

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7755 OF 2017

Thyssen Krupp Industries
India Private Limited
Having its Registered Office
At Pimpri, Pune – 411 018
Through its authorised representative
Rajendrasinh Shankarrao Nageshkar
Age 60 Years, Occupation Service,
O/At Thyssen Krupp Industries
India Private Limited
Pimpri, Pune- 411 018.

... Petitioner

Versus

1. Suresh Maruti Chougule
Age Adult, Occupation Nil,
R/o Shivraj Colony,
Near Tambe High School,
Nakhate Vasti,
Rahatni, Pune 411017.
2. Union of India
Ministry of Labour and Employment
Shram Shakti Bhawan,
New Delhi – 110 001.
3. Bar Council of India
21, Rouse Avenue Institutional Area,
Near Bal Bhawan,
New Delhi – 110 002.
4. Bar Council of Maharashtra & Goa
2nd Floor, High Court Extension,
Fort, Mumbai,
Maharashtra – 400032.

5. State of Maharashtra ... Respondents

WITH
CIVIL APPLICATION STAMP NO. 33077 OF 2017
IN
WRIT PETITION NO. 7755 OF 2017

1. Trade Union Joint Action Committee,
Maharashtra,
44, Cawasji Patel Street, Dady Sheth Building,
1st Floor, Nanabhai Lane, Opp. Akbar Ally Store,
Hutatma Chowk, Fort, Mumbai – 400001.
2. All India Trade Union Congress (AITUC)
Bhupesh Gupta Bhavan,
85, Sayni Road, Prabhadevi,
Mumbai – 400025.
3. Centre of Indian Trade Unions (CITU)
Dr. Vivek Montero,
Mumbai Shramik Sangh,
Quari Road, Bhandup,
Mumbai – 400078.
4. Hind Mazdoor Sabha,
204, Navsaraswati Sadan,
Noupada, Thane (W) 400602.
5. Indian National Trade Union Congress
(INTUC),
David Je Sasoon Bldg, 1st Floor,
27-B, Bharucha Marg,
Kala Ghoda, Fort,
Mumbai 400 023.
6. Sarva Shramik Sangh
Shramik, Royal Crest,
Plot No.31, Lokmanya Tilak Colony,
Lane No.3, Dadar (E),
Mumbai 400014.

7. Sarva Shramik Sanghtana,
104, Royal Crest, Plot No.31,
Lane No.03, Lokmanya Tilak Colony,
Dadar, Mumbai – 400014.
8. Trade Union Centre of India (TUCI)
180-C, 1st Floor, Dharavi Koliwada,
J.J.Keni Lane, Dharavi Road,
Mumbai – 400017. ..Applicants(Intervenors)

IN THE MATTER BETWEEN:

Thyssen Krupp Industries
India Private Limited
Having its Registered Office
At Pimpri, Pune – 411 018
Through its Authorised representative
Rajendrasinh Shankarrao Nageshkar
Age 60 Years, Occupation Service,
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Maharashtra – 400032.

5. State of Maharashtra ... Respondents

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Mr. K. M. Naik, Senior Advocate a/w Mr. Varun Joshi, Mr. Hemant Telkar, Ms. Shruti Padsalgikar, Mr. Sujit Salkar and Ms. Janki Kadam i/by Mr. Chetan Alai for the Petitioner.

Mr. Anil C. Singh, Additional Solicitor General a/w Mr. P. M. Palshikar, Mr. Aditya Takker and Mr. V. T. Kalyan for the Respondent-UOI.

Mr. A. A. Kumbhokoni, Advocate General a/w Mr. Shardul Singh and Mr. Akshay Shinde a/w Mr. B. V. Samant, AGP for the State.

Mr. Sanjay Kulkarni for the Respondent No.1.

Mr. Amitkumar Damodar Sale for Respondent No.3.

Mr. Sanjay Singhavi, Senior Advocate i/by Mr. Rahul Kamerkar for the Applicants in CAWST/33077/2017.

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CORAM : S. C. DHARMADHIKARI &

SMT. BHARATI H. DANGRE, JJ.

RESERVED ON : NOVEMBER 27, 2017.

PRONOUNCED ON : MARCH 1, 2018

JUDGMENT : (Per S. C. Dharmadhikari, J.)

1. Rule.
2. By consent, Rule is made returnable forthwith.
3. By this Petition under Article 226 of the Constitution of India, the petitioner is challenging the constitutional validity of Section 36(4) of the Industrial Disputes Act, 1947 ("I.D. Act" for short) and praying that it be declared *ultra vires* Article 14 of the Constitution of India as also Section 30 of the Advocates Act, 1961 ("Advocates Act" for short).
4. The further prayer is that an order passed on 15th February, 2017 by the 2nd Labour Court, Pune in Reference IDA No.121 of 2016 be quashed and set aside.
5. The facts leading to this Petition briefly stated are as under:
 - a. The petitioner states that it is a company duly incorporated under the provisions of the Companies Act, 1956 and is an existing company within the meaning of Section 2 of the Companies Act, 2013. The company is having one of its factories at the address mentioned in the cause title. In this factory, the company is *inter alia* engaged in the manufacture of machinery for Sugar Cement, MHE and Boilers. The petitioner in all employs, including management staff, about 1765 employees. The petitioner

states that the workmen employed by the company used to be represented by Thyssen Krupp Workers Union which is the recognized Union. The petitioner submits that they have signed various wage settlements alongwith the current wage settlement signed dated 25th November, 2015 with the said Union. Through this settlement, it has fixed the terms and conditions of service of the workmen employed in the petitioner's factory at Pune. In addition to this, the remaining terms and conditions of service are governed by the contract of employment that is the appointment orders and the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946.

b. The petitioner submits that the respondent workman was appointed as a Welder with the petitioner with effect from 1st April, 2001.

c. The petitioner further states that the respondent was dismissed from services with effect from 24th August, 2015 for acts of misconduct, after following due process of law.

d. The petitioner further states that the respondent had raised a dispute before the office of the Additional Commissioner of Labour at Pune. The said dispute was referred to the Conciliation Officer. Since the dispute could not be resolved amicably, the Conciliation Officer forwarded his failure report to the Government of Maharashtra and the

said dispute was referred to the Labour Court for adjudication. The petitioner submits that thereafter, the Labour Court had issued notices to the parties. The respondent-workman appeared in the matter and filed his statement of claim dated 29th July, 2016, copy of which is Annexure “A” to the Petition. The respondent-workman also filed his objection under Section 36(4) of the Industrial Disputes Act, 1947 (Annexure “B”) objecting the petitioner from engaging a legal practitioner.

e. The petitioner thereafter appeared in the matter and filed its written statement dated 24th October, 2016 (Annexure “C”) in reply to the statement of claim dated 29th July, 2016. The petitioner also filed its reply dated 16th January, 2017 (Annexure “D”) to the objection application raised by the respondent-workman.

f. The petitioner submits that the respondent filed its written notes of arguments on 24th November, 2016 (Annexure “E”).

g. The petitioner submits that thereafter, the Labour Court was pleased to pass its order dated 15th February, 2017, which is impugned in the present petition.

h. The petitioner submits that they wished to engage a legal practitioner of their choice to conduct the matter being

Reference IDA No.121 of 2016 between the petitioner and the respondent-workman. The petitioner further states that the Labour Court at Pune has failed to appreciate that the officers of the Company are not well versed with the provisions of the law. The petitioner also submits that the the Labour Court has failed to take into consideration the provisions of the Advocates Act, 1961. The Labour Court has failed to appreciate that the Advocates Act, 1961 is a subsequent special legislation which over-rides the provisions of Section 36(4) of the Industrial Disputes Act, 1947. The petitioner therefore submits that the Labour Court at Pune has committed an error of law apparent on the face of the record which is bad in law and suffers from non-application of mind and as such, deserves to be quashed and set aside.

i. The impugned order proceeds on the footing that the application styled as Exhibit-U3 will have to be allowed and the objection raised by the 1st respondent to this petition would have to be sustained.

j. The objection was that the petitioner before us is a company and it has engaged an advocate for conducting the reference. That was objected to by the 1st respondent. The 1st respondent pointed out that the law does not permit engaging an advocate by the petitioner. The law is clear in the sense nobody has a right to appoint an advocate.

Therefore, the petitioner should not be allowed to engage an advocate, all the more when the 1st respondent - workman is conducting the reference himself.

k. The petitioner opposed and submitted that the objection should be rejected. The petitioner relied upon Section 30 of the Advocates Act and submitted that Section 30 of the Advocates Act has come into force from 15th June 2011, hence no objection can be raised to the engagement of an advocate by the petitioner. Such an objection is raised only to harass the petitioner. This is nothing but a coercive tactic and the 1st respondent is coercing the petitioner into out of court settlement. Once Section 30 of the Advocates Act has been brought into force, then the advocate engaged by the petitioner cannot be prevented from representing the petitioner. Therefore, the objection should be rejected. This aspect has been dealt with by the impugned order. The Presiding Officer, in the impugned order, held as under:

“6] It is contention of first party that as per Section 30 of the Advocates Act an advocate whose name is entered in the State Roll shall be entitled to as of right to practice towards the territory to which this Act extends.

7] In recent case law of Sathi vs. Labour Court, reported in 2015 LLR 752 Kerala H.C., wherein held, the Industrial Disputes Act is a special piece of legislation. It will prevail over the Advocates Act which is a general piece of legislation. 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 authority conferred on an Advocate under section 30 of the Advocates Act. Sub-sec.(4) of section 36 of the 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. 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 opposite party; be it employee or employer. The party refusing consent also would be disabled from being represented by a legal practitioner. Hence introduction of section 30 of the Advocate Act, 1961 does not have any impact upon the effectiveness of section 36(4) of the Act.

