

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9275 OF 2012

Hindustan Organic Chemicals Limited Employees'
Union ... Petitioner
Vs.
Hindustan Organic Chemicals Limited ... Respondent

WITH

WRIT PETITION NO.5113 OF 2013

Mukesh Langote ... Petitioner
Vs.
M/s. Lumax Industrial Private Limited ... Respondent

WITH

WRIT PETITION NO.352 OF 2015

M/s. Ohshung Electronics India Private Limited ... Petitioner
Vs.
Prakash Dattatraya Shinde and another ... Respondents

Ms Nayana Buch a/w. Mr. S. K. More for Petitioner in WP9275/12.

Mr. A. K. Jalisatgi for Respondent in WP9275/12.

Mr. Amitkumar Sale a/w. Mr. Vikrant Waghchoure for Bar Council of India in WP9275/12.

Mr. P. M. Patel for Petitioner in WP5113/13.

Mr. Prakash Shinde a/w. Ms Chinmayee Ghag i/b. MDP & Partners for Respondent in WP5113/13.

Mr. Kiran Bapat i/b. Mr. Avinash H. Fatangare for Petitioner in WP325/15.

Mr. P. M. Patel for Respondent No.1 in WP352/15.

CORAM : R. G. KETKAR, J.

Reserved on: **15TH JANUARY, 2015**

Pronounced on: **28TH JANUARY, 2015**

ORDER :

Heard Ms Buch, learned Counsel for petitioner, Mr. Jalisatgi, learned Counsel for respondent and Mr. Sale, learned Counsel for the Bar Council of India in Writ Petition No.9275 of 2012, Mr. Patel, learned Counsel for petitioner and respondent No.1 in Writ Petitions

No.5113 of 2013 and 352 of 2015 respectively as also Mr. Shinde, learned Counsel for respondent in Writ Petition No.5113 of 2013 and Mr. Bapat, learned Counsel for petitioner in Writ Petition No.352 of 2015 at length.

2. All these Petitions raise a common question of law namely, whether in any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute could be represented by a legal practitioner as of right and hence all these Petitions are disposed of by this common judgment.

3. Before considering this issue, it is necessary to state the relevant and material facts in all these Petitions. Writ Petition no.9275 of 2012 is instituted by the petitioner-union under Articles 226 and 227 of the Constitution of India challenging the judgment and order dated 31.07.2012 passed by the learned Presiding Officer, Central Government Industrial Tribunal-2, Mumbai below exhibit-6 in Reference CGIT-2/56 of 2011. By that order, the Tribunal rejected the application filed by the petitioner-second party raising objection to the respondent appointing a practising advocate in the reference. By order dated 18.10.2011, Government of India in exercise of powers conferred by clause (d) of sub-Section (1) and sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947 (for short 'I.D. Act') referred the following dispute for adjudication to the Central Government Industrial Tribunal:

The Schedule

“Whether the Union's Charger of demands dated 29/12/2008 submitted to the management of Hindustan Organic Chemical Limited, Rasayani is legal and justified? What privileges and other benefits are the Union/workmen entitled to?”

4. On 30.12.2011, Vakilpatra was filed by the respondent appointing a practising Advocate. On the same day, the petitioner filed application exhibit-6 objecting to the said appointment. The application was

opposed by the respondent by filing reply dated 19.03.2012. The petitioner filed rejoinder dated 02.04.2012. By the impugned order, the Tribunal rejected the application. The Tribunal considered the decision of the Division Bench of this Court (Coram: S.A.Bobde and P.B.Varale, JJ.) in the case of **Mohan Madhukar Sudame Vs. State of Maharashtra and others**¹ as also the order of the Apex Court in **M/s. Hygienic Foods Vs. Jasbir Singh and others**² where the Apex Court prima facie expressed opinion that “Section 36(4) of the I.D. Act debarring the lawyers from appearing before the Labour Court / Industrial Tribunal is unconstitutional being violative of Articles 14 and 19(1)(g) of the Constitution of India. This is because industrial law has become so complex that a layman cannot possibly present his case properly before Labour Court / Industrial Tribunal.”. The learned Presiding Officer held that the observations of the Apex Court though are mere obiter dicta, still, have a binding force till the Apex Court made observation contrary to it. In view thereof, the application exhibit-6 was rejected.

