the provisions of rule 11(5) as much as it does on the provisions of Art. 311 of the Constitution, the real question is whether the reasonable opportunity claimable under Art. 311 was not made available though claimed. If in a given case it emerges that the opportunity afforded was not sufficiently reasonable and that the deficiency in the opportunity arose, out of denial of permission to obtain professional assistance, that the matter is not one of discretion under rule 11(5), is (sic) not how the transgression of the Constitution can be defended.

50. The constitutional duty to afford an opportunity which conforms to the required standard of reasonableness not being discretionary but mandatory, that imperative duty cannot by a rule be transformed by the Governor into a discretionary function. No disciplinary authority can therefore refuse legal representation to the Government servant if its refusal is unreasonable, and on the question whether the refusal was reasonable or not which introduces a controversy of basic and fundamental importance, whether the Constitution has or has not been obeyed, no disciplinary authority can be the final arbiter.

51. Although it is clear that a decision on the question whether the refusal of legal representation resulted in deprivation of reasonable opportunity should in each case depend on its own facts and circumstances, it would be for the Court to enquire in each case into the question whether, having regard to all the relevant features of the disciplinary proceeding, it was unreasonable to deny such representation as was done in *Dr. K. Subba Rao v. State of Hyderabad* [1958 - I L.L.J. 206], *Nripendra Nath Bagchi v. Chief Secretary, Government of West Bengal* [1961 - II L.L.J. 312] and *Nitya Ranjan Bohidar v. State* A.I.R. 1962 Cal. 78.

52. In support of the first submission, we were asked to say that Art. 311(2) permitted engagement of counsel only in proceedings in which the civil servant was likely to be embarrassed by a multitude of accusations or enormity of evidence or a difficult question of law. Whether this postulate which in effect involves the theory that an opportunity to appoint counsel is reasonable only in a proceeding of that description, delimits accurately the area of a reasonable opportunity or unreasonably circumstances it, is what I should turn to consider.

53. Now, a reasonable opportunity to show cause really involved for the purpose of the present discussion the measure and amplitude of that opportunity as also the manner of its exercise. While it is difficult to make an exhaustive enumeration of all the attributes of such opportunity, it is plain that every legitimate endeavour at exoneration falls within its orbit. The assertion on behalf of State that it would be legitimate to appoint counsel only in a proper case raises issues to which there can be no answer in the abstract. What is a proper case is of course for the

disciplinary authority to decide, but rule 11(5) which authorizes that determination affords no more useful guidance than that it should depend upon the 'circumstances of the case.' But when that sub-rule is read as it should be with Art. 311(2) of the Constitution, it becomes manifest that attention is directed to those circumstances to aid the adjudication on the reasonableness of the opportunity claimed. But a complete enumeration of the circumstances justifying introduction of counsel being as much above the reach of human ability as an attempt at an accurate identification of the frontiers of a reasonable opportunity, no enumeration of a formula of universal application or a rule which can settle all cases can be possible. But there are certain broad and well-known principles by which a disciplinary authority should allow itself to be guided. If the accusation in a disciplinary proceeding is so grave as to merit a punishment of dismissal, removal or reduction in rank, the opportunity for defence may normally include an opportunity of representation although there may be cases in which the misconduct is so irrefutable that no defence can succeed. But if the misconduct has to be established by evidence, whether there is a solitary accusation or a battalion of them, it would be, of course, necessary to prove every such accusation by the production of evidence. But, in support of the submission that what justifies permission for representation is the complexity created by a conglomeration of charges or the exuberance of evidence or a troublesome legal question, we were referred to the decisions in *Dr. K. Subba Rao v. State of Hyderabad* [1958 - I L.L.J. 206] (vide supra), *Nripendra Nath Bagchi v. Chief Secretary, Government of West Bengal* [1961 - II L.L.J. 312] (vide supra) and *Nitya Ranjan Bohidar v. State* : AIR1962 Cal78 (vide supra), which have been already noticed in another context.