8] So also in recent case law of Hindustan Organic Chemicals Ltd. Employees' Union Vs. Hindustan Organic Chemicals Ltd. bearing Writ Petition no. 9275/2012 decided on 28/1/2015 by Hon'ble Bombay High Court, wherein Hon'ble High Court referred case law of N.K. Bajpai (AIR 2012 SC 1310). In paragraph 15 the Hon'ble Apex Court considered the provisions of Section 29, 30 and 33 of the Advocates Act and observed that a statutory right is given to an advocate to practice and advocate alone is the person who can practice 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 practice is not an absolute right which is free of restriction and is without any limitation.

Hon'ble High Court held that the restriction was limited in its scope and impact and was not violative of the right of the legal practitioner as they will have to conform to the conditions laid down under section 36(4) of the I.D. Act.

9] *Thus in view of ratio laid down in above cited case law, first party has no inherent right to engage an advocate under Section 30 of the Advocates Act in this proceeding.*

10] *In case law of Pradip Port Trust Vs Management of Keonjhar Central Co op. Bank Ltd., reported in 1976-II-LLJ 409-SC wherein held, “the lawyer simpliciter cannot appear before the tribunal without consent of the opposite party and leave of the tribunal. The lawyer can appear as office bearer of trade union or as the officer of an association of employer and in such case the consent of opposite party and the leave of the tribunal is not necessary.”*

1. The learned Presiding Officer held that the 1st respondent is not consenting to the petitioner's representation by an advocate. In the light of the law laid down in the above referred decisions, the petitioner cannot appear through an advocate in the proceedings. Hence, the prayer of the petitioner to engage an advocate is rejected and the objection of the 1st respondent was sustained.

m. It is such an order, which raises the wider challenge in this petition.

6. Mr. K.M. Naik, learned senior advocate appearing for the petitioner, submits that the impugned order is contrary to law. The impugned order also prejudicially affects the petitioner as they cannot effectively present their case before the Labour Court.

7. Mr. Naik would submit that the industrial adjudication is getting complicated day by day. It has several shades and it is not easy for employees or a company like the petitioner to represent their cases effectively and properly before the Labour Court. Mr. Naik has taken us through the statement of claim in Reference No. 121 of 2016 and submits that the 1st respondent has alleged that his dismissal from services is contrary to the I.D.Act, the Industrial Employment (Standing Orders) Act, 1946 and other Labour laws. The further allegation is that the termination/dismissal is not *bonafide*. It is in violation of principles of natural justice. Even the inquiry is vitiated and the allegations in paragraphs 5 and 6 of the statement of claim contain the case of the 1st respondent – workman on the validity and legality of inquiry. Mr. Naik would submit that in such circumstances, various issues of fact and law would arise. The oral and documentary evidence would have to be placed before the Labour Court. Subsequently, the evidence of both sides will have to be appreciated and appraised by the learned Judge and he would be required to analyze the submissions and arguments of both sides. If thorough and well prepared submissions are not canvassed on behalf of the petitioner in the pending reference, it may well suffer an adverse order. Thus, to meet the challenge raised by respondent No.1 - workman as set out in the reference and to defend the case as a whole, assistance of an advocate trained and experienced in industrial and labour laws is necessary. Merely because the workman is not consenting to the appointment of an advocate is,

therefore, no ground to refuse the request of the petitioner. The refusal is therefore, contrary to law and well established principles of equity, justice and fair play.

8. Mr. Naik has submitted that it is the right of a party to engage an advocate and equally the right of an advocate to appear before the Court or Tribunal. He invites our attention to the judgment rendered by the Allahabad High Court and which has struck down Section 36(4) of the I.D. Act. Mr. Naik would submit that the effect of this judgment is that a provision in law made by the Parliament, is no longer on the Statute Book. It is wiped out. All the more, when the judgment of learned Single Judge of the Allahabad High Court had not been challenged, leave alone reversed by the larger Bench of that Court or the Hon'ble Supreme Court. The legal provision, therefore, stands effaced from the Statute Book. Therefore, every High Court is not required to strike down this provision again.

9. Alternatively and without prejudice to the aforesaid submissions, Mr. Naik would submit that the judgment of the Hon'ble Supreme Court in the case of *Paradip Port Trust Vs Their Workmen* – AIR 1977 SC 36 = (1976) IILLJ 409 SC did not consider the issue of legality and validity of Section 36 (4) of the I.D. Act. The constitutional challenge was thus not dealt with. Assuming without admitting that this judgment dealt with the issue, still, after the same was delivered, now the situation has

undergone a radical change. Now, Section 30 of the Advocates Act has been brought on the Statute Book and is in force. When the judgment in *Paradip Port Trust (supra)* was delivered by the Hon'ble Supreme Court, the section was not brought in force. This is one distinguishing factor. Secondly, the circumstances have now changed. This Court must decide the matter independent of any view taken earlier bearing in mind the language of Section 30 of the Advocates Act. Though Section 34 imposes a reasonable restriction on the right to practice as assured by the Advocates Act still, absent these reasonable restrictions, a provision like Section 36(4) of the I.D. Act cannot stand the scrutiny of law. That requires consent of the other side for representation by or through an advocate before the Industrial Tribunal. This requirement of obtaining consent of the other side or the opponent is *ex-facie* unreasonable. This is a situation distinct from those enactments and provisions thereof where leave of the Court is necessary for an advocate to appear before a Court or Tribunal. This could be said to be a reasonable restriction on the right to practice law, but to insist on the consent of the other side or the opponent, is beyond comprehension and particularly in the twenty first Century. Though a provision of this nature is continued on the Statute Book, its retention has the effect of prohibiting a lawfully engaged professional from appearing before a Court of law or Tribunal to espouse a party's cause. Thus, the circumstances now prevailing are extraordinary. We must therefore, consider this challenge in the backdrop of Article 19(1)(g) of the Constitution of India. In

the present case, the right of an advocate and the party are intertwined and go together. Further, the mandate of Article 14 of Constitution of India would also come into play in relation to the right of the litigant to present his case effectively. A effective representation postulates that legal assistance is not unduly denied. The conditions imposed by Section 36(4) are totally arbitrary and unreasonable. In comparison, there is no such requirement in other labour legislations concerning which as well there are disputes pending before the Industrial and Labour Courts. There are other Courts, which are exercising powers and discharging functions such as the Employee State Insurance Court, Commissioner of Workmen Compensation, Commissioner of Provident Funds. They do not prohibit the lawyers nor the legislations concerned prevent these authorities from allowing the litigants before them to appear through advocates. Equally, in the Industrial and Labour Courts, there is a discrimination, in the sense, under the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 important matters are conducted day to day by the advocates. There is no prohibition from appearance through advocates. In the circumstances, we should not sustain this provision, is the argument of Mr. Naik. He further argues that if the language of sub-section (2) of Section 36 is noted, it cannot be said with certainty that appearance through Office Bearers or Officers of the Employers Association of which a litigant employer is a member, a effective substitute for an advocate. Today, labour legislations and labour laws are giving rise

to complex and complicated issues. Such complex and complicated issues arising out of bundle of facts have to be properly presented and unfolded before a Judge. The parties are before a Court of law. The parties are expected to not only discharge the burden cast on them by the law, but they are also expected to render assistance to a Judge to arrive at a just conclusion in a case. All this is possible if an experienced and legally trained professional totally dedicated to his profession, expert in handling and presenting cases of a complex nature, is allowed to appear and represent the parties. The labour and industrial cases are not ordinary in the nature. More often than not complicated facts and contradictory rulings compel a litigant to engage an advocate. The Courts and Tribunals deal with legal rights of the parties. These rights have to be adjudicated upon. The stakes involved in the adjudication are very high. The impact of the adjudication is enormous and it is also on the society. In Industrial and Labour disputes, there are always three parties, the third one is eternally silent. The industries and individual entrepreneur may be facing a challenge to its or his individual acts and raised by the opponent employee/union, but the effect thereof is on the society or public at large. Thus the employer - employee are not the only parties to a dispute, but the unknown silent consumer of goods and services or its recipient also has a stake in such adjudication. If proper, coordinated industrial growth is necessary for the development of the Nation or a country, then, the impact of the orders and decisions of the Courts

and Tribunals on the society and public at large cannot be ignored. Mr. Naik emphasizes that in the whole process, justice should not be a casualty, it should not be only done, but seen to be done. Therefore, in larger public interest, this sub-section be struck down.

10. Mr. Naik would submit that the presence of an advocate before a Court ensures proper focus, direction and control of the proceedings. An advocate rarely goes astray or at a tangent and on all occasions, he focuses himself on the issues at hand and arising out of the facts of a particular case. Therefore, the precious judicial time is saved. Mr. Naik has relied upon the following judgments in support of his above contentions.

(1) I.C.I. India, Ltd vs. Labour Court (IV) – 1992 - ILL.N. 972;

(2) Hygienic Foods Vs. Jasbir Singh and ors. - 2011 (4) UJ2149 = MANU/SC/0708/2011;

(3) M/s. Hygienic Foods vs. Jasbir Singh and ors. (Petition (s) for Special Leave to Appeal (Civil) No (s). 10138/2010 decided on 8.5.2014) ;

(4) Kusum Ingots & Alloys Ltd. Vs. Union of India and anr. - 2004 (6) SCC 254;

(5) Textile Technical Tradesmen Association Vs. Union of India – MANU/TN/3508/2010 = (2011) ILLJ 297 Madras;

(6) Shiv Kumar vs. Union of India and ors. - MANU/KA/0540/2014 = AIR 2014 Kant 73;

(7) Dr. T. Rajakumari & ors. vs. Govt. of Tamil Nadu and ors. - MANU/TN/2202/2016 = AIR 2016 MAD 177;

(8) Shayara Bano vs. Union of India – 2017 (9) SCC 1;

(9) Union of India vs. Tulsiram Patel & ors. - MANU/SC/0373/1985 = AIR 1985 SC 1416;

(10) D.K.Yadav vs. J.K. A. Industries Ltd. - 1993 II CLR 116 SC;

(11) Aeltemesh Rein, Advocate Supreme Court of India vs. Union of India and ors. - MANU/SC/0009/1988 = AIR 1988 SC 1768;

(12) T.C. Mathai and anr. vs. District & Sessions Judge, Thirvananthapuram – AIR 1999 SC 1385;

(13) Jamshed Ansari vs. High Court of Judicature at Allahabad and anr. - 2017 (1) SCC (L& S) 241 and (2016) 10 SCC 554;

(14) B.P. Sharma vs. Union of India and ors. - (2003) 7 SCC 309;

(15) The Management, M/s. Hindustan Motors Earth Moving Equipment Division Limited vs. The Presiding Officer, Principal Labour Court, Chennai & ors. (Writ Petition Nos.20933 and 23606 of 2006 decided on 20.01.2007 by Madras High Court).