5. Writ Petition No.5113 of 2013 is instituted by the workman under Articles 226 and 227 of the Constitution of India challenging the judgment and order dated 20.04.2012 passed by the learned Presiding Officer, First Labour Court, Pune below exhibit-10 in Reference IDA No.86 of 2011. By that order, the Labour Court held that as per the notification dated 09.06.2011, Section 30 of the Advocates Act, 1961 (for short 'Advocates Act') has come into force with effect from 09.06.2011. In view thereof, the advocate whose name is entered in the State roll is entitled as of right to practise in the territories to which the Advocates Act extends. The services of the petitioner and that of 27 other workmen were terminated by the respondent. The industrial

¹ Writ Petition No.3107 of 1994 decided on 15.03.2012.

² Special Leave Petition to Appeal (Civil) No.10138 of 2010 decided on 06.05.2011.

dispute was raised under the I.D. Act and Reference was made to the Labour Court. The Reference was registered as Reference (IDA) No.86 of 2011. The date of hearing of the Reference was fixed on 20.06.2011. On that day, the petitioner-workman appeared in person and sought time. On 14.11.2011, by filing application exhibit-10, workman's representative objected to the respondent engaging practising Advocate. The respondent filed reply at exhibit-13 opposing that application. By the impugned order, the Labour Court rejected the application mainly on the ground that as per notification dated 09.06.2011, Section 30 of the Advocates Act has come into force with effect from 15.06.2011. Section 30 of the Advocates Act lays down that every advocate whose name is entered in the State roll is entitled as of right to practise throughout the territories to which the Act extend before any tribunal or person legally authorized to take evidence amongst others. Incidentally, it is necessary to note that on behalf of the petitioner, reliance was placed on several decisions in support of their contention that as per Section 36 of the I.D. Act, without the consent of the other side and leave of the Labour Court, Tribunal or National Tribunal, a party to a dispute cannot be represented by a legal practitioner. The Labour Court did not deal with those decisions. The petitioner thereafter filed review application at exhibit-18. The learned Judge dismissed the application on the ground that since Section 30 of the Advocates Act is brought into force with effect from 15.06.2011, Section 36(4) of the I.D. Act is impliedly repealed.

6. Writ Petition No.352 of 2015 is instituted by the employer under Articles 226 and 227 of the Constitution of India challenging the judgment and order dated 02.08.2014 passed by the learned Presiding Officer, 2nd Labour Court, Pune below exhibit-U6 filed by the respondent No.1 workman opposing appointment of advocate by the petitioner. Respondent No.1 raised industrial dispute claiming that he has been terminated from the services by the petitioner. On 22.04.2012,

respondent No.1 filed application exhibit U-6 objecting to the petitioner appointing practising Advocate. The petitioner filed reply dated 26.03.2014. It was contended that Section 30 of the Advocates Act has come into force with effect from 15.06.2011. Along with the reply, the petitioner also produced notification dated 09.06.2011. After hearing the parties, the Labour Court allowed the application. Since the respondent No.2 is the Labour Court, Pune, notice is dispensed with.

7. Rule in all the Petitions. The learned Counsel for respondents waive service. In view of the earlier orders as also at the request and by consent of the parties, rule is made returnable forthwith and the Petitions are taken up for final hearing.

8. Ms Buch appearing for the petitioner in Writ Petition No.9275 of 2012 submitted that the controversy in this Petition is squarely covered by the decision of the Apex Court in the case of **Paradip Port Trust Vs. Their Workmen**³. She submitted that the said decision is considered in the following decisions:

- a. **Sandoz (India) Limited Vs. Association of Chemical Workers and another**⁴;
- b. **Kamakshi R. Iyer (Mrs.) Vs. Hindustan Door-Oliver Ltd.**⁵;
- c. **M/s. Orissa Cement Limited Vs. State of Orissa**⁶; and
- d. **Chandrakant Vs. All India Reporter Limited**⁷.

