

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

W.P.(C).No.4896 of 2015 (J)

AGAINST THE ORDER IN I.A.NO.10 OF 2013 IN I.D.NO.8 OF 2012 DATED 16.07.2013
OF LABOUR COURT, KOLLAM.

PETITIONER(S):-

SMT.B.SATHI,
MANAGING PARTNER, HOTEL SUDARSAN, PARAMESWAR NAGAR,
KOLLAM

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS.

RESPONDENT(S):-

1. THE LABOUR COURT, KOLLAM.

2. THE SECRETARY
QUILON HOTEL AND TEA SHOP WORKERS UNION, MUNDAKKAL
KOLLAM-691010.

R1 BY GOVERNMENT PLEADER SRI.R.RANJITH.
R2 BY ADVS. SRI.B.ASHOK SHENOY
SMT.C.G.PREETHA
SRI.K.V.GEORGE
SRI.P.N.RAJAGOPALAN NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.4896 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:- TRUE COPY OF THE WRITTEN STATEMENT DTD 27/3/2013 IN
ID NO 8/2012 FILED BEFORE THE IST RESPONDENT ON BEHALF
OF THE PETITIONER.

EXT.P2:- TRUE COPY OF THE OBJECTION STATEMENT FILED BY THE
PETITIONER IN ID NO 8/2012 BEFORE THE IST RESPONDENT
ON APRIL, 2013.

EXT.P3:- TRUE COPY OF THE ORDER DTD 16/7/2013 IN IA NO 10 OF 2013 IN
ID NO 8/2012 PASSED BY THE IST RESPONDENT.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

“C.R.”

K. Vinod Chandran, J.

W.P(C) No.4896 of 2015-J

Dated this the 20th day of March, 2015

JUDGMENT

The issue arising for consideration herein is whether by enforcement of Section 30 of the Advocates Act, 1961 [for brevity “Advocates Act”]; an Advocate engaged by a party in a proceeding, before a Labour Court/Industrial Tribunal, under the Industrial Disputes Act, 1947 [for brevity “ID Act”]; gets an absolute right to appear for and on behalf of the litigant. Would Section 30 of the Advocates Act override the specific restriction in sub-section (4) of Section 36 of the ID Act?

2. The individual management is the petitioner herein and the 2nd respondent is the Secretary of a Union representing a worker in an industrial dispute before the Labour Court. The management was represented by a power of attorney holder, who was incapacitated due to medical complications and, hence, the management sought appearance through a legal practitioner, who was, however, declined consent under sub-section (4) of Section 36 of the ID Act, by the Union.

3. The learned Senior Counsel appearing for the management would contend that the issue is covered by the decision of a learned Single Judge of this Court in ***Saji v. Union of India* [2011 (3) KLT 936]**, wherein the specific effect of introduction of Section 30 was considered. Any restriction, in any of the enactments as in force on the date of notification, for Advocates to appear before a Court, Tribunal or a person legally authorised to take evidence and any authority or person before whom such Advocate is entitled to practice, would be taken away, is the binding precedent. The learned Senior Counsel would also rely on the decisions in ***Lingappa Pochanna v. State of Maharashtra* [AIR 1985 SC 389]** and ***Aeltemesh Rein v. Union of India* [(1988) 4 SCC 54]** to contend that the Hon'ble Supreme Court has time and again noticed the fact that Section 30, under the Advocates Act, had not been notified and had also taken serious note of the fact that the Legislature had not considered the changing times to bring into force such provision so as to enable Advocates to appear before the Courts, Tribunals and other authority or persons; to enable a proper adjudication of the issues coming up before such authorities. It is also specifically pointed out that ***Aeltemesh***

Rein (*supra*) notices the ID Act, especially Section 36(4), which restricts the appearance of a counsel in an industrial dispute. The Hon'ble Supreme Court also issued a mandamus to the Central Government to consider enforcement of Section 30 of the Advocates Act within a period of six months. A Division Bench decision of the Punjab and Haryana High Court in **Paramjit Kumar Saroya v. Union of India and another** [CWP-7282-2010 and 12340-2010 (O&M) dated 28.05.2014] has also considered the restriction in the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 to find that the introduction of Section 30 of the Advocates Act would take away such restriction.