11. On the other hand, learned Additional Solicitor General appearing for the Union of India and respondent No.1 submits that there is no merit in the contentions of Mr. Naik. Mr. Anil Singh would submit that the judgment and order of the learned Single Judge of the Allahabad High Court has no binding effect. It

has only a persuasive value. It is merely but a view of one Judge in a Court and would bind that Court. There are various rulings of the other High Courts which were rendered prior and subsequent to the order or the judgment of the learned Single Judge of the Allahabad High Court in I.C.I. (*supra*). In these rulings, the Hon'ble Judges have not agreed with the view taken by the Allahabad High Court. They have upheld the law. Judicial discipline also requires that the learned Single Judge of the Allahabad High Court follows and applies the judgment of the Hon'ble Supreme Court in *Paradip Port Trust case (supra)*. *Paradip Port Trust* case could not have been brushed aside or ignored. That judgment of the Hon'ble Supreme Court clinches the issue. Apart therefrom, the right to practice law is not a fundamental right. If that is not a fundamental or vested right nor a legal right of an advocate of professional, then, a party can never claim such a right to engage the advocate. This very relevant and crucial aspect of the matter was not brought to the notice of the learned Single Judge of the Allahabad High Court. For these reasons, Mr. Singh would submit that the view taken by the learned Single Judge should not bind us. We must proceed to dismiss the petition.

12. Mr. Singh relied upon the following judgments :

- (i) Co-operative Store Ltd. vs. Industrial Tribunal-II, decided on 9th January, 1986, **Civil Writ Petition No. 2752 of 1986.**
- (ii) Crescent Dyes and Chemicals Ltd. vs. Ram Naresh Tripathi, (1993) 2 SCC 115.

(iii) National Horticultural Research Development Foundation vs. P. Murugesan and Anr., 2010 SCC Online Mad 3833.

(iv) N. K. Bajpai vs. Union of India and Anr., (2012) 4 SCC 653.

13. Learned Additional Solicitor General was supported in his argument by Mr. Kumbhakoni, learned Advocate General appearing for the State of Maharashtra as also the advocate appearing for the workmen. Learned Advocate General would submit that as under:

(a) It is fairly well settled position of law that constitutional validity of a provision of a Statute can be challenged only on two grounds namely:

(i) Lack of legislative Competence and

(ii) Inconsistent with Part-III of the Constitution.

(b) There is no challenge to the constitutional validity of Section 36(4) of the I.D. Act on the ground of Legislative Competence. It leaves the petitioners, therefore, with only one ground viz. inconsistency with Part-II of the Constitution.

(c) In this case, the petitioner not being an advocate covered by the Advocates Act, cannot invoke any protection either of Article 19(1)(g) or Article 14 in that light. The petitioner is pure and simple a litigant.

(d) *A citizen does not have a constitutional right, much less fundamental right, that falls in any of the Articles contained in Part-III of the Constitution, of being heard through his advocate or through his lawyer, in any of the proceedings contemplated by Section 36 of the I.D. Act. A litigant having no fundamental right to be represented by a legal practitioner in such proceedings, Section 36(4) cannot offend any fundamental right of the petitioner. The present petition therefore fails to make out any legally permissible ground for challenging the constitutional validity of Section 36(4) of the I.D. Act.*

(e) *It is a matter 'procedure' and not a matter of 'substance' as to how should parties be permitted to be represented before a Court or a Tribunal. Therefore, a provision which regulates representation of a party before a Court or a Tribunal is merely 'a rule of procedure' and not 'a rule of substance'. Therefore, deprivation of such a procedural aspect of being represented through an advocate, a lawyer or a legal practitioner cannot be said to be affecting any substantive right, if at all and if any of any litigant. There cannot be any constitutional challenge to any such provision.*

(f) *In any case, there is a qualitative difference between a procedural right, of being represented through an advocate or a legal practitioner before a regular court as against before a simplicitor Tribunal. The nature of proceedings conducted before*

a Tribunal in this regard are decisive in nature. The 'Legislative Policy' therefore, in not permitting parties to engage the services of advocates or legal practitioners must be given due weightage. There may be difference of opinion as to wisdom of this policy but the merits of such policy is not justiciable. There is definitely a basis and a logical reason which is fundamentally sustainable behind such a policy. Keeping in view the nature of proceedings, the object and purpose of the I. D. Act, the nature of parties between whom such proceedings takes place are, amongst others, various factors that have been considered by the Legislature, in their proper perspective, in formulating such policy that have given rise to framing of the statutory provision in issue.

(g) If Section 36(4) is considered in its proper perspective, the restriction imposed thereunder is really not against an advocate but is one against the contesting litigant, necessitated for maintenance of industrial peace, required for societal advancement, in view of grossly unequal status of contesting litigants, being the employer and the employee.

(h) Save and except only one judgment relied by the petitioner of the learned Single Judge of the Allahabad High Court, almost all the High Courts in the country have repelled the challenge to the constitutional validity of Section 36(4) in issue. Even a later judgment of learned Single Judge of the very

same High Court (Allahabad High Court-learned Single Judge) has refused to follow the said earlier judgment.

(i) There are various statutes which have similar provisions, if not identical. The provisions which completely barred the engaging of services of advocates have been struck down being repugnant to Section 30 of the Advocates Act, after coming into force of the Notification dated 9th June, 2011 (w.e.f. 15/6/2011) e.g. Section 64 of Universities Act. However, such provisions which have only regulated engaging of such services have been largely upheld e.g. Family Court Act. Hence it is urged that the petition be dismissed.”

14. For properly appreciating the rival contentions, a reference will have to be made to the Industrial Disputes Act, 1947. That Act was enacted on 11th March 1947 to make provision for the investigation and settlement of industrial disputes.

15. That Act is divided into several Chapters.

16. The First Chapter contains definitions and crucial amongst these is the definition of term “industrial dispute” appearing in Section 2 clause (k). That definition reads as under:

“(k) “industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”

17. The word “industry” has also been defined in Section 2 Clause (j) to mean any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workman.

18. The word “employer” is also defined in Section 2 Clause (g) and in relation to an industry carried on by a local authority, the chief executive officer of that authority would come within the provision. Thus, the definition is in relation to an industry carried on by any department of the Central Government or a State Government or in relation to an industry carried on by or on behalf of a local authority. The word “Court” is defined in Section 2 Clause (f) to mean a Court of Inquiry constituted under this Act. The words “award”, “conciliation proceeding” and “industrial establishment or undertaking” are defined in Section 2 Clause (b), Section 2 Clause (e) and Section 2 Clause (ka) respectively. The word Labour Court is also defined in Section 2 Clause (kkb). The word “Labour Court” is defined to mean a Labour Court constituted under Section 7. The word “trade union” is also defined in Section 2 Clause (qq). The word “Tribunal” is defined in Section 2 Clause (r) to mean an Industrial Tribunal constituted under Section 7-A and includes an Industrial Tribunal constituted before 10th March 1957 under the I.D. Act. The word “workman” is defined in Section 2 Clause (s), which reads as under:

“(s) “workman” means any person (including an apprentice) employed in any industry to do any manual,

unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
- (ii) who is employed in the police service or as an officer or other employee of a prison, or*
- (iii) who is employed mainly in a managerial or administrative capacity, or*
- (iv) who, being employed in a supervisory capacity, draws wages exceeding (Ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”*

19. Then, we have Section 2-A, which reads as under:

“2-A. Dismissal etc., of an individual workman to be deemed to be an industrial dispute.- (1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.”

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the

application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

20. The term industrial dispute is defined by a legal fiction and it is evident from Section 2-A that dismissal etc., of an individual workman is deemed to be an industrial dispute. Thus, the issue may be concerning an individual or affecting him, but it is deemed to be an industrial dispute and that is not without any reason. Way back in 1964 in a decision in the case of M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd. vs. The Labour Appellate Tribunal & Ors. reported in **AIR 1964 SC 737**, the Hon'ble Supreme Court held that the Industrial Disputes Act, 1947 and various labour legislations are enacted so as to preserve and protect industrial peace, bring about equality in bargaining power and balancing rights of workman so also employer for an industry is considered to be the wealth of the Nation. The Hon'ble Supreme Court held as under:

"(12) In this connection, it is hardly necessary to emphasise that in the modern world industrial operations have become complex and

complicated and for the efficient and successful functioning of any industry, several incidental operations are called in aid and it is the totality of all these operations that ultimately constitutes the industry as a whole. Wherever it is shown that the industry has employed an employee to assist one or the other operation incidental to the main industrial operation, it would be unreasonable to deny such an employee the status of a workman on the ground that his work is not directly concerned with the main work or operation of the industry. Reverting to the illustration of the buses owned by the factory for the purpose of transporting its workmen, if the bus drivers can legitimately be held to assist an operation incidental to the main work of the industry, we do not see why a Mali, should not claim that he is also engaged in an operation which is incidental to the main industry.

... ..