9. She submitted that in the case of **Paradip Port Trust**³, the Apex Court has interpreted Section 36(4) of the I.D. Act. It also considered Section 30 of the Advocates Act and the fact that the said Section was not brought into force while deciding the said case. Even if Section 30 of the Advocates Act were to come into force, the Apex Court held that

³ (1977) 2 SCC 339

⁴ 1998 I CLR 109

⁵ 1996 I CLR 88

⁶ 1995 II LLJ 266 (Orissa High Court)

⁷ 2005 II LLJ 290

Industrial Disputes Act is a special piece of legislation with the avowed aim of labour welfare and representation before adjudicatory authorities therein has been specifically provided for with a clear object in view. This special Act will prevail over the Advocates Act which is a general piece of legislation with regard to the subject matter of appearance of lawyers before all courts, tribunals and other authorities. The I.D. Act is concerned with representation by legal practitioners under certain conditions only before the authorities mentioned under the Act. It was further held that matter is not to be viewed from the point of view of legal practitioner but from that of the employer and workmen who are the principal contestants in an industrial dispute. It is only when a party engages a legal practitioner as such that the latter is enabled to enter appearance before courts or tribunals. Under the I.D. Act, the restriction is upon a party as such and the occasion to consider the right of the legal practitioner may not arise. As regards the rights of Advocates to appear before the Labour Court, Tribunal or National Tribunal as of right, the parties will, therefore, have to conform to the conditions laid down in Section 36(4) in the matter of representation by legal practitioners. She submitted that decision in **Paradip Port Trust**³ is rendered by the three learned Judges of the Apex Court and is an authoritative pronouncement on the interpretation of Section 36(4).

10. She submitted that while rejecting the application-exhibit 6, the learned Presiding Officer relied upon the decision in the case of **Mohan Madhukar Sudame**¹. In that case, the Division Bench of this Court was considering Section 64 of the Maharashtra Universities Act, 1994 under which legal practitioners are not entitled to appear before the college tribunal. She submitted that the said decision is wholly inapplicable considering provisions of Section 36(4) of the I.D. Act vis-a-vis Section 30 of the Advocates Act.

11. She submitted that the learned Presiding Officer also held that the observations made by the Apex Court in the case of **M/s. Hygenic Foods**² though are mere obiter dicta, have a binding force till the Apex Court makes any observation contrary to it. She submitted that in the first place, the Apex Court prima facie expressed opinion that Section 36(4) of the I.D. Act debarring the lawyers from appearing before the Labour Court / Industrial Tribunal is unconstitutional being violative of Articles 14 and 19(1)(g) of the Constitution of India because industrial law has become so complex that a layman cannot possibly present his case properly before Labour Court / Industrial Tribunal. The Apex Court however, did not finally hold to that effect. Secondly, by subsequent order dated 08.05.2014, the Apex Court disposed of the Appeal keeping the issue of law open. She, therefore, submitted that the impugned order deserves to be set aside thereby allowing application exhibit-6 filed by the petitioner.

12. On the other hand, Mr. Jalisatgi supported the impugned order. He submitted that the conditions prevailing at the time of deciding **Paradip Port Trust**³ and the conditions prevailing today are materially different. The circumstances have undergone changes. Now, free legal aid is readily available across the country. Advocates Act is a special legislation regulating the appearance of advocates before various fora. Section 30 of the Advocates Act will override Section 36(4) of the I.D. Act. He relied upon the decision of the Apex Court in the case of **Aeltemesh Rein Vs. Union of India**⁸, and in particular paragraphs 3 and 4 thereof. In paragraph 4, the Apex Court also noted Section 36(4) of the I.D. Act. It was further observed that the Legal Aid and Advice Boards, which are functioning in different States, can now be approached by people belonging to weaker sections, such as, Scheduled Castes, Scheduled Tribes, women, labourers etc. for legal assistance and

8 AIR 1988 SC 1768

for providing the services of competent lawyers to appear on their behalf before the Courts and Tribunals in which they have cases. The Apex Court prima facie observed that there appear to be no justification for not bringing into force Section 30 of the Advocates Act. Eventually, the Apex Court issued Writ of Mandamus directing the Central Government to consider within a period of 6 months whether Section 30 of the Advocates Act should be brought into force or not.

