

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.3125 OF 2015

M/s. Vimal Travels ...Petitioner

Versus

Mr. Raju Malaiyandi Yadav ...Respondent

.....

Ms Anjali Purav for the Petitioner.

Mr. Ashok Shetty with Mr. Vineet Saraf for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 15th JUNE, 2017.

P.C.:-

The Petitioner herein has impugned the order dated 20th March, 2015 whereby the Judge, 1st Labour Court, Mumbai, allowed the application filed by the Respondent and thus, debarred the Petitioner herein from being represented by a legal practitioner.

2. Heard the learned counsels for the respective parties. It is the contention of Ms Anjali Purav, the learned counsel for the Petitioner that the proceedings under section 33 C (2) of the Industrial Disputes Act are basically execution proceedings, which do not require adjudication. She has further submitted that provisions under section 36 of the Industrial Disputes Act (for short 'ID Act') are applicable mainly to industrial disputes as defined under Section 2 (k) of the ID

Act and not applicable to the proceedings under section 33 C(2) of the ID Act. She has relied upon the decision of the Apex Court in *Municipal Corporation of Delhi vs. Ganesh Razak and Anr., 1995 I CLR 170*

3. Per contra, Mr. Shetty, the learned counsel for the Respondent has submitted that a plain reading of Section 36 of the ID Act makes it clear that this provision is applicable to “any proceedings” and are not restricted to the industrial dispute, as defined under section 2(k) of the ID Act but are applicable to all other disputes in any proceedings under the ID Act. He therefore, submits that the provisions under Section 36(4) are also applicable to the proceedings under Section 33 C(2) of the ID Act. He has relied upon *M/s. Paradip Port Trust, Paradip Vs. Their Workmen, (1977) 2 SCC 339*

4. I have perused the records and considered the submissions advanced by the learned counsel for the Petitioner and the learned counsel for the Respondent. The question, which falls for consideration is whether provisions under Section 36(4) are applicable to the proceedings under Section 33 C(2) of the Act, which are in the nature of execution proceedings. In this context, it would be advantageous to

refer to section 36, which 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, by² 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,

1. Subs. by Act 48 of 1950, s. 34 and Sch., for s. 36. 2. Subs. by Act 45 of 1971, s. 6 (w. e. f. 15- 12- 1971).

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].]”

5. A plain reading of section 36(4) of the ID Act clearly indicates that in any proceedings pending either before the Labour

Court or Tribunal or National Tribunal the party can be represented by the legal practitioner only with the consent of the other party to the proceedings and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be. The wordings of section 36 of the ID Act are very clear that the provisions are not restricted only to the industrial dispute as defined under section 2(k) of the Act but would cover all disputes in any proceedings under the Industrial Disputes Act. Thus, in my view the words “any proceedings” would include proceedings under section 33 C(2) of the Act.

6. The, scope of Section 36 was considered and interpreted by the Apex Court in ***Paradip Port Trust, Paradip Vs. Their Workmen, (1977) 2 SCC 339*** as under:

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.

12. ...

13. As stated earlier, section 36 deals with representation of the parties. Neither the Act nor section 36 provides for appearance of the parties themselves when they are individuals or companies or corporations. The Tribunals and the Labour Courts being quasi-judicial authorities dealing with rights affecting the parties cannot adjudicate their disputes in absence of the parties. It is, therefore, incumbent upon the Tribunals and Labour Courts to afford reasonable opportunity to the parties to appear before them and hear them while adjudicating industrial disputes. This position is indisputable. Section 36, therefore, is not exhaustive in the sense that besides the persons specified therein there cannot be any other lawful mode of appearance of the parties as such. As indicated earlier section 36 does not appear to take count of companies and corporations as employers. It is, however, common knowledge that industrial disputes are raised in a predominantly large number of cases where companies or corporations are involved. Since companies and corporations have necessarily to appear through some human agency there is nothing in law to prevent them from being represented in any lawful manner. As Salmond says :, "Every legal person, therefore, has corresponding to it in the world of natural persons certain agents or representatives by whom it acts "(Salmond on Jurisprudence, 12th Edition, page 312.) It is not intended under the Act that companies and corporations are confined to representation of their cases only through the officers specified in section 36(2) of the Act. They can be represented by their directors or their own officers authorised to act in that behalf in a lawful manner provided it is not contrary to any provision of the Act. This would not, however, mean that the companies and corporations, and for the matter of that any party, are free to engage legal practitioners by

means of a special power of attorney to represent their interests before the Tribunals without consent of the opposite party and leave of the Tribunal.

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.*
15. *The parties, however, will have to conform to the conditions laid down in section 36(4) in the matter of representation by legal practitioners. Both the consent of the opposite party and the leave of the Tribunal will have to be secured to enable a party to seek representation before the Tribunal through a legal practitioner qua legal practitioner. This is a clear significance of section 36(4) of the Act.*
16. *If, however, a legal practitioner is appointed as an officer of a company or corporation and is in their pay and under their control and is not a practising advocate the fact that he was earlier a legal practitioner or has a legal degree will not stand in the way of the company or the corporation being represented by him. Similarly if a legal practitioner is an officer of an association of employers or of a federation of such associations, there is nothing in section 36(4) to prevent him from appearing before the Tribunal under the provisions of section 36(2) of the Act. Again, an office bearer of a trade union or a member of its executive, even though he is a legal*

practitioner, will be entitled to represent the workmen before the Tribunal under section 36(1) in the former capacity. The legal practitioner in the above two cases will appear in the capacity of an officer of the association in the case of an employer and in the capacity of an office bearer of the union in the case of workmen and not in the capacity of a legal practitioner. The fact that a person is a legal practitioner will not affect the position if the qualifications specified in section 36(1) and section 36(2) are fulfilled by him.

.....

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.”

7. In ***Philips India Limited Vs. Kishor S. Lad & Ors.*** 2006 III ***CLR 87***, this Court after considering the judgment of the Apex Court in ***Paradip Port Trust, supra*** and other decisions of this Court has held that section 36 of the ID Act is not exhaustive and it is open for the Tribunal under Act to permit a party to the dispute to be represented by any other person of his choice, even though such person of his choice may not strictly fall in any of the categories specified in section 36 of the Act.

8. The Division Bench of this Court in *Chandrakant and Ors. Vs. All India Reporter, Ltd. [2005(105) F.L.R. 300]* has also considered the scope of provision under section 36(4) of the ID Act and has held that it is an equivocal view that requiring permission from other party is a condition precedent for exercising power for permitting a party to engage a lawyer under Section 36(4) of the ID Act.

9. In the instant case, it is not in dispute that the Respondent herein has not consented for the representation of the Petitioner by a lawyer. Hence the learned Judge was justified in allowing the application.

10. Under the circumstances, the Petition has no merits and is accordingly dismissed. Needless to state that the learned Judge, Labour Court, Mumbai, will accord reasonable opportunity to the Petitioner to put in any other lawful mode of appearance. The Labour Court shall also give an opportunity to the Petitioner to file written statement on the next date of hearing.

11. Both the parties shall appear before the Labour Court on 1st August, 2017.

(ANUJA PRABHUDESSAI, J.)