54. I do not read these decisions as laying down any such principle and I find it difficult to subscribe to any inflexible or rigid rule for the classification of cases in which legal representation may be claimed. That the right to representation should depend entirely upon the size of the case or on the magnitude of the evidence or on the complexity of the issues is a proposition which excludes counsel from a proceeding in which none of these three elements exists, regardless of the seriousness of the accusation and of the incapacity of the delinquent to defend himself, and, I would therefore hesitate to state the law in that form. Generally speaking, it seems to me that the real and true criterion in each case is whether

the refusal of representation generates prejudice or embarrassment and if that result is likely to ensure, the refusal of permission for defence through counsel would plainly lack the element of reasonableness. Whatever may be the complexion of the proceeding and however inconsiderable the evidence in it, it should not be forgotten that an inarticulate or obtuse Government servant would find himself in as serious a quandary when defending himself against a simple charge supported by inappreciable evidence and involving no intricate legal conundrums as a person of acuteness and affluence of language would, in a proceeding of greater perplexity. It is thus clear that the claim to representation should necessarily depend upon a variety of factors an enumeration of which can only be an imperfect catalogue which no one hopes to complete.

55. If the misconduct is the acceptance of a bribe, witnesses in support of the charge would be those who speak to its demands, those who speak to its payment and others whose evidence is of a circumstantial character and if in a case like the one before us the payment of the bribe was in pursuance of a preconceived trap set for him, the evidence would include that of persons who set the trap and executed it. But, there may be cases in which the evidence in support of the charge consists of a solitary witness who speaks to its payment. The theory that counsel may be appointed in the first category only if the evidence in support of the charge is overwhelming and that the second category of cases is so simple as contrasted with the first that the civil servant should have no difficulty in defending himself without the assistance of a lawyer, cannot claim the suffrage of reason. Whether the accusation rests upon the testimony of a single witness or upon a larger volume of evidence, its displacement is possible only by effective cross-examination the ability to do which is a faculty and art in which proficiency is attainable only by assiduous application and intensive study during a long period of uninterrupted application of the intellect and the mind. The most talented member of the legal profession quite often finds a forswearing witness the most difficult witness bidding defence to all his professional skill, and, to require a Government to demonstrate the falsity of his testimony by his own endeavour is only to involve him in perplexity which inexperience renders insurmountable, and that there is a solitary perjurer and not a regular army of them, can in no degree contribute to the simplification of the cross-examination which in both cases to be

effective, has to be equally dexterous. The exposition of an intricate question of law being quite often simpler even for the most experienced counsel that the cross-examination of an artful dissembler, the belief which we were asked to share that assistance of counsel in a case involves a mere question of fact is a needless luxury, must be dismissed as superficial.

56. If the question of fact as in the present case is whether a bribe was demanded or taken and witnesses are examined to give evidence in support of that charge, it is easy to imagine the difficulty of the civil servant who asked to personally cross-examine those witnesses. The assumption that a civil servant is endowed with the skill necessary for such cross-examination rests on an entirely unrealistic view unless it can be said that every civil servant before commencing his career in civil service has a duty to equip himself with the craft of cross-examination so that that talent may be employed in exoneration of a charge which may be made against him by some unscrupulous person at some stage of his career. Normally, if the accusation is of sufficient gravity and evidence is produced in support of that charge and the Government servant desires to get the witnesses giving such evidence cross-examined by a counsel, it does not appear reasonable to say that he should himself do the cross-examination, and refusal of permission to engage counsel when such evidence is led by one trained in the art of leading evidence would be aggravation of embarrassment.