13. Mr. Jalisatgi further submitted that in the order dated 06.05.2011, the Apex Court in **M/s. Hygienic Foods**² prima facie expressed opinion that “Section 36(4) of the I.D. Act debarring the lawyers from appearing before the Labour Court / Industrial Tribunal is unconstitutional being violative of Articles 14 and 19(1)(g) of the Constitution of India. This is because industrial law has become so complex that a layman cannot possibly present his case properly before Labour Court / Industrial Tribunal.” The Tribunal ought to have therefore, stayed its hand. The Tribunal however, proceeded with the matter and rejected the application, exhibit-6 on 31.07.2012. In support of this submission, he relied upon the decision of the Apex Court in the case of **Mohinder Kumar Vs. State of Haryana**⁹.

14. Mr. Patel appearing for petitioner in Writ Petition No.5113 of 2013 submitted that the right to practise is not an absolute right which is free of restriction and is without any limitation. Under Section 29 of the Advocates Act, only one class of persons is entitled to practice the profession of law, namely, advocates. Section 30 of the Advocates Act provides that subject to the provisions of the Act, every advocate whose name is entered in the State rolls shall, as a matter of right, be entitled to practice throughout the territories to which this Act applies, in all courts including the Supreme Court of India. Such an Advocate would also be

9 (2001) 10 SCC 605

entitled to practice before any tribunal or person legally authorized to take evidence and before any other authority or person before whom such an advocate is, by or under any law for the time being in force, entitled to practice. Section 33 of the Advocates Act further states that except as otherwise provided in that Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practice in any court or before any authority or person unless he is enrolled as an advocate under the Advocates Act. A bare reading of these three provisions clearly shows that this is a statutory right given to an advocate to practise. The right to practise, which is not only a statutory right under the provisions of the Advocates Act but would also be a fundamental right under Article 19(1)(g) of the Constitution is subject to reasonable restrictions. He submitted that Section 36(4) of the I.D. Act lays down reasonable restrictions. He further submitted that no litigant has a fundamental right to be represented by a lawyer in any Court.

15. Mr. Patel further submitted that vires of Section 36(4) was challenged before Madras High Court in the case of **National Horticultural Research Vs. P. Murugesan**¹⁰. In that case, on behalf of the petitioner reliance was placed upon the decision of Allahabad High Court in the case of **I.C.I. India Limited Vs. Labour Court**¹¹ wherein Section 36(4) of the I.D. Act was struck down being violative of Article 19(1)(g) of the Constitution of India. The learned Single Judge of Madras High Court, in that case, after following the decision in **Paradip Port Trust case**³ did not follow the decision of Allahabad High Court. Mr. Patel also relied upon the decision of Kerla High Court in the case of **J. Subhash Vs. Labour Court**¹², wherein the learned Single Judge held that Section 36(4) is valid and not ultra vires either Article 14 or

10 W.P.(MD) No.5239 of 2010 decided on 12.07.2010

11 1992 (1) L.L.N. 972

12 1993 I L.L.J. 273

Article 19(1)(g) of the Constitution of India. He also relied upon the decision of the Apex Court in the case of **N. K. Bajpai Vs. Union of India**¹³, wherein the decision of **Paradip Port Trust**³, among other decisions, was considered.

16. Mr. Patel submitted that the impugned order is totally perverse as the Labour Court did not consider the decision of the Apex Court in **Paradip Port Trust**³ and other decisions though they were cited. The petitioner therefore, filed Review Petition and by order dated 21.09.2012, the Labour Court dismissed the application exhibit-18 filed by the petitioner on the ground that Section 30 of the Advocates Act is brought into force with effect from 15.06.2011 and the said provision has impliedly repealed Section 36(4) of the I.D. Act. He, therefore, submitted that the impugned orders deserve to be set aside thereby allowing exhibits 10 and 18.

17. On the other hand, Mr. Shinde supported the impugned order. He submitted that the petitioner raised objections on 14.11.2011 which was the second date. In other words, according to him, the petitioner ought to have raised objections as regards appearance of Advocate on behalf of the respondent on the very first date of hearing and since the objection was not raised on the first date of hearing, the same is deemed to have been waived. In support of his proposition, he relied upon the following decisions:

- a. **Sandoz (India) Limited**⁴;
- b. **Engineering Mazdoor Sabha, Bombay Vs. Mahar (M.R.) (Industrial Tribunal, Bombay)**¹⁴.

