

i) On 25 November 2016 a reference was made by the Government to adjudicate the dispute between the Respondent Company and the Petitioner workman. Notice was issued to the Respondent Company to file its Written Statement. On 3 January 2017 none was present on behalf of the Respondent Company. The Union Representative for the Petitioner workman was present before the Labour Court. On 1 February 2017 the Respondent Company filed an Application (Exhibit C-1) to engage an Advocate and filed Vakalatnama of the Advocate. The said Application (Exhibit C-1) reads as follows:

“The undersigned desires to engage Mr. Chaitanya Torgal to appear as an Advocate for the first party Nos.1 and 2 in the above matter.

It is therefore prayed that this Hon'ble Court may kindly permit Mr. Chaitanya Torgal to appear, attend and file the documents, written statement, etc. on behalf of the first party Nos.1 and 2 and kindly oblige.”

ii) On that date i.e. on 1 February 2017 the representative of the Petitioner-workman was present and the learned Judge made an endorsement on the Application for Say of the Petitioner-workman and the matter was adjourned to 7 February 2017. On 7 February 2017 the representative of the Petitioner-workman made hand-written endorsement on the Application (Exhibit C-1) which reads as follows:

“Say of the Second Party.

The Second Party taking Objection for appearance of the advocate in the matter.

Advocate cannot appear in the I.D. Act under section 36(4). Second Party will file separate application for Debar the advocate.”

iii) The matter was thereafter adjourned to 20 February 2017. On 20 February 2017 both the parties were present. The matter was adjourned to 27 February 2017. On 27 February 2017, a separate Application dated 27 February 2017 was made by the Petitioner-workman not to allow the Respondent Company to be represented by any Advocate in the proceedings before the Labour Court. A Reply was filed by the Respondent Company interalia stating that since the Application dated 27 February 2017 of the Petitioner-workman was made belatedly and since on 1 February 2017 when the Application (Exhibit C-1) and Vakalatnama were filed, no objection was taken by the representative of the Petitioner-workman, the said Application dated 27 February 2017 of the Petitioner-workman was liable to be rejected.

4 The issues raised in the Petition are essentially involve interpretation of section 36(3) and (4) of the Industrial Disputes Act, which read as follows:

“36. Representation of parties:- (1)

(2)

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

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

5. I have heard learned Counsel for the parties and perused the record and the judgments cited across the bar. In **Engineering Mazdoor Sabha, Bombay vs. Meher (M.R.) (Industrial Tribunal, Bombay) & Ors., CDJ 1965 BHC 090**, the Division Bench of this Court has observed as follows:

“1. In an industrial dispute between the petitioners and their employers, respondent 2, which has been referred to the industrial tribunal, respondent 1, an application for interim bonus had been made by the union. From the roznama it appears that this application was kept for hearing on 12 September, 1963. On that date Sri Phadke appeared for respondent 2. Sri Joshi appeared for the union and prayed for an adjournment, since Sri Mehta, who generally used to appear on behalf of the union was out of Bombay. Sri Phadke raised

no objection to the prayer for adjournment. The matter was therefore adjourned to 21 September, 1963. On that date Sri Phadke appeared for respondent 2. An objection was then raised to his appearance. The tribunal held that if the union wanted to object to his appearance, it should have done so at the first hearing of the matter and that it was too late for the union to object to his appearance. The tribunal therefore, rejected the application made by the union that Sri Phadke should not appear for respondent 2. Sri Kamerkar, who appears on behalf of the petitioners, has urged that there was no effective hearing of the matter on 12 September, 1963, that on that date only a prayer had been made on behalf of the union for adjourning the hearing as the person in charge of the case on behalf of the union was Sri Mehta who was out of Bombay and that consequently it cannot be said that the union was not aware of Sri Phadke's appearing in the matter. This argument cannot be accepted, because the roznama of the case, of which Sri Kamerkar has shown to us a certified copy, shows that on 12 September Sri Joshi appeared on behalf of the union and prayed for an adjournment on the ground that Sri Mehta was out of Bombay. The roznama further states that Sri Phadke had no objection to the matter being adjourned. These entries in the roznama clearly show that the fact of Sri Phadke's appearance must have come to the knowledge of Sri Joshi, who had appearance on behalf of the union. No objection to Sri Phadke's appearance was then raised. Even though therefore the union had not given express consent to the appearance of Sri Phadke, the union must be held to have

given its consent at least impliedly by not objecting to the appearance of Sri Phadke on 12 September, 1963. Thereafter it was not open to the union to object to his appearance. In any case, we do not think that this is a case in which we should interfere.”