57. The theory expounded at one stage that a disciplinary proceeding in which a Government servant cannot be sentenced to imprisonment or to fine but in which the maximum penalty which can be imposed is only one of dismissal, is a proceeding which does not have about it that gravity or solemnity of a criminal prosecution and that therefore no serious harm can ensue to the Government servant if it is insisted that he should defend himself personally, is a submission which should not, in my opinion, appeal to us. The dismissal of a Government servant from his post or his removal or reduction in rank which involves loss of office and disgrace and debasement to which he becomes subjected in the estimation of the community is, it is clear, what hurts a Government servant as much as his conviction by a criminal court.

58. No one can say - and no such submission was made to us - that a Government servant could be punished in a disciplinary proceeding without sufficient proof of misconduct. A belief to the contrary can be nurtured by the misconception that a fact which should be proved with sufficient clearness in other proceedings need not be proved in that way in a disciplinary proceeding and that a punishment in a disciplinary proceeding is possible and may be imposed even without sufficient proof. That, as in the case of any other employer who may terminate the services of his employee if he considers him to be unworthy of the post although that impression does not rest on any trustworthy evidence or proof, a moral conviction in the mind of the State that a civil servant is unworthy of continuing in his post could form the foundation for his dismissal, removal or reduction in rank, is what is made impossible by the Constitution which forbids the imposition of any such punishment except upon the establishment of facts justifying its imposition and unless the Government servant has been afforded an opportunity to defend himself fully.

59. So, if the probe into the truth of a charge cannot be less meticulous in a disciplinary proceeding than by a Court of law, before which counsel can be appointed as of right, and Art. 311(2) permits appointment of counsel if such appointment is reasonably necessary for defence and rule 11(5) authorizes the engagement of counsel only if the disciplinary authority 'having regard to the circumstances of the case' permits it, there can be little doubt that every relevant factor must influence the decision of the disciplinary authority which must rest on the facts and circumstances of each case. But the determination of the nice limits separating a reasonable opportunity from what is excessive being by no means easy, the purpose of the Constitution is best promoted by error if any on the side of superfluity, the enlargement of the opportunity which hurts none being less pernicious than its contraction which may generate mischief.

60. The disciplinary authority who holds the balance should put himself in the situation of the Government servant and after making a judicious estimate of the problem confronted by an unaided defence, transfer the weight generally in favour of representation. Experience reveals that as a rule counsel assists and does not obstruct and that a tribunal who is in too much of a hurry to refuse representation

encounters the danger of misjudgment, influenced by unavailability of proper guidance and assistance. That a proceeding can be concluded quicker without the impeding presence of counsel is a point of view which is open to the reproof that it casts a slur on a great profession and mistakes speed for judgment. Misconduct deserving a major punishment is not committed every day, and, when one who is accused of it is in peril of being visited with a major punishment which he would richly deserve if the accusation is true, I am unable to see why emphasis should be on quick punishment rather than on a fair hearing although it might involve expenditure of more thought, attention and time necessitated by aspects elucidated by counsel.

61. The narrowness of the concept on which the standards suggested for the State rest being thus sufficiently apparent, it becomes plain that every relevant fact must influence the decision of the disciplinary authority which must depend in each case on its own facts and circumstances thrown into prominence either by the preliminary enquiry which precedes the disciplinary proceeding or by the statement produced by the civil servant in defence or otherwise. But among those facts of the case invariably highlighted in that way there are some on which attention must need be focussed.

62. The accusation and its source, the character of the informant and his intentions, the types of witnesses supporting the charge, their status, antecedents and motives, the quality and the measure of the evidence in the case, the ineptitude of the personal endeavour of the delinquent to discredit a perjurer by effective cross-examination, the danger of a defence debilitated by the prohibition of counsel producing miscarriage of justice, the probability of a conspiracy for the victimization of an innocent person discovered impregnable to blandishment and influence in the performance of governmental duty and the chain of events culminating in the commission of the alleged act of misconduct are in the main some of the those matters towards which the disciplinary authority should unfailingly project its mind to aid its decision on the appropriateness of the request for counsel.