He, therefore, submitted that no interference is called for at the hands of this Court.

¹³ AIR 2012 SC 1310

¹⁴ 1996 I L.L.J. 580

18. Mr. Bapat appearing for the petitioner in Writ Petition No.352 of 2015 submitted that Section 36(4) does not lay down any embargo on the appearance of the advocates. On the other hand, Section 30 of the Advocates Act will override Section 36(4) of the I.D. Act. He submitted that at the time of deciding the case of **Paradip Port Trust**³, Section 30 of the Advocates Act was not brought into force and Section 14(1)(b) of the Indian Bar Councils Act which was in force at that time laid down that the Advocate shall be entitled as of right to practise save as otherwise provided by sub-Section (2) or by or under any other law for the time being in force in any other Court in British India or before any Tribunal or person legally authorized to take evidence. The discussion as regards Section 30 in that judgment are merely passing remarks and are not even observations as the said issue was not referred and it cannot cull out from the case. The Court was dealing with hypothetical argument and gave hypothetical answer. It was merely an expression of opinion and not an authoritative pronouncement. Mere observations in that decision do not amount to obiter dicta, and therefore, are not binding on the High Court. He further submitted that in the case of **I.C.I. India Limited**¹¹, Allahabad High Court has struck down Section 36(4)(b) of the I.D. Act. In support of his submissions, he relied upon the following decisions:

- a. **Mohandas Issardas Vs. A. N. Sattanathan**¹⁵;
- b. **I.C.I. India Limited**¹¹;
- c. **Kusum Ingots & Alloys Limited**¹⁶; and
- d. **State of Tamil Nadu Vs. K. Shyam Sunder**¹⁷.

19. He submitted that once the Allahabad High Court has struck down Section 36(4) of the I.D. Act being violative of Article 19(1)(g), the effect is that the said provision has never been in existence. He

¹⁵ AIR 1955 Bombay 113

¹⁶ (2004) 6 SCC 254

¹⁷ (2011) 7 SCC 737

submitted that the Labour Court committed error in allowing the application filed by the respondent. He, therefore, submitted that the impugned order deserves to be set aside thereby dismissing the application exhibit U-6.

20. Mr. Amit Sale appearing for Bar Council of India has invited my attention to the affidavit in reply filed by J. R. Sharma, Secretary in Writ Petition No.9275 of 2012. He submitted that in pursuance of the order dated 06.05.2011 passed by the Apex Court in **M/s. Hygienic Foods**², the General House of the Council convened meeting on 09.05.2014 under item No.9275 of 2012 and resolved that only advocates are entitled to practise in all courts including the labour court, tribunal and national tribunal.

21. Thus, all these Petitions raise a common question of law namely, whether in any proceeding before a labour court, tribunal or national tribunal, a party to the dispute could be represented by a legal practitioner as of right. In my opinion, the issue is squarely covered by the decision of the Apex Court in the case of **Paradip Port Trust**³. Section 36 of the I.D. Act reads as under:

“36. Representation of parties.- (1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

(a) any member of the executive or office bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

(a) an officer of an association of employers of which he is a member;

- (b) an officer of a federation of association of employers to which the association referred to in clause (a) is affiliated;
- (c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorized in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be.”

22. The scope of Section 36 came up for consideration before the Apex Court in **Paradip Port Trust**³. In paragraphs 10, 11 and 14, it was observed thus:

“10. The question that arises for consideration will turn on the interpretation of Section 36 of the Act which may be quoted:

36(1) A workman who is a party to a dispute shall be entitled to be represented in an proceeding under this Act by-

(a) any member of the executive or other office bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or other office hearer of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorised in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by--

(a) an officer of an association of employers of which he is a member;

(b) an officer of a federation of associations of employers to which the association referred to clause (a) is affiliated;

(c) where the employer is not a member of any association of employers by an officer of any association of employers

connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be."