19. Then Mr. Pathak was driven to contend that the ground of social justice given by the Labour Appellate Tribunal in support of its award is really not sound in law, and he referred us to the observations made by this Court on some occasions that the-considerations of social justice 'were "not only irrelevant but untenable" vide J.K. Iron & Steel Co., Ltd. Kanpur v. The Iron andn Steel Mazdoor Union, Kanpur, 1955- 2 SCR 1315 : (AIR 1956 SC 231), and Muir Mills Co., Ltd. v. Suti Mills Mazdoor Union, Kanpur,1955-1 SCR 991 : ((S) AIR 1955 SC 170). In our opinion, the argument that the considerations of -social justice are irrelevant and untenable in dealing with industrial disputes, has to be rejected without any hesitation. The development of industrial law during the last decade and several decisions of this Court in dealing with industrial matters have emphasised the relevance, validity and significance of the doctrine of social justice : vide Messrs. Crown Aluminium Works v. Their Workmen, 1958 SCR 651 :

(AIR 1958 SC 30) and The State of Mysore v. The Workers of Gold Mines, 1959 SCR 895 : (AIR 1958 SC 923). Indeed the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes. The concept of social justice is not narrow, one-sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socioeconomic equality and its aim is to- assist the removal of socioeconomic disparities and inequalities ; nevertheless, in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach. It, therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and Labour, and good relationship. The ultimate object of industrial adjudication is to help the growth and progress of national economy and it is with that ultimate object in view, that industrial disputes are settled by industrial adjudication on principles of fair-play and justice. That is the reason why on several occasions, industrial adjudication has thought it fit to make reasonable provision for leave in respect of the workmen, who may not strictly fall within the purview of the Factories Act or the Shops and Commercial Establishments Act. We are, therefore, satisfied that there is no substance in the grievance made by Mr. Pathak that the Labour Appellate Tribunal should not have granted the demand of the respondents for leave on grounds of fair-play and social justice.”

21. In Chapter II of this Act, which is titled as Authorities under this Act. Sections 3, 4 and 5 deals with Works Committee, Conciliation Officers and Board of Conciliation. Section 6 deals

with the Courts of Enquiry and Section 7 the Labour Court and they read as under:

“6. Courts of Enquiry.- (1) The appropriate Government may as occasion arises by notification in the Official Gazette, constitute a Court of Inquiry for enquiring into any matter appearing to be connected with or relevant to an industrial dispute.

(2) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the Chairman.

(3) A Court, having the prescribed quorum, may act, notwithstanding the absence of the Chairman or any of its members or any vacancy in its number:

Provided that, if the appropriate Government notifies the Court that the services of the Chairman have ceased to be available, the Court shall not act until a new Chairman has been appointed.

7. Labour Courts.- (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

(2) A Labour Court shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless--

(a) he is, or has been, a Judge of a High Court; or

(b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or

*(c) [*****]*

(d) he has held any judicial office in India for not less than seven years; or

[(d-1)he has practised as an advocate or attorney for not less than seven years in the High Court, or any Court

subordinate thereto, or any Industrial Court or Tribunal or Labour Court, constituted under any law for the time being in force;

(d-2) he holds a degree in law of a University established by law in any part of India and is holding or has held an office not lower in rank than that of a Deputy Registrar of any such Industrial Court or Tribunal for not less than five years; or

(d-3) he holds a degree in law of a University established by law in any part of India and is holding or has held an office not lower in rank than that of Assistant Commissioner of Labour under the State Government for not less than five years; or]

(e) he has been the Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.

(f) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the labour department including three years of experience as Conciliation Officer:

Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or

(g) he is an officer of Indian Legal Service in Grade III with three years' experience in the grade."

22. Then appears Section 7-A, which deals with Tribunals. The same reads as under:

"7-A. Tribunals.- (1) The appropriate government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule [and for performing such other functions as may be assigned to them under this Act].

(3) *A person shall not be qualified for appointment as the presiding officer of a Tribunal unless--*

(a) *he is, or has been, a Judge of a High Court [or a District Judge or a person qualified for appointment as a Judge of High Court] or*

(aa) *he has, for a period of not less than three years, been a District Judge [an Additional District Judge or an Assistant Judge];*

(b) *he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the labour department including three years' of experience as Conciliation Officer:*

Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or

(c) *he is an officer of Indian Legal Service in Grade III with three years' experience in the grade.*

(d) *he holds a degree in law of a University established by law in any part of India and is holding or has held an office not lower in rank than that of Assistant Commissioner of Labour under the State Government for not less than ten years.*

(4) *The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it."*

23. By Chapter-III reference of disputes to Boards, Courts or Tribunals, is provided for and such reference of disputes can be made by the appropriate Government in the manner set out in Section 10 and by Section 10-A voluntary reference of disputes to arbitration can be made. Chapter-IV sets out the procedure,

powers of duties of authorities, wherein Section 11 and 11-A would fall. By Section 12 duties of conciliation officers and by Section 13 duties of Board are set out. The duties of Court are set out in Section 14. The duties of Labour Courts, Tribunals and National Tribunals are set out in Section 15. The form of report or award is set out in Section 16 and by Section 17 publication of reports and awards is contemplated. By Section 17-A commencement of the award and by Section 17-B payment of full wages to workman pending proceedings in higher courts has been provided for. Section 18 says that settlements and awards arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement and how various types of award and settlements would bind the parties has been then set out in sub-sections (1) to (3) of Section 18. The period of operation of settlements and awards, commencement and conclusion of proceedings and confidentiality of certain matters is provided for Sections 19, 20 and 21. Chapter V deals with strikes and lock-outs and Chapter V-A deals with lay-off and retrenchment. After all these provisions follows Chapter V-B, Chapter VI and Chapter VII styled as miscellaneous. In Chapter VII, Section 32 deals with offences by companies whereas Section 33 says that conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings. Section 33-A to Section 33-C sets out special provisions for adjudication as to whether conditions of service etc. changed during pendency of proceedings, power to

transfer certain proceedings and Section 33-C provides for recovery of money due from an employer. Then follow Section 34 dealing with cognizance of offences. Section 35 gives protection to persons and then follows Section 36 which deals with representation of parties.

24. A bare perusal of Section 36 denotes that by sub-section (1) a case of representation in any proceeding under this Act is dealt with. If a workman is a party to a dispute, he shall be entitled to be represented by any member of the executive or other office bearer of a registered trade union of which he is a member, any member of the executive or other office bearer of federation of trade unions to which the trade union referred to in clause (a) of sub-section (1) of Section 36 is affiliated and where the worker is not a member of any trade union then he can be represented by any member of the executive or other office bearer of any trade union connected with or any other workman employed in the industry in which the worker is employed and authorised in such manner, as may be prescribed. There is a proviso added and which sets out that where there is a recognized union for any undertaking under any law for the time being in force, no workman in such proceeding shall be entitled to be represented in the manner set out by the clause of sub-section (1) of Section 36 in any such proceeding except those set out in the proviso. Meaning thereby in proceedings other than those bracketed by the proviso, the workman in the undertaking has to be represented by such recognized union.

25. Likewise where an employer is a party to the dispute, he shall be entitled to be represented in any proceedings under the I.D. Act by persons specified in Clause (a) to (c) of sub-section (2) of Section 36. By sub-section (3) of Section 36, no party to a dispute shall be entitled to be represented by legal practitioner in any conciliation proceedings under the I.D. Act or in any proceeding before a Court.

26. Then follows sub-section (4) of Section 36 and which deals with the proceedings before a Labour Court, Tribunal or National Tribunal. Therein a party to the dispute may be represented by a legal practitioner with the consent of other parties to the proceedings and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be.

27. The remaining sections are not relevant, save and except Section 38 which confers power to make rules and those rules can be made by the appropriate Government, which may, in particular and without prejudice to the generality of the power to make rules provide for the conditions subject to which parties may be represented by a legal practitioner in proceedings under this Act before a Court, Labour Court, Tribunal or National Tribunal.

28. There are rules made and what we have before us are the Industrial Disputes (Maharashtra) Rules, 1957, which by Rule 75 says that the parties to the industrial dispute shall appear before

the Commissioner and appointed vide Rule 68, either in person or by any other person who is competent to represent them in the proceeding before the Labour Court. We have not been shown any other Rules other than the above in the Maharashtra Rules. Then we have the Industrial Disputes (Central) Rules 1957 and in that we find that in Rule 29 and Rule 30, this is what is provided for:

“29. Right of representatives.—The representatives of the parties appearing before a Board, Court, Labour Court, Tribunal or National Tribunal or an Arbitrator shall have the right of examination, cross-examination and of addressing the Board, Court, Labour Court, Tribunal or National Tribunal or Arbitrator when an evidence has been called.

30. Proceedings before a Board, Court, Labour Court, Tribunal or National Tribunal.—The proceedings before a Board, Court, Labour Court, Tribunal or National Tribunal shall be held in public:

Provided that the Board, Court, Labour Court, Tribunal or National Tribunal may at any stage direct that any witness shall be examined or its proceedings be held in camera.

29. Then in Part VI, Rules 36 and 37 appear, which read as under:

“36. Form of authority under Section 36.—The authority in favour of a person or persons to represent a workman or group of workmen or an employer in any proceeding under the Act shall be in Form F.

37. Parties bound by acts of representative.—A party appearing by a representative shall be bound by the acts of that representative.”

30. There is a form appended to these Rules styled as Form F. Thus, the representation in terms of Rule 36 has to be by a authority in favour of a person or persons and that shall be in Form F.