63. While a grave accusation or a charge resting on the evidence of a multitude of witnesses or documents can produce as much embarrassment and perplexity as a cluster of accusation in one impeachment, an unscrupulous complainant determined on persecution or an untrustworthy or disreputable witness interested in the complainant or antagonistic to the Government servant spares no effort at some smart fabrication which is also the process by which evidence springs up when a disappointed malefactor masquerades as a person of rectitude and transposes himself into the role of an accuser, similarly, inattention to surrounding circumstances and events can, sometimes, as in this case where even according to the accusation, the delinquent was inveigled into misconduct by or at the instance of the accuser, make a false charge appear unanswerable and a good defence look ridiculous.

64. So it is that rule 11(5) directs attention to the circumstances of the case and requires the application of the mind to all relevant surrounding matters and attendant facts and if of that there is no indication, or, the conviction induced in the mind of the Court is that those circumstances did demand introduction of counsel, or that the natural consequence of its refusal was or was likely to be the penalization of the defence, it would be its clear duty to say that no reasonable opportunity to show cause was afforded and to quash the punishment imposed on the foundation of a finding in a defective proceeding which did not conform to constitutional standards.

65. These are the principles by the application of which I should proceed to consider whether the introduction of counsel was improperly refused in this case. In the charge framed against the petitioner, he was accused of 'grave misconduct' and if it was true that he was had taken a bribe, it is clear that no smaller punishment than dismissal would be commensurate with the gravity of his misdemeanour. But if he was, on the contrary, innocent of the accusation, nothing could produce in him grater alarm and consternation than insistence on personal defence.

66. Now, in this case, it is not disputed that the application for permission to engage counsel was properly made to the Government who were the disciplinary

authority. The communication sent by the Government to the petitioner informing him that permission to appoint counsel would not be accorded reads :

'Government of Mysore, No. RD. 130 CBE 59.

Mysore Government Secretariat,

Vidhana Soudha

Dated Bangalore, 5 October, 1859

(Aswayuja, Saka, 1881).

From

The Secretary to the Government of

Mysore, Revenue Department,

To

T. Muniswami, Commercial Tax Officer,

(under Suspension), No. 38. Theobald Road,

Nazarbad, Mysore.

Sir

With reference to your letter dated 920 September, 1959 addressed to the Minister for Finance, I am directed to inform you that your request for permission to engage a legal practitioner to defend your case in the departmental proceedings against you cannot be granted.

Yours faithfully

(Sd.) N. J. GOREPEERZADE,

Under Secretary to Government,

Revenue Department.'

67. It is clear from this communication that the request for permission was made in September 1959 and was refused in October 1959. But the Petitioner had, in the meanwhile on 31 August, 1959, produced his statement in defence in which he made many averments of importance. He stated therein that after the petitioner was asked to take charge of the posts of the Assistant Commercial Tax Officer, No. 1 Sub-Circle, Chitradurga, he issued a show-cause notice under rule 37 of the Mysore Sales Tax Rules to a certain K. S. Krishnamurthi who owned a hotel in Chitradurga, directing him to appear before him with his accounts, and that 23 March, 1959, who was the date of hearing that person obtained an adjournment to 28 March, 1959. He proceeded to state that he issued a similar notice to a certain K. Nagaraja Rao who was another hotel-keeper at Chitradurga, that on 27 March, 1959, Krishnamurthi's hotel was inspected by the petitioner and that on the date of hearing which was 28 March, 1959, Krishnamurthi absented himself. The further allegation was that when on 28 March, 1959, Krishnamurthi met the petitioner at the travellers' bungalow and 'placed for a lenient view' both in his own case as well as in the case of Nagaraja Rao he was warned against such improper endeavours. That there was a conspiracy on the part of some disappointed persons at Chitradurga to harm the petitioner in relation for firmness in the discharge of official duty and that his apprehension in that regard had been communicated to the concerned Revenue Assistant Commissioner, District Superintendent of Police and the Deputy Commissioner of Commercial Taxes, that he was assured of their support and that they exhorted him to proceed with the performance of his duties undeterred by any acts of intimidation and that the accusation that he demanded or received a bribe had been manufactured as apprehended by him was the substance of his defence.