11. Section 36 provides for representation of parties before the Tribunals and the Labour Court. Under Section 36(1) a workman who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by three classes of officers mentioned in (a), (b) and (c) of that sub-section. Similarly under Section 36(2) an employer who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by three classes of officers mentioned in (a), (b) and (c) of that sub-section. By sub-section (3) a total ban is imposed on representation of a party to a dispute by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court of enquiry. Then comes Section 36(4) which introduces the requirement of prior consent of the opposite party and leave of the Tribunals and of the Labour Court, as the case may be, for enabling a party to be represented by a legal practitioner.

14. Again, although under Section 36(2)(c) there is provision for the contingency of an employer not being a member of an association of employers, the device of representation provided therein would not fit in the case of a Government Department or a public corporation as an employer. These categories of employers, known to the Act, will be put to the most unnatural exercise of enlisting the aid of an outside association, albeit connected with the same type of industry, to defend their cases before Tribunals. Such an absurd intent cannot be attributed to the legislature in enacting Section 36, which will be, if that Section is the be all and end all of the types of representations envisaged under the Act. The impossibility of the position indicated above a crucial pointer to Section 36 being not exhaustive but only supplemental to any other lawful mode of representation of parties."

23. In paragraph 20, the Apex Court noted the submission that the word "and" in Section 36(4) should be read as "or" in which case refusal to consent by a party would not be decisive in the matter. The Tribunal

will then be able to decide in each case by exercising its judicial discretion whether leave, in a given case, should be given to a party to be represented by a lawyer notwithstanding the objection of the other party. The said contention was dealt with in paragraphs 20 and 21, which are to the following effect:

“20. The Solicitor General contends that "and" in Section 36(4) should be read as "or" in which case refusal to consent by a party would not be decisive in the matter. The Tribunal will then be able to decide in each case by exercising its judicial discretion whether leave, in a given case, should be given to a party to be represented by a lawyer notwithstanding the objection of the other party. It is pointed out by the Solicitor General that great hardship will be caused to public corporations if the union is given a carte blanche to finally decide about that matter of representation by refusing to accord its consent to representation of the employer through a legal practitioner. It is pointed out that public corporations, and even Government running a transport organisation like the State transport, cannot be expected to be members of any employers' association. In their case Section 36(2) will be of no avail. To deny them legal representation would be tantamount to denial of reasonable opportunity to represent their cases before the Tribunal. It is submitted that since such injustice or hardship cannot be intended by law the final word with regard to representation by legal practitioners before the Tribunal should rest with the Tribunal and this will be effectively implemented if the word "and" in Section 36(4) is read as "or". This, it is said, will also achieve the object of the Act in having a fair adjudication of disputes.

21. We have given anxious consideration to the above submission. It is true that "and" in a particular context and in view of the object and purpose of a particular legislation may be read as "or" to give effect to the intent of the legislature. However, having regard to the history of the present legislation, recognition by law of the unequal strength of the parties in adjudication proceedings before a Tribunal, intention of the law being to discourage representation by legal practitioners as such, and the need for expeditious disposal of cases, we are unable to hold that "and" in Section 36(4) can be read as "or".”

24. The Apex Court also dealt with the contention urged by the appellant that under Section 30 of the Advocates Act, every advocate is entitled “as of right” to practise in all courts and before any tribunal

[Section 30(i) and (ii)]. The Apex Court held that I.D. Act is a special piece of legislation which will prevail over the Advocates Act which is a general piece of legislation. Paragraphs 22 and 23 read thus,

“22. Consent of the opposite part is not an idle alternative but a ruling factor in Section 36(4). The question of hardship, pointed out by the Solicitor General, is a matter for the legislature to deal with and it is not for the courts to invoke the theory of injustice and other consequences to choose a rather strained interpretation when the language of Section 36 is clear and unambiguous.