31. Pertinently, Mr. Naik does not dispute that the representation of parties before a Court and before a Labour Court and Tribunal or National Tribunal is distinctly dealt with. For a Court is defined to mean a Court of Inquiry, whereas a Labour Court, Tribunal or National Tribunal is provided for and dealt with separately. Thus, in proceedings before a Labour Court, a party to a dispute which may be represented by a legal practitioner, but with the consent of other parties to the proceedings and with the leave of Labour Court, Tribunal or National Tribunal, as the case may be. This aspect of leave was introduced in the Act, but later on substituted by Act No. 36 of 1956. The Statement of Objects and Reasons leading to the substitution by the said Act reads as under:

“ *STATEMENT OF OBJECTS AND REASONS*

The Industrial Disputes (Amendment and Miscellaneous Provisions) Bill 1955, seeks to make certain long needed changes in the Industrial Disputes Act, 1947, and the Industrial Employment (Standing Orders) Act, 1946, and to repeal the Industrial Disputes (Appellate Tribunal) Act, 1950.

2 The present definition of 'workman' in section 2(s) of the Industrial Disputes Act has led to uncertainty, particularly in the case of technical and supervisory personnel. It is, therefore, proposed to enlarge the

definition to cover supervisory personnel, whose emoluments do not exceed Rs. 500 per mensem, and also the technical personnel.

3 There has been a persistent demand that notice should be given whenever it is proposed to make any change in the conditions of service of workmen. Therefore, a new Chapter, namely, Chapter IIA is proposed to be inserted to provide that the employer shall not introduce any change in respect of certain specified matters without giving to the workmen concerned 21 days' notice of his intention to do so.

4 The existing provisions of section 33 of the Act prohibit during the pendency of any conciliation proceeding or proceeding before a Tribunal any change being made in the conditions of service of, or any action being taken against, the workmen concerned in the dispute except with the express written permission of the authority concerned. The number of applications for such permission is frequently large and their disposal takes time. Employers have complained that they are therefore prevented from taking action even in obvious cases of misconduct and indiscipline unconnected with the dispute till long after the offence has been committed. It is proposed to alter the existing provisions so as to provide that, where, during the pendency of proceedings an employer finds it necessary to proceed against any workman in regard to any matter unconnected with the dispute, he may do so in accordance with the Standing Order applicable to the workman, but where the action taken involves discharge or dismissal, he will have to pay the workman one month's wages and simultaneously file an application before the authority before which the proceeding is pending, for its approval of the action taken. Protection on the lines of the existing provisions will continue to be available to all workmen to all workmen in regard to any matter or misconduct connected with the dispute. A

limited number of representatives of the workers will, however, be given protection in all matters whether connected with the dispute or otherwise.

5 There is a large volume of criticism that appeals filed before the Appellate Tribunal take a long time for disposal and involve a great deal of expenditure which the workers cannot afford. It is proposed to repeal the Industrial disputes (Appellate Tribunal) Act, 1956, and at the same time, to substitute the present system of tribunals by a three-tier system of original tribunals, manned by personnel of appropriate qualifications. References to the National Tribunals will be made by the Central Government and they will cover disputes which involve questions of national importance or which are of such a nature that establishments situated in more than one State are likely to be interested in, or affected by, the disputes. [Underlining ours]

6 Provisions is also made for voluntary reference of disputes to arbitration by the parties themselves by written agreement and for the enforcement of agreements between employers and workmen reached otherwise than in the course of conciliation.

7 Opportunity has been taken to carry out certain essential amendments to the Industrial Employment (Standing Orders) Act, 1946. It is proposed to empower both the Certifying Officer and the Appellate Authority to take into account the fairness or reasonableness of the standing orders before they are certified. Under the present law, only the employer can take steps to modify the existing standing orders. A similar right is being provided in the Bill for workmen. Provision has also been made for the resolution of differences that may arise between the parties as to the application and interpretation of standing orders. In case of any such differences, the parties can approach a Labour Court without the intervention of the appropriate

Government.”

32. Mr. Naik, therefore, does not dispute that not only consent of the other party, but leave of the Labour Court, Tribunal or National Tribunal is necessary. Mr. Naik could not dispute that the I.D. Act does not rule out representation of a party to dispute in any proceeding before a Labour Court, Tribunal or National Tribunal by representatives specified in sub-sections (1) and (2) of Section 36. Thus, the enactment does not prohibit representation of parties by persons other than a party. Those persons are also specified in the law. The word “represent” or “representation” in legal parlance means “act for, speak for, stand up for”. Representative means chosen, elected, elective and particularly a delegate, deputy, proxy, spokesman, stand-in, substitute and agent. Thus, both parties are statutorily to be represented by those specified in the sub-sections of section 36. There is no right in a party to engage anybody else or other than those specified in law to represent them in proceedings before the Labour Court, Industrial Tribunal etc. A legal practitioner is totally ruled out as a representative by Section 36(3) of the Industrial Disputes Act. Hence when the parties seek representation by a legal practitioner that they have to comply with the provision, namely, Section 36(4) of the I.D. Act. Pertinently, none of the sub-sections, which curtail the right of representation are challenged. The limitations and restrictions therein are accepted. A legal practitioner is assumed to be only an advocate as defined in section 2(1) (a) of the Advocates Act, 1961. Is that the only meaning of this term?.

We do not think it to be so. This term is understood by the I. D. Act, 1947 to be a trained, experienced, expert legal mind which would include a advocate as above. We only refer to the legal meaning of this term and to be found in Act XVIII of 1879 (Legal Practitioners), section 3, section 2(c) of the Notaries Act and Article 22(1) of the Constitution of India. It is understood as one who is engaged in the exercise or employment of legal profession, a person who practised law, such as an advocat, vakil or attorney of any High Court, a pleader, mukhtiyar or revenue agent (section 2(1)(i) of the Advocates Act, 1961). The repealing section in the Advocates Act, 1961, namely section 50 reads as under:-

“50. Repeal of certain enactments – (1) On the date on which a State Bar Council is constituted under this Act, the provisions of sections 3 to 7 (inclusive), sub-sections (1), (2) and (3) of section 15 and section 20 of the Indian Bar Council Act, 1926 (38 of 1926), shall stand repealed in the territory for which the State Bar Council is constituted.

(2) On the Date on which Chapter III comes into force, the following shall stand repealed namely :-

- a. sections 6, 7, 18 & 37 of the Legal Practitioners Act, 1879 (18 of 1879) and so much of sections 8,9, 16, 17, 19 and 41 of that Act as relate to admission and enrolment of legal practitioners ;*
- b. sections 3, 4 and 6 of the Bombay Pleaders Act, 1920 (Bombay Act 17 of 1920) ;*
- c. so much of section 8 of the Indian Bar Councils Act, 1926 (38 of 1926), as relate to the admission and enrolment of legal practitioners ;*
- d. the provisions of the Letters Patent of any High Court and of any other law in so far as they relate to the admission and enrolment of legal practitioners.*

(3) On the date on which Chapter IV comes into force, the following shall stand repealed, namely :-

- a. sections 4,5, 10 and 20 of the Legal Practitioners Act, 1879 (18 of 1879) and so much of sections 8, 9 19 and 41 of that Act as confer on legal practitioners the right to practice in any court or before any authority of person ;*
- b. sections 5,7,8 and 9 of the Bombay Pleaders Act, 1920 (Bombay Act 17 of 1920) ;*
- c. section 14 of the Indian Bar Councils Act, 1926 (38 of 1926), and so much of sections 8 and 15 of that Act as confer on legal practitioners the right to practice in any court or before any authority or person ;*
- d. the Supreme Court Advocates (Practice in High Courts) Act, 1951 (18 of 1951) ;*
- e. the provisions of the Letters Patent of any High Court and of any other law conferring on legal practitioners the right to practice in any court or before any authority or person.*

(4) On the date on which Chapter V comes into force, the following shall stand repealed, namely :-

- a. sections 12 to 15 (inclusive), sections 21 to 24 (inclusive) and sections 39 and 40 of the Legal Practitioners Act, 1879 (18 of 1879), and so much of sections 16, 17 and 41 of that Act as relate to the suspension, removal or dismissal of legal practitioners ;*
- b. sections 24 to 27 (inclusive) of the Bombay Pleaders Act, 1920 (17 of 1920);*
- c. sections 10 to 13 (inclusive) of the Indian Bar Councils Act, 1926 (38 of 1926) ;*
- d. the provisions of the Letters Patent of any High Court and of any other law in so far as they relate to the suspension, removal or dismissal of legal practitioners.*

(5) *When the whole of this Act has come into force –*

a. the remaining provisions of the Acts referred to in this section which do not stand repealed by virtue of any of the foregoing provisions of this Section (except sections 1, 3 and 36 of the Legal Practitioners Act, 1879 (18 of 1879) shall stand repealed ;

b. the enactments specified in the Schedule shall stand repealed to the extent mentioned therein.”

33. A bare perusal thereof indicates as to how the repealing section would operate. Therefore, subject to the Act and Rules made thereunder, the only class of persons, namely, Advocates can practice law. Hence, to urge that section 30 having been brought into force, there is absolute right to practice law is incorrect for section 30 is also subject to the provisions of the Advocates Act, 1961.

34. Merely because the conditions are stipulated will that make the provision unconstitutional? Pertinently, Mr. Naik started with the petitioner's right to representation by a legal practitioner and went on developing his arguments, as if, this provision imposes unreasonable restrictions on the right of an advocate to practice guaranteed by Section 30 of the Advocate Act, 1961. We would advert to this later part of the argument, after we dispose of his first contention.

35. In the case of *Lingappa P. Appelwar vs. State of Maharashtra and anr. - (1985) 1 SCC 479*, the Hon'ble Supreme Court while dealing with the challenge to Section 9-A of the

Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, in the context of a parties right to be represented by an advocate held thus:

“32. The next and the last question that arises is whether Section 9-A of the Act is constitutionally void as it affects (i) the fundamental right of an advocate enrolled by the State Bar Council of Maharashtra to carry on his profession guaranteed by Article 19(1)(g) of the Constitution and (ii) the right of the appellants who are non-tribals being prevented to be represented by a legal practitioner of their choice.

