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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 11272/2015 & CM 29463/2015**
NOKIA SOLUTIONS AND NETWORKS INDIA PVT. LTD.

..... Petitioner

Through: Mr. Sandeep Prabhakar, Mr. Sanjay
Rawat and Mr. Vikas Mehta,
Advocates

versus

GOVT. OF NCT OF DELHI & ANR

..... Respondent

Through: Mr. Santosh Kr. Tripathi, ASC with
Mr. Rizwan, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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22.08.2016

The issue raised in this petition is to set aside the order dated 14th July 2015 passed by the CGIT- I in ID No. 68/2014.

Despite the issuance of notice to the respondent No.2, none appears for him. The learned counsel for the respondent No.1 states that no relief is sought against the respondent No.1. The impugned order has held that the management i.e. the petitioner is not entitled to be represented through an Advocate or a legal practitioner. The learned counsel for respondent No.1 states that the short issue to be determined in this case is whether an Advocate can appear before the Presiding Officer, Central Government Industrial Tribunal in a matter pending before it. Mr. Prabhakar, learned counsel for the petitioner submits that this issue stands duly covered by a judgment of the Division Bench of this Court in LPA 212/2008 delivered on

13th August 2008 which reads as under:-

“In the facts and circumstances of the case, we are inclined to agree with the submission of the learned counsel for the appellant-management that since there was no objection raised to the appearance of legal practitioner on behalf of the other side, the consent is to be taken as implied consent. As the Labour Court has also allowed Mr. J.K. Singhal, the legal practitioner, to appear on behalf of the appellant company, it will have to be deemed that the Labour Court had granted leave to Mr. Singhal to appear for the appellant-management, though there was no specific or express consent given by the respondent workman or his representative and though the Labour Court had not specifically granted leave to Mr. Singhal to appear for the appellant-management. From the conduct of the union representative as well as from the fact that Mr. Singhal was allowed to appear in the matter before the Labour Court for several dates, leave will have to be inferred having been granted.

While interpreting Section 36(4) we must remember a crucial fact that when the Industrial Dispute Act was enacted in the year 1947 the trade union movement in this country was in its infancy and was absolutely a novice before adjudication machinery. The Legislature had visualized a legal battle between two unequals before the Industrial Adjudicator. In order to bring about and maintain fairness and equality, the Legislature provided under Section 36 of the Act how the parties would be represented in the proceedings under this Act. However, there has been sea change in the circumstances. A large number of small employers have also come up in the industrial scene. They cannot be denied the service of a legal practitioner when they are dragged into industrial litigations.

Trade unions have also become financially well off to engage services of legal practitioners. Many a times union representatives appearing for the workmen are extremely knowledgeable and possess vast experience in the field. Constitutional validity of Section 36(4) has been upheld by this Court in ***The Cooperative Store Limited, New Delhi v. O.P. Dwivedi, P.O. Industrial Tribunal – II & Others*** 1988 1 LLJ 135. However, thereafter when the same issue came up before the Allahabad High Court, Markandeya Katju, J (as he then was) vide his decision reported in 1992-1-LLN 972 (***ICI India Ltd. v. Labour Court (IV) & Another***) has held that Section 36(4) of the Industrial Disputes Act and a similar provision i.e. Section 6-1(2) of the UP Industrial Disputes Act are ultra vires of the Constitution. In view of our finding that there was implied consent it is not for us to re-examine the constitutional validity of Section 36(4) but we feel that in the changed circumstances a fresh look is necessary at Section 36(4). With these observations, we allow the appeal and set aside the order of the Labour Court as also of the learned single Judge and hold that the management is entitled to be represented by a legal practitioner before the Labour Court.”

The issue being duly covered, the petitioner will have the right to be duly represented before the Central Government Industrial Tribunal insofar as the petitioner was denied the opportunity of being duly represented through counsel.

In view of the above, the impugned order is set aside. The case is remanded back to the Central Government Industrial Tribunal which shall consider the matter afresh and pass a speaking order in the context of the above after according opportunities of being duly represented, if they so

choose. The parties shall appear before the Central Government Industrial Tribunal on 15th September 2016.

The petition stands disposed off in the above terms.

NAJMI WAZIRI, J

AUGUST 22, 2016

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