23. Besides, it is also urged by the appellant that under Section 30 of the Advocates Act, 1961, every advocate shall be entitled "as of right" to practise in all courts, and before only tribunal Section 30(i) and (ii). This right conferred upon the advocates by a later law will be properly safeguarded by reading the word "and" as "or" in Section 36(4), says counsel. We do not fail to see some difference in language in Section 30(ii) from the provision in Section 14(1) (b) of the Indian Bar Councils Act, 1926, relating to the right of advocates to appear before courts and tribunals. For example, under Section 14(1) (b) of the 547 Bar Councils Act, an advocate shall be entitled as of right to practise save as otherwise provided by or under any other law in any courts (other than High Court) and tribunal. There is, however, no reference to "any other law" in Section 30(ii) of the Advocates Act. This need not detain us. We are informed that Section 30 has not yet come into force. Even otherwise, we are not to be trammelled by Section 30 of the Advocates Act for more than one reason. First, the Industrial Disputes Act is a special piece of legislation with the avowed aim of labour welfare and representation before adjudicatory authorities therein has been specifically provided for with a clear object in view. This special Act will prevail over the Advocates Act which is a general piece of legislation with regard to the subject matter of appearance of lawyers before all courts, tribunals and other authorities. The Industrial Disputes Act is concerned with representation by legal practitioners under certain conditions only before the authorities mentioned under the Act. Generalia Specialibus Non Derogant. As Maxwell puts it:

Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. In the absence of these conditions, the general statute is read as silently

excluding from its operation the cases which have been provided for by the special one.

25. The submissions made by Mr. Bapat that the discussion as regards Section 30 in that judgment are merely passing remarks and are not even observations as the said issue was not referred cannot be accepted. It also cannot be accepted that it was merely an expression of opinion and not an authoritative pronouncement. Before the Apex Court, specific contention was raised based on Section 30 of the Advocates Act, and the same was authoritatively answered.

26. Apart from that, the case of **Paradip Port Trust**³ was also considered in the case of **N. K. Bajpai**¹³. In paragraph 15, the Apex Court considered the provisions of Sections 29, 30 and 33 of the Advocates Act and observed that a statutory right is given to an advocate to practise and advocate alone is the person who can practise before the courts, tribunals, authorities and persons. But this right is statutorily regulated by two conditions – one, that a person's name should be on the State rolls and second that he should be permitted by the law for the time being in force, to practice before any authority or person, that right can be denied by a law that may be framed by the competent legislature. Thus, the right to practise is not an absolute right which is free of restriction and is without any limitation. In paragraph 16, it was observed that the right to practise is not only a statutory right under the Advocates Act but also is a fundamental right under Article 19(1)(g) of the Constitution of India and is subject to reasonable restrictions. In paragraph 25, the Apex Court considered **Paradip Port Trust case**³ and observed thus,

“25. In the case of Paradip Port Trust, this Court dealt with the right of the legal practitioners to represent employers before the Industrial Tribunal that too only with the consent of the opposite party and leave of the Tribunal. The restriction was limited in its scope and impact and this Court held that it was not violative of the right of the legal practitioners as they will have to conform to

the conditions laid down in Section 36(4) of the Industrial Disputes Act, 1947.”

27. In paragraph 27, the Apex Court considered decision in the case of **Lingappa Pochamma Appelwar Vs. State of Maharashtra**¹⁸ and observed that it was well settled that apart from under the provisions of Article 22 of the Constitution, no litigant has a fundamental right to be represented by a lawyer in any Court. In paragraph 29, it was observed that an objective analysis of the above principles makes it clear that except where the challenge is on the grounds of legislative incompetence or the restriction imposed was ex-facie unreasonable, arbitrary and violative of Part III of the Constitution of India, the restriction would be held to be valid and enforceable.

28. In view of the categorical finding recorded by the Apex Court in paragraph 25, extracted hereinabove, the reliance placed by Mr. Bapat on the decision of the learned Single Judge of the Allahabad High Court in the case of **I.C.I. India Limited**¹¹ is wholly misconceived. The Apex Court in terms held that the restriction imposed in Section 36(4) is limited in its scope and impact and is not violative of right of the legal practitioners as they have to conform to the conditions laid down in Section 36(4) of the I.D. Act. That apart, the learned Single Judge of Kerala High Court in the case of **J. Subhash**¹² has held that Section 36(4) is violative not of either Article 14 or Article 19(1)(g) of the Constitution of India. The long and short of the above discussion is that the law laid down in **Paradip Port Trust**³ still holds the field, and therefore, the parties will have to conform to the conditions laid down in Section 36(4) in the matter of representation by legal practitioners.