4. The learned counsel for the 2nd respondent, however, would rely on another judgment of this Court, authored by me in O.P.(LC).No.6 of 2014 dated 17.02.2014 [**A.C.Anandan (Monachan) v. G.Vijayakumar**]; where the specific question of the overriding nature of Section 30 of the Advocates Act and the introduction of a notification was considered and it was held, following the decision of the Hon'ble Supreme Court in **Paradip Port Trust, Paradip v. Their Workmen** [AIR 1977 SC 36], that the prohibition in Section 36(4) of the ID Act would not be overridden

by the introduction of Section 30 of the Advocates Act.

5. The learned counsel appearing for the 2nd respondent would point out that sub-section (3) of Section 36 of the ID Act is restrictive in nature and sub-section (4) is not a restriction; but is an enabling provision, which enables any party to be represented by a legal practitioner if the other party consents to it. It is also submitted that sub-section (3) would have no effect to a proceeding in a Labour Court, Tribunal or National Tribunal, since “Court” is specifically defined under clause (f) of Section 2, which is only a Court of Inquiry constituted under the ID Act. “Labour Court”, “National Tribunal” and “Tribunal” have been separately defined in Section 2(kkb), 2(II) and 2(r). It is the compelling argument of the learned counsel for the 2nd respondent that the representation by a legal practitioner is enabled only with the consent of parties and there is no restriction as such, which could be removed on leave granted by the Labour Court or Tribunal.

6. The restriction under sub-section (4) of Section 36 of the ID Act is not against an Advocate appearing for the parties. The restriction is one on the contesting litigant to engage a counsel if the other party desists from doing so and also refuses consent to

do so. The provision is unique to the Act and is introduced only in the nature of the proceedings, which have been culled out from the jurisdiction of the ordinary civil courts, considering the expediency with which industrial adjudication are to be concluded. This is necessitated for maintenance of industrial peace required for societal advancement as also considering the grossly unequal status of the contesting litigants being the employer and the employee.

7. What arises for consideration is the interpretation of Section 30 of the Advocates Act and Section 36(4) of the ID Act; in the background of the object behind the special enactment.

8. The relevant provisions are extracted hereunder:

Advocates Act

“S.30. Right of advocates to practise.- Subject to the provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which this Act extends,-

- (i) in all Courts including the Supreme Court;
- (ii) before any tribunal or person legally authorised to take evidence; and
- (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise”.

ID Act**“S.36. Representation of parties.-**

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xxx

xxx

(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”.

9. In ***Saji*** (*supra*), the questions raised were the following:

- (i) Whether Sheristadar of Family Court can insist that litigant should execute the vakalath in his presence?
- (ii) Whether personal presence of litigant is necessary to file application, petition or such proceedings before Family Court?
- (iii) After bringing into force S.30 w.e.f.125.6.2011, whether lawyers have acquired a right to practice before all courts/Tribunals and such other forums as of right?
- (iv) After implementation of S.30 of Advocates Act, whether it is having the traits and effect of a subsequent legislation to override the restrictive covenants as contained in S.13 of Family Courts Act?
- (v) Whether prior sanction for engaging a lawyer before Family Court is necessary?”

A learned Single Judge of this Court found that, by Section 13 of the Family Courts Act, 1984, the right of a litigant to be represented through a lawyer, in a Family Court, was not automatic; but sanction had to be obtained from Court. However, on the notification of Section 30 of the Advocates Act, made effective from the appointed date of 15.06.2011, all the Advocates have acquired a right to practise before all Courts/Tribunals and such other forum in the country as a matter of right. The notification, appointing a date for the coming into force of section 30 of the Advocates Act, according to the learned Judge, has the trait and effect of a legislation overriding the restrictive covenants as contained in Section 13 of the Family Courts Act, 1984. It was, hence, held that Section 13, necessitating prior sanction of the Family Court, has virtually become redundant. I am fully in agreement with the above proposition.

10. However, it has to be noticed that the said decision may not have relevance herein, since sub-section (4) of Section 36 of the ID Act does not confer any discretion on the Labour Court or the Tribunal to permit the appearance of a legal practitioner, in an industrial dispute adjudicated before it. The prohibition is not

against the Advocate as such; but is against the party to the *lis* and that too if no consent is given by the opposing party; be it the employee or the employer. It goes without saying that, the party refusing consent also would be disabled, from being represented by a legal practitioner.

11. The reliance placed on the Punjab & Haryana High Court judgment in ***Paramjit Kumar Saroya*** (*supra*) also would not be applicable, as the legislation dealt with therein, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007; provided for an outright prohibition of the appearance of a legal practitioner. No discretion was conferred on the Tribunal under the enactment to grant leave for such appearance; which restriction stands removed by the enforcement of Section 30 of the Advocates Act, was the finding.