33. The problem before us has to be viewed from two angles: first, from the viewpoint of the legal practitioner; and secondly from that of the litigants. Though the question for consideration as to whether Section 9-A of the Act offends Article 19(1)(g) is of considerable importance to the litigant public in general, and the legal profession in particular, it is no longer res integra, it being practically concluded by several decisions of the various High Courts, from both the view-points noted above. Section 9-A of the Act reads:

"9-A. Notwithstanding anything contained in this Act or any law for the time being in force, no pleader shall be entitled to appear on behalf of any party in any proceedings under this Act before the Collector, the Commissioner or the Maharashtra Revenue Tribunal:

Provided that, where a party is a minor or lunatic, his guardian may appear, and in the case of any other person under disability, his authorised agent may appear, in such proceedings."

34. The contention that an advocate enrolled under the Advocates Act, 1961 has an absolute right to practice before all courts and tribunals can hardly be accepted. Such a right is no doubt conferred by Section 30 of the Advocates Act. But unfortunately for the legal profession, Section 30 has not been brought into force so far though the Act has been on the Statute Book for the last 22 years. There is very little that we can do in the matter and it is for the Bar to take it up elsewhere. A person enrolled as an advocate under the Advocates Act is not ipso facto

entitled to a right of audience in all courts unless Section 30 of that Act is first brought into force. That is a matter which is still regulated by different statutes and the extent of the right to practice must depend on the terms of those statutes. The right of an advocate brought on the rolls to practise is, therefore, just what is conferred on him by Section 14(1)(a), (b) and (c) of the Bar Councils Act, 1926. The relevant provision reads as follows:

14. (1) An advocate shall be entitled as of right to practise:
- (a) subject to the provisions of sub-section (4) of Section 9, in the High Court of which he is an advocate, and
 - (b) 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 and before any other tribunal or person legally authorised to take evidence, and
 - (c) before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practise.

In view of the various authorities on the subject, we cannot but hold that Section 9-A of the Act is not an unconstitutional restriction on advocates to practise their profession.

35. That brings us to the second aspect of the matter i.e. the so-called right of a litigant to be represented before the Collector in matters not covered by Sections 3(1) and 4 of the Act. Now it is well-settled that apart from the provisions of Article 22(1) of the Constitution, no litigant has a fundamental right to be represented by a lawyer in any court. The only fundamental rights recognized by the Constitution is that under Article 22(1) by which an accused who is arrested and detained in custody is entitled to consult and be defended by a legal practitioner of his choice. In all other matters i.e. in suits or other proceedings in which the accused is not arrested and detained on a criminal charge, the litigant has no fundamental right to be represented by a legal practitioner. For ought we know the Legislature felt that for the implementation of the legislation, it would not subserve the public interest if lawyers were allowed to appear, plead or act on behalf of the non-tribal transferees. It cannot be denied that a tribal and a non-tribal are unequally placed and non-tribal transferee being a person belonging to the more affluent class, would unnecessarily protract the proceedings before the Collector

under Sections 3(1) and 4 of the Act by raising all kinds of pleas calculated to delay or defeat the rights of the tribal for restoration of his lands. The proceedings before the Collector have to be completed with sufficient despatch and the transferred lands restored to a tribal under sub-section (1) of Section 3 and Section 4 of the Act without any of the law's delays.”

36. Once a litigant does not have a fundamental right to be represented by a lawyer in any Court, then, it is difficult to accept the argument of Shri. Naik that Section 36(4) is unconstitutional and *ultra vires* Article 14 of the Constitution of India, so also Article 21 thereof. Article 14 guarantees equality before law and equal protection of laws. Article 21 guarantees life and liberty. Both these Articles read with Article 39-A may take in their sweep a right to seek legal redress or access to a Court of law or a guarantee of justice, but that is not to be confused with the right claimed before us, which is a right to be represented by an advocate/lawyer in any Court. That is not a part of the mandate of these provisions in the Constitution of India and our answer would be in the negative. That is for obvious reasons, particularly after the authoritative pronouncement of the Hon'ble Supreme Court. Mr. Naik could not bring anything contrary to the above to our notice.

37. However, we must in all fairness to Mr. Naik and to other parties refer to a decision of the Hon'ble Supreme Court of India rendered in the case of ***H.S. Srinivasa Raghavachar etc. vs. State of Karnataka and Ors. - AIR 1987 SC 1518***. Therein, the Hon'ble Supreme Court, *inter alia*, dealt with the issue of constitutional

validity of the Amendment Act, namely, Karnataka Land Reforms (Amendment) Act (1 of 1974), by which, Karnataka Land Reforms Act (10 of 1962) was amended. The argument was that sub-section 8 to Section 48 was inserted by Amendment Act and that prohibited a legal practitioner from appearing before the land Tribunals. That provision was declared as unconstitutional and the reasoning in paragraph 9 with regard to this challenge is as under :

“9. The last submission was in regard to sub-sec. (8) of S.48 which prohibited legal practitioners from appearing in proceedings before the Tribunals. The argument was that S. 48(8) was repugnant to S.30 of the Advocates Act, 1961 and S.14 the Indian Bar Councils Act. It was said that the State Legislature was not competent to make a law repugnant to laws made by Parliament pursuant to entries 77 and 78 of List I of the 7th Schedule of the Constitution. The submission of the learned counsel is fully supported by the judgment of a Full Bench of High Court of Punjab and Haryana in Jaswant Kaur v. State of Haryana, AIR 1977 Punj & Har 221. We adopt the reasoning of the High Court of Punjab & Haryana and direct that S.48(8) will not be enforced so as to prevent Advocates from appearing before the Tribunals functioning under the Act. In regard to the decisions already rendered by the Tribunals we do not think that it is necessary to re-open them on the ground that legal practitioners were not allowed to appear before the Tribunals in those cases. All the civil appeals are, therefore, dismissed, in the circumstances without cost.”

38. Since this judgment approves the judgment of the Full Bench of the High Court of Punjab and Haryana in the case of *Smt. Jaswant Kaur and Anr. vs. The State of Haryana and Anr.*, reported in **AIR 1977 (P & H.) 221**, we deem it fit and proper to reproduce the relevant paras therefrom, which read as under:-

“18. We now take up an important question which was raised by Shri Bhandari on the constitutional validity of Section 20-A of the Haryana Ceiling on Land Holdings Act which bars the appearance of any legal practitioner before any officer or authority other than the Financial Commissioner. It was argued that Section 20-A was repugnant to Section 30 of the Advocates Act 1961 which declares that every Advocate whose name is entered in the common roll shall be entitled as of right to practice (i) in all Courts including the Supreme Court, (ii) before any Tribunal or persons 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 practice. There is no dispute that the authorities constituted under the Haryana Ceiling on Land Holdings Act are legally authorised to take evidence (vide Section 20 of the Act). There is also no dispute that but for Section 20-A of the Act, Advocates would be entitled by virtue of Section 30(ii) of the Advocates Act to appear before any officer or authority functioning under the Act. The argument of Shri Bhandari was that the Advocates Act was a law made by Parliament pursuant to Entries 77 and 78 of List I of the Seventh Schedule to the Constitution and, therefore, the State Legislature was not competent to make a law repugnant to it. It was argued that Section 20-A would not be saved by Article 254(2) of the Constitution since the Advocates Act was not a law made with respect to a matter enumerated in the Concurrent List. Shri Bhandari placed strong reliance on the decision of the Supreme Court in *O. N. Mohindroo v. Bar Council of Delhi*, AIR 1963 SC 888. The question before the Supreme Court was whether Section 38 of the Advocates Act which gave appellate jurisdiction to the Supreme Court against orders made by the Disciplinary Committee of the Bar Council of India, was ultra vires Article 138(2) of the Constitution. Article 138(1) provides for the enlargement of the jurisdiction of the Supreme Court by law made by Parliament with respect to any of the matters in the Union List. Article 138(2) provides for the enlargement of the jurisdiction of the Supreme Court by law made by Parliament with respect to any matter upon which the Government of India and the Government of any State may specially agree. If the Advocates Act wholly fell within the Union List, the vires of the Act could not be challenged. If it fell within List III, then in the absence of agreement between the Central Government and the State Government, the Act would be invalid. The High Court of Delhi held that the Advocates Act was a composite legislation partly falling under Entries 77 and 78 of List I and partly in Entry 26 of List III. The Supreme Court after referring to Entries 77 and 78 of List I and Entry 26 of List III, observed as follows :-

"Entries 77 and 78 in List I apart from dealing with the Constitution and Organisation of the Supreme Court and the High Courts also deal with persons entitled to practise before the Supreme Court and the High Courts. This part of the two entries shows that to the extent that the persons entitled to practise before the Supreme Court and the High Court are concerned, the power to legislate in regard to them is carved out from the general power relating to the professions in Entry 26 in List III and is made the exclusive field for legislation by Parliament only. Barring those entitled to practise in the Supreme Court, and the High Courts, the power to legislate with respect to the rest of the practitioners would still seem to be retained under Entry 26 of List III. To what extent the power to legislate in regard to legal profession still remains within the field of Entry 26 is not the question at present before us and, therefore, it is not necessary to go into it in this appeal."

The Supreme Court then referred to the object of the Act and the various provisions of the Act including Section 30. It was then observed as follows:-

"Though the Act relates to the legal practitioners, in its pith and substance it is an enactment which concerns itself with the qualifications, enrollment, right to practise and discipline of the Advocates. As provided by the Act once a person is enrolled by any one of the State Bar Councils, he becomes entitled to practise in all Courts including the Supreme Court. As aforesaid, the Act creates one common Bar; all its members being of one class, namely, advocates. Since all those who have been enrolled have a right to practise in the Supreme Court and the High Courts the Act is a piece of legislation which deals with persons entitled to practise before the Supreme Court and the High Courts. Therefore, the Act must be held to fall within Entries 77 and 78 of List I. As the power to legislation relating to those entitled to practise in the Supreme Court and the High Court is carved out from the general power to legislate in relation to legal and other professions in Entry 26 of List III, it is an error to say, as the High Court did, that the Act is a composite legislation partly falling under Entries 77 and 78 of List I and partly under 26 of List III."