29. As noted earlier, Writ Petition No.9275 of 2012 is filed challenging the order dated 31.07.2012 passed by the learned Presiding

¹⁸ (1985) 1 SCC 479

Officer, Central Government Industrial Tribunal-2, Mumbai below exhibit-6. By that order, application exhibit-6 was rejected. The learned Presiding Officer relied upon the decision in the case of **Mohan Madhukar Sudame**¹ as also the order dated 06.05.2011 passed by the Apex Court in the case of **M/s. Hygienic Foods**². The decision in **Mohan Madhukar Sudame's case**¹ is not applicable while considering provisions of Section 36(4) of the I.D. Act vis-a-vis Section 30 of the Advocates Act. As far as the order dated 06.05.2011 is concerned, by subsequent order dated 08.05.2012, the Apex Court disposed of the Appeal keeping the issue of law open. Mr. Jalisatgi submitted that the Tribunal should have stayed its hand during the pendency of **M/s. Hygienic Foods' case**² before the Apex Court. I do not find any merit in the submission of Mr. Jalsatgi for more than one reason. In the first place, the said contention was not raised before the Tribunal. Secondly, in the case of **Ashok Sadarangnani Vs. Union of India**¹⁹, the Apex Court considered its earlier decision in **Harbhajan Singh Vs. State of Punjab**²⁰ and observed in paragraph 29 that the pendency of a reference to a larger Bench does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. Thirdly, by subsequent order dated 08.05.012, the Apex Court disposed of the Appeal in **M/s. Hygienic Foods' case**² by keeping the issue of law open. Lastly, in view of the decision of the Apex Court in the case of **N. K. Bajpai**¹³ wherein the Apex Court has extracted paragraph 25 of **Paradip Port Trust's case**³, wherein it was held that the restriction was limited in its scope and impact and was not violative of the right of the legal practitioners as they will have to conform to the conditions laid down under Section 36(4) of the Act. In view thereof, the impugned order is, therefore, liable to be set aside thereby allowing the application exhibit-6. Hence, Rule is made absolute in terms of

¹⁹ (2012) 11 SCC 321

²⁰ (2009) 13 SCC 608

prayer clause (a)(i) and a(ii) of the application with no order as to costs.

30. In Writ Petition No.5113 of 2013, the petitioner has challenged orders dated 20.04.2012 and 21.09.2012 below exhibits 10 and 18 respectively. While dismissing the application at exhibit-10, the Labour Court held that Section 30 of the Advocates Act came into force on 15.06.2011, and therefore, objections to the appearance of the advocate is not tenable. In the first place, the learned Presiding Officer did not deal with the decisions in **Paradip Port Trust's case**³ and others though they were specifically referred. That apart, while dismissing the review application, the Labour Court held that Section 30 of the Advocates Act impliedly repealed Section 36(4) of the I.D. Act. For the reasons already indicated, the impugned orders cannot be sustained. Mr. Shinde, however submitted that the petitioner raised objection on 14.11.2011, which was the second date. In other words, the petitioner did not raise objections as regards appearance of the Advocate on behalf of the respondent on the very first date of hearing. From the perusal of the material on record, it is evident that the first date of hearing was 20.06.2011. On behalf of the petitioner-workman, application for adjournment was made on that date. In view thereof, it cannot be said that the said date was the first effective date of hearing. In view thereof, I do not find any merit in the submission of Mr. Shinde that objection was not raised on the first date of hearing. The reliance placed by him on the decisions of **Sandoz (India) Limited**⁴ and **Engineering Mazdoor Sabha, Bombay**¹⁴ does not advance the case of the petitioner. Impugned order deserves to be quashed and set aside. Hence, the Petition succeeds. Rule is made absolute in terms of prayer clause (a) with no order as to costs.

31. In Writ Petition No.352 of 2015, the Labour Court allowed the application U-6 filed by the respondent thereby holding that petitioner is

not entitled to engage practising advocate. For the reasons indicated earlier, I do not find that the Labour Court committed any error in passing the impugned order. Hence, the Petition fails and the same is dismissed. Rule is discharged. In the circumstances of the case, however, there shall be no order as to costs.

(R. G. KETKAR, J.)

Minal Parab