68. Krishnamurthi who had been directed by the petitioner to show cause why assessment should not be reopened under rule 37 of the Mysore Sales Tax Rules is no other than P.W. 1 in the disciplinary proceeding on whose information a trap was arranged by P.W. 6, an Assistant Superintendent of Police of the Anti-Corruption Department. If the petitioner's allegation was that this person made improper but unsuccessful attempts to influence his decision in the reassessment

proceeding concerning him and his relation Nagaraja Rao and that his professed rectitude had earned for him enemies who were engineering trouble for him and about whose activities he had made a report to his own superior officer and to the other concerned officers holding the highest position in the district, at a point of time much anterior to the date when he was accused of having demanded a bribe, those a statements although their truth had to be established, revealing as they are, could not be excluded from consideration for the limited purpose of deciding whether there was a case for permitting counsel. The authority which was approached for permission to engage counsel whose mind should have been projected towards the possibility of the invention of a false accusation and the fabrication of evidence to support it, was under a duty to consider whether in the circumstances, the prohibition against counsel would not prejudice the defence. Of the bestowal of any such through there is no indication whatsoever and it is clear that the refusal of the permission sought by the petitioner was not preceded by a consideration of any of the relevant circumstances of the case.

69. Indeed, the evidence in the disciplinary proceedings substantially established the truth of the antecedent circumstances explained by the petitioner, in his statement. P.W. 1, the complainant, admitted the attempt made by him to influence the petitioner's decision in the reassessment proceeding concerning his relation Nagaraja Rao. This is what he stated in his evidence :

'I do not remember whether I had told that day that Nagaraja Rao and I are close relatives, his worries are my worries, we are not of a different family, that he has taken fright at your notice and that the he left. You had given a notice regarding three years' accounts. I do not remember exactly for how many years. The notice was issued to him to show cause why his assessment should not be increased. I told you that Nagaraja Rao had a turnover at Modern Hotel of Rs. 35,000 and that you should not assess him to 70,000 to Rs. 80,000. Nagaraja Rao had told me that he was being assessed at Rs. 70,000 to Rs. 80,000.'

70. The Revenue Assistant Commissioner and the Deputy Commissioner of Commercial Taxes to whom the petitioner according to his statement had confided his anxieties were respectively examined as D.W. 1 and D.W. 3 and their evidence

fully supported the petitioner's allegations. D.W. 1 stated as follows :

'I have heard of the incident of the trap case against you. You had approached me for assistance in sales recoveries. You informed me once that some people were hatching plans to assault you and even to make an attempt on your life. I advised you to go to the District Superintendent of Police and keep him informed. That was before the incident of the trap. I was along with you when you approached the District Superintendent of Police. We had gone together to one village Rampur to conduct auction sale for recovery of sales tax dues. On our return to travellers' bungalow, I told you that if you were afraid of the mischief, why not you go to the District Superintendent of Police. We were travelling in the same car and the District Superintendent of Police was camping at Rampur. So I accompanied you and you spoke to the District Superintendent of Police. The District Superintendent of Police said that you should not worry, that nothing would happen.'

71. D.W. 3 gave the following evidence :

'I was Deputy Commissioner Commercial Taxes, Bangalore Division, from January 1958 up to July 1959. Chitradurga was in my charge. Muniswami who was then in charge of Chitradurga Circle complained to me orally that there was an attempt on his life and assault and to trouble him in different manners. This was conveyed by you at my Davangere camp. I am not sure whether it was on 18 February, 1959. It might have been. Prior to that you had also conveyed that information through a trunk call. At Davangere when you complained to me, I advised you to be firm and to go ahead with your work. Immediately after the incident of trap you came to me and represented to me on the next day and reported all that had happened. You also took my permission to see the Commissioner.'