Thus, it appears to be the view of the Supreme Court that Entries 77 and 78 of List I are concerned with the persons entitled to

practise before the Supreme Court and the High Courts, that is to say, the Entries are concerned not merely with who are entitled to practise in the Supreme Court and the High Courts, but also with all other matters concerning them such as their qualifications, discipline, rights including the right to practise elsewhere etc. In that view, the right of an Advocate whose name appears on the common roll to practise before any Tribunal or person legally authorised to take evidence, cannot be taken away by a State law. To the extent that Section 20-A bars the appearance of Advocates before any officer or authority it must be held to be repugnant to Section 30 of the Advocates Act and, therefore, invalid. We would like to add that the Haryana Ceiling on Land Holdings Act is a complicated piece of legislation and it would indeed be difficult for lay persons to understand some of its provisions without expert legal assistance. It is but necessary that those that need legal assistance to enable them to properly put-forward their case, should not be deprived of that assistance. Cases arising under the Haryana Ceiling on Land Holdings Act are not like those which come before a Labour Court where, if Legal Practitioners are allowed to appear, a poor workman who is unable to engage the services of a lawyer may find himself pitted against a stalwart advocate engaged by the management. Such a situation cannot possibly arise in cases under the Ceiling on Land Holdings Act. While it is not for us to question the legislative wisdom in enacting Section 20-A, we are unable to discover any reason for the provision. Perhaps it is founded on the unfounded distrust expressed by a wit:

"In the heels of the higgling lawyers, too many slippery ifs and buts and howevers.

Too much hereinbefore provided whereas, Too many doors to go in and out of, When the lawyers are through What is there left Bob ?

Can a mouse nibble at it And find enough to fasten a tooth in?"

24. After the judgment was prepared, it was brought to our notice that Section 30 of the Advocates Act has not yet come into force. That however will not make any difference to our conclusion regarding the validity of Section 20-A of the Haryana Act. Until Section 30 of the Advocates Act comes into force, by virtue of Section 50(3)(c) of the Advocates Act, Section 14 of the Indian Bar Councils Act shall continue to be in force. Now Section 14(1)

of the Indian Bar Councils Act is in pari materia with Section 30 of the Advocates Act and is as follows:

"14. Right of advocates to practise.-(1) An Advocate shall be entitled as of right to practise--

(a) subject to the provisions of Sub-section (4) of Section 9, in the High Court of which he is an advocate, and

(b) 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 and before any other Tribunal or person legally authorised to take evidence, and

(c) before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practise."

An examination of the various provisions of the Indian Bar Council Act, particularly Sections 1(2), 2(1)(a), 2(1)(c), 3, 8, 9, 10, 14, 15 clearly shows that the Indian Bar Council Act is primarily concerned with the qualifications, enrolment, right to practise and discipline of advocates entitled to practise in the High Courts even as the Advocates Act is concerned with the qualifications enrolment, right to practise and the discipline of Advocates entitled to practise in the Supreme Court and in the High Courts. All that has been said by the Supreme Court with reference to the Advocates Act and by us with reference to Section 30 of the Advocates Act applies with the same vigour Section 14 of the Indian Bar Councils Act. Section 20-A of the Haryana Act is therefore ultra vires."

39. Pertinently and with greatest respect, the attention of the Hon'ble Supreme Court was not invited to its own prior judgment and rendered in the case of *Lingappa Pochanna Appelwar (supra)*. That decision was rendered by a Bench of three Judges. In *Lingappa Appelwar (supra)*, the Bench of three Judges was headed by Hon'ble Mr. Justice O. Chinappa Reddy and His Lordship headed the Division Bench which declared Section 48(8) as above to be unconstitutional. We do not decide a larger and wider issue as to

which of this judgment would bind us, but given the fact that there are compelling reasons otherwise not to agree with Mr. Naik. We do not pursue this aspect any further. Apart therefrom and pertinently, both provisions barring the legal practitioners' appearance are to be found in the State Land reforms/tenancy law unlike a parliamentary statute before us. Secondly, section 36(4) was specifically referred in the Full Bench decision (*supra*) and it was not held to be contrary to the constitutional mandate enshrined above.

40. Suffice it to say that the Hon'ble Supreme Court in the judgment, which is relied upon by Mr. Naik himself [*Jamshed Ansari Vs. High Court of Judicature at Allahabad (surpa)*] has made a distinction between a right to practice law guaranteed by the Advocates Act and a right to appear and argue cases before a Court of law, then, we do not think that Mr. Naik's argument can be accepted. In paragraphs 17, 18, 19 and 20 of the decision in *Jamshed Ansari (supra)*, the Hon'ble Supreme Court has held as under:

"17. In N.K. Bajpai v. Union of India, this Court made it clear that right to practise can be regulated and is not an absolute right which is free from restriction or without any limitation. Following observations from the said judgment are pertinent and relevant for the present case: (SCC pp.668 & 680, Paras 24-26 & 59)

"24. A bare reading of these three provisions clearly shows that this is a statutory right given to an advocate to practise and an 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 practise before any authority or person. Where the advocate has a right to appear before an authority or a person, that right can be denied by a law that may be framed by the competent legislature.

25. Thus, the right to practise is not an absolute right which is free from restrictions and is without any limitation. There are persons like Mukhtars and others, who were earlier entitled to practise before the courts, but the Advocates Act itself took away the right to practise which was available to them prior to its coming into force. Thus, the Advocates Act placed a complete prohibition upon the right to practise of those persons who were not advocates enrolled with the State Bar Council. Therefore, 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.

26. An argument could be raised that a person who has obtained a degree of law is entitled to practise anywhere in India, his right, as enshrined in the Constitution and under the Advocates Act cannot be restricted or regulated and also that it is not necessary for him to enroll himself on any of the State rolls. This argument would be fallacious in the face of the provisions of the Advocates Act as well as the restrictions contemplated in Article 19(6) of the Constitution. The legislature is entitled to make a law relating to the professional or technical qualifications necessary for carrying on of that profession.

59. As already noticed by us above, the right to practise law is a statutory right. The statutory right itself is restricted one. It is controlled by the provisions of the Advocates Act, 1961 as well as the Rules framed by the Bar Council under that Act. A statutory right cannot be placed at a higher pedestal to a fundamental right. Even a fundamental right is subject to restriction and control. At the cost of repetition, we may notice that it is not possible to imagine a right without restriction and control in the present society. When the appellants were enrolled as advocates as well as when they started practising as advocates, their right was subject to the limitations under any applicable Act or under the Constitutional limitations, as the case may be.”

18. At this juncture, we may also take note of the rationale behind the impugned Rules which would not only be an answer to the question which we are addressing at the moment, namely, the Rules are in the nature of regulations/restrictions and not prohibition, it will even answer related aspect as well viz. the restrictions are reasonable in nature as they are in public interest.

19. The administration of justice is a sacrosanct function of the judicial institutions or the persons entrusted with that onerous responsibility and principle of judicial review has now been declared as a part of the basic structure of the Constitution. Therefore, if anything has the effect of impairing or hampering the quality of administration of justice either due to lack of knowledge or proper qualification on the part of the persons involved in the process of justice dispensation or they being not properly certified by the Bar Council as provided under the Act and the Rules made there under, it will surely affect the administration of justice and thereby affecting the rights of litigants who are before the Courts seeking justice. The whole object of the Rules in question is furtherance of the administration of justice and to

ensure that the advocates who can be easily located or accountable to the Courts are allowed to practice before the Court. Therefore, the Rules provide that the name of such advocates whose names are not on the roll of the Advocates in the High Court should appear with a local Advocate of the High Court. The easy identification of the person who appears before the Court when he is the enrolled advocate of another Bar Council or is not on the rolls of Advocates of the High Court is to ensure his presence whenever the cases are listed and to minimise the cases being dismissed for default which may result in serious consequences to the litigants and multiplicity and inordinate delay in proceedings whether it be a criminal case or civil dispute is the objective of Rule 3 or 3-A of the Rules. That objective is achieved when he is permitted to appear along with the local Advocate of the High Court.

20. In applying the test of reasonableness (which is the most crucial consideration), the broad criterion is whether the law strikes a proper balance between social control on the one hand and the rights of the individual on the other hand. The court must take into account the following aspects:

- (a) nature of the right infringed;*
- (b) underlying purpose of the restriction imposed;*
- (c) evils sought to be remedied by the law, its extent and urgency;*
- (d) how far the restriction is or is not proportionate to the evil; and*
- (e) prevailing conditions at the time.”*

41. The other compelling reasons, according to us, not to accept the argument of Mr. Naik are that Mr. Naik relied upon the view taken by the learned Single Judge of the Allahabad High Court and submitted that in the said judgment, the learned Single Judge declared that Section 36(4) was unconstitutional. The argument is

that by this judgment the provision is effaced from the Statute Book. In that regard, we find much substance in the contention of Mr. Kulkarni, learned advocate appearing for respondent No.1 that another learned Single Judge of the High Court of Allahabad in the case of ***V.K. Gupta vs. Presiding Officer, Central Government Industrial Tribunal and others – AIR 2016 ALL 23*** disagreed with the view taken by the learned Single Judge of the Allahabad High Court (Justice Sri M.Katju) in the case of *I. C. I. India Ltd.* (supra). He held that the decision of the Hon'ble Supreme Court in the case of *Paradip Port Trust* (supra) and other decisions particularly in the case of *Lingappa Appelwar* (supra) would show that a view contrary taken by the learned Single Judge in the case of *I.C.I. India , Ltd. (supra)* cannot be accepted. Mr. Anil Singh, learned Additional Solicitor General also invited our attention to the judgment of the High Court of Judicature at Delhi in the case of *Co-operative Store Ltd. vs. Industrial Tribunal-I, Delhi and Ors.*, decided on 9th January, 1986 (**Civil Writ Petition No. 2752 of 1986**), which is a Division Bench judgment, in which as well it is held by the Division Bench that Section 36 is not violative of Article 14 of the Constitution of India as the bar imposed by subsection (4) thereof is not unreasonable. In the same breath, our attention was also invited to the judgment of a Division Bench of this Court rendered as far back as in the year 1952 in the case of ***Mulchand Gulabchand vs. Mukund Shivram Bhide and anr. - AIR 1952 Bombay 296***. In that decision, the Division Bench declared the law thus:

“It is not suggested by Mr. Kotwal that any fundamental right of the petitioner is affected by the statutory rule. The fundamental right that a citizen has is to be heard before a judicial tribunal and not to have any decision given against him or affecting his rights without his being permitted to show cause in his defence. But that right is vouchsafed to the petitioner. We do not think it can be seriously urged that it is a fundamental right of a citizen to be heard through his advocate or through his lawyer.”