12. In ***Lingappa Pochanna*** (*supra*) it was specifically noticed that Section 30 of the Advocates Act was not brought into force for 22 years and, hence, an Advocate is not *ipso facto* entitled to an audience in all Courts. The Hon'ble Supreme Court specifically referred to Section 14(1)(a) and (c) of the Bar Councils Act, 1926, which grants an authority to an Advocate to practise in

any Courts subject only to any other law for the time being in force. The said aspect being regulated by different statutes, the Hon'ble Supreme Court was of the opinion that the right to practise must depend upon those other statutes, since Section 30 was, then, not notified. It was also specifically noticed that the Courts could do little in the matter and it was for the legal profession to take up the matter before the Central Government.

13. ***Aeltemesh Rein*** (*supra*) also specifically observed that:

“We have travelled a long distance from the days when it was considered that the appearance of a lawyer on one side would adversely affect the interests of the parties on other side. 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 for providing the services of competent lawyers to appear on their behalf before the courts and tribunals in which they have cases. In these circumstances *prima facie* there appears to be now no justification for not bringing into force Section 30 of the Act”.

In fact, the learned Senior Counsel for the petitioner would invite this Court to para 4 of ***Aeltemesh Rein*** (*supra*), where sub-section (4) of Section 36 of the ID Act was referred to as one of the enactments which restricts the appearance of the Advocates before the Labour Court/Tribunals.

14. It is to be specifically noticed that both the above cited Supreme Court decisions does not lay down a binding precedent. In fact, after noticing the fact that Section 30 has remained, without being enforced, in the Advocates Act, for very many years, the learned Judges raised serious concerns about the restriction inflicted on the legal practitioners. However, the Hon'ble Supreme Court restrained itself from issuing any positive orders on the premise that it was for the legislature to consider the enforcement of Section 30, for reason of the Parliament having conferred an unfettered discretion on the Union Government to decide on the same; and it was not for the Courts to interfere.

15. This Court is of the opinion that the position is identical insofar as sub-section (4) of Section 36 of the ID Act is concerned. The introduction and coming into force of Section 30 of the Advocates Act does not have any impact on the same. Though

the learned Senior Counsel would distinguish the judgment relied on by this Court in O.P.(LC).No.6 of 2014, in which the decision of the Hon'ble Supreme Court in ***Paradip Port Trust*** (*supra*) was followed, this Court is of the definite view that the same is applicable on all fours in considering the aforesaid issue.

16. In ***Paradip Port Trust*** (*supra*), the question referred to was specifically as to whether sub-section (4) of Section 36 of the ID Act could be considered as a restrictive right on the Advocate to practise under the Advocates Act. At that point of time, Section 30 of the Advocates Act was not brought into force. It was specifically noticed by the Supreme Court also and it was held so:

“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.

24. Second, **the matter is not to be viewed from the point of view of legal practitioners, 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, Here, under the Act, the restriction is upon a party as such and the occasion to consider the right of the legal practitioner may not arise”.

17. The declaration of law made by the Hon'ble Supreme Court, was after noticing that Section 30 has not yet come into force. The observations therein was specifically taking into consideration the effect of Section 30, since the declaration was on the finding that “even otherwise, we are not to be trammelled by Section 30 ...”. Hence, the decision of the Hon'ble Supreme Court would apply squarely even in the context of Section 30 of the Advocates Act being brought into force. The right granted to a party to an industrial dispute to refuse consent for appearance through an Advocate, in an industrial adjudication; cannot be lightly taken away on the ground of the authority conferred on an Advocate under Section 30 of the Advocates Act. If consent is obtained, then the mandate for leave of the Labour Court/Tribunal, would be of no consequence on enforcement of Section 30. However, the requirement for consent remains unaffected.

18. True, changing times require changed measures. The unequal balance with respect to an employer and employee, is tilted in favour of the employee, in the case of an individual proprietor pitted against the office bearer of an organised trade

union, as is the case herein. Especially so, when every establishment would not be supported by an association of managements. However, the changing social norms cannot be imported to the interpretation of specific statutory provisions. There being no ambiguity in the language employed and the legislative intendment being crystal clear, this court would not venture into an exercise of social emancipation, which would best be left to the legislature. To that effect is the finding of the Hon'ble Supreme Court in ***Lingappa Pochanna*** (*supra*).

For all the above reasons, the writ petition is found to be devoid of merit and the same is dismissed. No costs.

Sd/-
K. Vinod Chandran,
Judge

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