72. That the petitioner was specially posted as Assistant Commercial Tax Officer, No. 1 Sub-Circle, Chitradurga, in the place of someone who was not equal to the work involved in that post, was also the evidence given by D.W. 3 :

'. . . I pressed before the Commissioner that you should be put in charge as there were a number of cases that were likely to become time-barred and the Assistant Commercial Tax Officer No. 2 was unable to cope with the work. Nobody

personally reported anything to me regarding your personal integrity and character during your stay in Chitradurga. You were giving me progress of collections and disposals and I had expressed good opinion about your work.'

73. P.W. 2, another hotel-keeper of Chitradurga, admitted that he had been called upon by the petitioner to produce his accounts in a proceeding for a reassessment of his turnover and that it was to his house that the Assistant Superintendent of Police of the Anti-Corruption Department was brought from Bangalore, and that it was again in his house that it was decided to set a trap. It is also seen from his evidence that the application of a chemical to the currency notes proposed to be used at the trap and the preparation of the mahazar in that context were all made in that house.

74. P.W. 4, who was one of the persons who participated in the preparation of the mahazar on that occasion, gave the following evidence :

'I have been working in Rachotappa's shop for the last five years. Rachotappa has produced his accounts in the Commercial Tax Office. A notice was issued to him to bring his accounts. I took the accounts on 19 March, 1959. I asked for an adjournment. I asked for a longer adjournment. You did not grant it. You only gave three days.'

75. It is of course true that the truth of many of the allegations contained in the petitioner's statement was only subsequently demonstrated by the evidence recorded in the disciplinary proceeding. But if the petitioner did set out in his statement many facts which if true rendered the circumstances of the case sufficiently exceptional, it is unreasonable to suggest that proof of those facts should precede a request for introduction of counsel. If a person who is accused of having taken a bribe pleads innocence and asserts that he is the victim of a conspiracy to implicate him and in support of that assertion states that when he was holding a post to which he was appointed in recognition of his special abilities, there was an unsuccessful attempt by the complainant to interfere with the course of a pending proceeding and that his firmness in the discharge of his official duty had generated animosity in certain persons who were conspiring to hurt him and that his apprehension of such danger had been communicated to the concerned

authorities and that a false accusation against him had been invented in that context, it would be very hazardous for a disciplinary whose permission to engage counsel is sought, to be insensible to the possibility of the petitioner being an innocent victim of an ingenious intrigue or to the perils of an unassisted defence resulting in a miscarriage of justice. That it would be dangerous for a disciplinary authority at that stage to presume the groundlessness of the allegations of the civil servant is what has been illustrated in this case in which every relevant factor which should have influenced the grant of permission to engage counsel and which was pleaded in defence was completely established by the evidence produced during the disciplinary proceeding. The provisions of rule 11(5) of the Mysore Civil Services (Classification, Control and Appeal) Rules authorizing the engagement of counsel in defence in a proper case can have little utility or meaning if a case like the present one in which the petitioner had truly and fully explained the unusual circumstances surrounding the disciplinary proceeding in which he was involved, cannot be considered as a proper case for the grant of permission under its provisions. There can be no better example of the unreasonableness of a mechanical refusal of permission to introduce counsel than this case in which the refusal of permission which was defended on the ground that the petitioner who was alleged to have been caught red-handed at a trap could not say that there was any complexity in his case, was not preceded by any consideration of the surrounding circumstances of the case to which attention was enjoined by the provisions of rule 11(5) and overlooked the material fact that the trap was itself engineered by a person of the character of P.W. 1 in collaboration with persons like P.W. 2 and P.W. 4 who had been driven to irksome situations by the proceedings commenced against them by the petitioner.