42. Mr. Kulkarni was also right in placing reliance on the decision in the case of *Nagalinga Nadar Sons, Firm vs. Ambalapuzha Taluk Head Load Conveyance Worker's Union Alleppey and ors. - A.I.R. (38) 1951 Travancore-Cochin 203*, which declares that Section 36(4) is not *ultra vires* Article 19(1) (g) of the Constitution of India.

43. Thus, the question of the provision being effaced or wiped out from the Statute Book does not arise at all. These are but conflicting opinions of the High Courts in India. Most of them have not agreed with the learned Single Judge's view in *I.C.I Ltd (supra)* of the Allahabad High Court. Even prior to that decision in several judgments including of this Court, it has been categorically held that such a provision does not fall foul of the constitutional mandate. Thus, this is not a case covered by the principle which Mr. Naik presses into service, namely, that once a High Court has struck down the provision of the Central Act, it cannot be said that it could be selectively applied in other States. This is not a principle which can be invoked in the facts and circumstances of the present case. We do not think that the principle laid down by

the Hon'ble Supreme Court in *Kusum Ingots & Alloys Ltd. (supra)*, can be invoked and applied to the issue before us.

44. Once Mr. Naik heavily relied upon the view taken by learned Single Judge of the High Court of Allahabad, but that view having not been accepted even in prior and later judgments, we do not think that the above principle in *Kusum Ingots & Alloys Ltd. (supra)* can be invoked.

45. Equally misplaced is the reliance by Mr. Naik on the provision of the Advocates Act and particularly Section 30 thereof. We are not concerned herewith a petition by an advocate. That apart, we have shown above as to how there is a legal distinction between a right of an advocate to practice law guaranteed by section 29 and 30 of the Advocates Act, 1961 and the right to appear and address a court of law or tribunal. That is not guaranteed in every case or in all circumstances. We are concerned with and deciding a petition by a party, who feels inhibited on account of the presence of sub-section (4) of Section 36 in the Industrial Disputes Act, 1947 in engaging a legal practitioner. Once the party's right to engage a lawyer cannot be placed higher than or above the legal practitioner's right to practise law, which is distinct from a right to appear and address a Court or right to represent a party before a Court or a Tribunal, then, all the more we decline to examine the point from the angle of a Advocate.

46. Once we reach the above conclusion, then, there is no merit in the argument canvassed before us that *Paradip Port Trust* (supra) was not concerned with the issue of constitutional validity of Section 36(4) of the ID Act. That would not be a proper reading of *Paradip Port Trust* (supra). *Paradip Port Trust* (supra) was a judgment rendered by the Hon'ble Supreme Court on the very issue. There the appellant before the Supreme Court was a party to a industrial dispute and the Union *Paradip Shramik Congress* representing the workmen raised an industrial dispute with regard to the termination of services of one Nityananda Behera, a temporary Teacher in Paradip Port Trust High School. The dispute was referred to the Industrial Tribunal (Central) Bhubaneswar, Orissa under Section 10(1) (d) of the ID.Act. The workmen appeared before the Tribunal through the Adviser and the General Secretary of the Union whereas the appellant sought to be represented before the Tribunal through an advocate, who was a Legal Consultant of the Trust. The appellant claimed to have complied with the provisions of the said Act and the Rules, but an objection was taken by the Union to the representation of the appellant/employer by the advocate and it refused to give their consent to his representation as required under Section 36(4) of the ID Act. This objection was upheld by the Tribunal and later on the matter was taken to the Supreme Court. In dealing with the challenge to the order and the view of the Tribunal, the Hon'ble Supreme Court has held in paragraphs 7,8 and 9 in *Paradip Port Trust, Paradip vs. Their Workmen* (supra) as under:-

“7. Industrial law in India did not commence with a show of cold shoulder to lawyers as such. There was an unimpeded entrance of legal practitioners to adjudication halls before tribunals when the Act first came into force on April 1, 1947. Three years later when the Labour Appellate Tribunals were constituted under the Industrial Disputes (Appellate Tribunal Act 1950, a restriction was imposed on the parties in engagement of legal practitioners before the Appellate Tribunal without consent of the parties and leave of the Tribunal. When this was introduced in the appellate forum, the same restriction was imposed for the first time upon representation of parties by legal practitioners before the Industrial Tribunals as well [see Section 34 of the Industrial Disputes (Appellate Tribunal) Act, 1950]. In view of the recent thinking in the matter of preferring legal aid to the poor and weaker sections of the people it may even be possible that the conditional embargo under S. 36 (4) may be lifted or its rigor considerably reduced by leaving the matter to the Tribunals' permission as has been the case under the English law.

8. Restriction on parties in respect of legal representation before Industrial Courts is not a new phenomenon. It was there in England in the Industrial Courts Act, 1919 (9 & 10 Geo 5 c 69) and does not appear to be altered even by the Industrial Relations Act, 1971. Section 9 of the English Act provides that except as provided by rules, "no person shall be entitled to appear on any such proceedings by counsel or solicitor." However, Rule 8 of the Industrial Court (Procedure) Rules 1920 allows persons to appear by counsel or solicitor with permission of the court.

9. The Act envisages investigation and settlement of industrial disputes and with that end in view has created various authorities at different levels all independent of one another. The word adjudication occurs only with reference to labour courts, industrial tribunals and national tribunals. These bodies are manned by Judges of High Courts or by

officers with appropriate judicial and labour law experience. The conciliation proceedings held by a Board or a Conciliation Officer are mainly concerned with mediation for promoting settlement of industrial disputes. It is reasonable to suppose that the presence of legal practitioners in conciliation may divert attention to technical pleas and will detract from the informality of the proceedings impeding smooth and expeditious settlement. Legal practitioners entrusted with their briefs cannot be blamed if they bring forth their legal training and experience to the aid and benefit of their clients. But labour law operates in a field where there are two unequal contestants. The Act, therefore, takes care of the challenge of the situation in which the weaker party is pitted against the stronger before adjudicating authorities. That appears to be one of the reasons for introducing consent of the parties for representation by legal practitioners. Employers, with their purse, naturally, can always secure the services of eminent counsel.”

47. We do not agree with Shri. Naik that this authoritative pronouncement of the Hon'ble Supreme Court does not deal with the controversy before us. Rather it, expressly deals with and rejects the arguments on almost all issues including the legality and validity of an order refusing a legal practitioner to appear before the Tribunal. Thus, judicial discipline requires that we do not tinker with or indulge in hair splitting particularly, when a binding judgment is rendered by the Hon'ble Supreme Court of India.

48. We are not persuaded to hold that once such a judgment is in the field, still the question of legality and validity of the

provision is open for consideration. If at all, that is open even that stands concluded by the authoritative pronouncements of the Hon'ble Supreme Court noticed in the forgoing paragraphs.

49. In the light of the above, we do not think that the view taken by the learned Single Judge of this Court following the Supreme Court's judgment (judgment of His Lordship Hon'ble Mr. Justice R.G. Ketkar) in **Writ Petition No. 9275 of 2012** decided on 28th January, 2015, **Hindusthan Organic Chemicals Employees Union v. Hindusthan Organic Chemicals Ltd.** can be said to be contrary to the settled legal position. That judgment has also been rightly followed and applied to the facts and circumstances of the present case.

50. As a result of above discussion, we are of the firm view that the writ petition must fail. It is accordingly dismissed. Rule is discharged. No order as to costs. We at once clarify that we have been called upon to only examine the legality and validity of Section 36(4) of the Industrial Disputes Act, 1947, in this petition. No other argument was canvassed and the impugned order was challenged only on this ground. Therefore, it is necessary to clarify that the orders refusing representation by a legal practitioner can be challenged in other cases if such an order contravenes the legal provision or is perverse. The order impugned in this petition is not challenged in these terms.

51. In view of dismissal of main writ petition, the civil application does not survive and the same is disposed of.

52. At this stage, Mr. Naik learned senior counsel prays for leave to appeal to the Hon'ble Supreme Court. This request is opposed by the other side.

53. Having noted this request, we find no reason to grant it for we have decided the challenge in the light of the well settled principles laid down in the judgment of the Supreme Court. Leave is refused.

54. At this stage, Mr. Naik would prays that the petitioner would like to challenge this order in the higher court and for that purpose, the operation and implementation of this judgment and order be stayed. This request is opposed by Mr. Kulkarni appearing for the respondent-workmen, who would submit that there are families of the workmen concerned, who would suffer adversely in the event the adjudication is held up.

55. We have heard both sides on this point as well and we do not find any reason to stay the proceedings before the trial court. In these circumstances, the request is refused.

(SMT. BHARATI H. DANGRE, J.)

(S. C. DHARMADHIKARI, J.)