76. This was a case in which the petitioner who was accused of a serious act of misconduct the establishment of which was likely to be visited with punishment involving an eclipse of official career besides economic and moral degradation, pleaded innocence and complained that he was the victim of a determined and premeditated intrigue. The evidence in support of the charges consisted of a large number of witnesses. P.W. 1 was the complainant. P.W. 2 was another hotel-keeper who admittedly accompanied P.W. 1 to Bangalore when he went there to make a complaint that the petitioner had demanded a bribe and to whose the

Assistant Superintendent of Police was taken for the preparation of the trap. P.W. 3, who is another dealer of Chitradurga whose turnover is liable to assessment under the Sales Tax Act, and P.W. 4 who admitted that his request for a longer adjournment had been turned down by the petitioner, were the two witnesses who spoke to the preparation of the mahazar both in the house of P.W. 2 and in the travellers' bungalow immediately after the trap was executed. P.W. 6 is the Assistant Superintendent of Police of the Anti-Corruption Department who arranged the trap. P.W. 9 is a police inspector of the Anti-Corruption Department who participated in the trap and who spoke to its execution. P.Ws. 7 and 8 are the other members of the staff of the Anti-Corruption Department.

77. D.W. 1 was the Revenue Assistant Commissioner of Chitradurga. D.W. 2, who claimed to be present in the room of the petitioner when he was alleged to have received the bribe, and D.W. 5, a former municipal president and a sitting councillor of the town municipal council of Molakalmuru, gave evidence that at the time of the incident, far from the petitioner receiving a bribe from P.W. 1, he was admonishing P.W. 1 for visiting him in the travellers' bungalow. D.W. 4 is the District Superintendent of Police and D.W. 3 is the Deputy Commissioner of Commercial Taxes. D. Ws. 1, 3 and 4 gave evidence about the communication to them by the petitioner of the fears engendered in his mind of a plot to involve him and D.W. 3 commended the good work turned out by the petitioner in his post.

78. Although the charge against the petitioner was a solitary charge and the question involved in the disciplinary proceeding was a pure question of fact, the truth of the accusation against the petitioner depended entirely on the direct evidence of P.W. 1 who had made an unsuccessful attempt to deflect the course of the reassessment proceeding in his and relation's case, and on the evidence given by the other witnesses who arranged for the trap and executed it which constituted evidence of a corroborating character of equal materiality. The defence of the petitioner was that the currency notes employed in the trap were planted in his room and it was to prove that allegation that he produced the evidence of D. Ws. 2 and 5.

79. I can conceive of no clearer case for counsel than the one before us in which without the proper presentation of the defence by one endowed with the art of cross-examination and the capacity for clearer analysis of the evidence and facts, the truth may lie shrouded, as it may conceivably be in this case. If, in addition, the petitioner's impeachment was entrusted to a police inspector of the Anti-Corruption Department, very little persuasion was necessary to be convinced that the request for permission to appoint counsel in defence was not unreasonable and that its refusal greatly embarrassed the defence.

80. It is to my mind plain that a proper consideration of the history of the disciplinary proceeding, the seriousness of the charge, the source of the complaint, the nature of the testimony in support of the charges and the antecedent circumstances surrounding the proceedings could not but have demonstrated the serious prejudice to which refusal of permission to obtain professional assistance at his own expense expose the petitioner whose case had about it all the required complexity, if complexity is the criterion. While it is clear that there was no application of the mind of anyone in this case to those material factors, it is equally obvious that in the circumstances of this case introduction of counsel formed part of the reasonable opportunity claimable by him under Art. 311(2) of the Constitution. The refusal of that opportunity resulting in disobedience to the constitutional mandate vitiates the punishment imposed on the petitioner.

81. In the view that I take, it is not necessary to consider the other submissions made on behalf of the petitioner.

82. This writ petition, therefore, succeeds and the punishment imposed on the petitioner is set aside.

83. In the circumstances, there will be no order as to costs.

Iqbal Husain, J.

84. I agree.