(emphasis supplied)

6 A single Judge of this Court (Coram: Dr. D.Y. Chandrachud, J. as his Lordship then was) in the case of **The Salvation Army, Indian Western Territory vs. Sunil J. Ingle, CDJ 2005 BHC 413**, relying upon the aforesaid Division Bench judgment in **Engineering Mazdoor Sabha, Bombay** has observed in paragraphs 5 and 6 as follows:

“5. These provisions have been interpreted in decisions of several High Courts. In Engineering Mazdoor Sabha v. Meher (M.R.) (Industrial Tribunal, Bombay, 1966(1) LLJ 580 an industrial dispute between the petitioning union and the employer, the second respondent was referred for adjudication. An application for interim relief was kept for hearing on 12th September, 1963. On that day, the employer was represented by an advocate. The advocate for the union appeared and prayed for an adjournment. The matter was thereafter adjourned to 21st September, 1963 on which date an objection was raised to the appearance of the advocate. The objection was rejected by the Tribunal holding that if an objection had to be taken it ought to have been taken on the first date of hearing. Before the Division Bench of this Court, it was urged on behalf

of the union that there was no effective hearing of the matter on 12th September, 1963 since only a prayer for adjournment had been made. The Division Bench held that this argument could not be accepted because the roznama of the case showed that on 12th September, 1963 an adjournment had been sought on behalf of the union on the ground that its representatives was out of Bombay. The advocate for the employer had no objection to the matter being adjourned. The Division Bench held that these entries in the rozanama clearly showed that the fact that the advocate had appeared for the employer must have come to the notice of the representative who appeared on behalf of the union and no objection had been raised to his appearance. Even though the union had not given its express consent, the Division Bench held that it must be held as having given its consent atleast impliedly by not objecting to the appearance of the advocate for the employer. Consequently it was not open to the union to object to his appearance. In a decision of the Calcutta High Court in Shiraz Golden Restaurant v. State of West Bengal, 2000 II L.L.J. 1101, Mr. Justice S.B. Sinha (as the Learned Judge then was) speaking for a Division Bench held that once leave has been granted in terms of Section 36(4) there is no provision in the Act to review it. The Calcutta High Court relied inter alia on several decisions in which it has been held that where a Vakalatnama is filed by a lawyer without any objection by the other side and it is accepted by the Court then it is to be inferred that the latter has given consent for the appearance of a lawyer and that leave of the Court was also given. In MSCO (P) Ltd. v. S.D. Rane, 1982(1) L.L.J. 434

Mr. Justice D.P. Madon (as the learned Judge then was) speaking for this Court held that neither the Act nor the Rules provide for the form or the manner in which, the Consent of the other party is to be given. Normally, leave that is to be granted by a Court or Tribunal would be in writing and ordinarily the consent of a party to the engagement of a legal practitioner by the other side would also be given in writing. However, Sub-section (4) of Section 36, it was held, does not contain a requirement that the consent or leave must always be in writing and implied consent is not negated by the statute. The same view has been taken by the High Court of Kerala in Calicut Co-operative Milk Supply Union v. Calicut Co-operative Milk Supply Workers Union, 1986(11) L.L.J. 422 and in Francis Gomez v. President, Thiruvananthapuram Shops & Commercial Employees' Union, 1999(III) L.L.J. (Supp.) 1250. There is also a judgment of Mr. Justice R.J. Kochar speaking for this Court in T.K. Varghese v. Nichimen Corporation, 2001(4) Bom.C.R. (O.O.C.J.) 168 : 2001(90) F.L.R. 91.

6. Having regard to this settled position in law, what emerges in the present case is that on 27th March, 2002, the Advocate appearing on behalf of the petitioner filed his Vakalatnama (Exh. C-3). There was no objection to the Vakalatnama. On that day, the petitioner filed an application questioning the jurisdiction of the Labour Court (Exh. C-4) and the matter was adjourned by consent for the reply of the respondent to 10th April, 2002. The taking of the Vakalatnama on the record is indicative of the leave which must be read and regarded as having been granted by the Labour Court. There was no objection to the filing of the

Vakalatnama and to the appearance of the advocate on 27th March, 2002. In view of the law laid down by the Division Bench of this Court in Engineering Mazdoor Sabha (supra), it was clearly not open to the respondent to raise an objection, having failed to raise it on the very first day of the appearance of the advocate. Before the Labour Court, the judgment of the Division Bench of this Court, in Engineering Mazdoor Sabha (supra) and of a Learned Single Judge in T.K. Varghese (supra) were cited. The labour Court declined to follow the settled position in law which emerges from these judgments for the specious reason that the respondent objected to the appearance of the Advocate on the next date of hearing. The order of the Labour Court is manifestly in error and the interference of this Court under Article 227 of the Constitution is warranted. Before concluding it would be necessary to record that the respondent has not appeared in these proceedings. Counsel appearing for the petitioner stated that on several of the previous hearings, the matter had to be adjourned since the respondent had remained absent and that in pursuance of the directions of this Court telegraphic intimation has been furnished to the respondent from time to time.”

(emphasis supplied)

7 In the impugned order dated 5 April 2017, in paragraphs 16, 17 and 18 the Labour Court has observed as follows:

“16. In the present case, on 1-2-2017, the advocate appearing for the first party filed application for seeking

permission to appear in the matter and filed his vakalatnama at Ex.C-1. On the same day the second party was not raised any objection to the vakaltnama and the matter was adjourned for the reply of the second party to 7-2-2017. The taking of the vakalatnama on record is indicative of the leave which must be read and regarded as having been granted by the second party. There was no objection to the filing of the vakalatnama and to the appearance of advocate on 1-2-2017 by second party. In view of the law laid down by the Division Bench of Hon'ble Bombay High Court in Engineering Mazdoor Sabha (supra), it was clearly not open to the respondents to raise an objection having filed to raise it on the very first day of the appearance of the advocate.

17. If the second party wanted to object the appearance of advocate for the first party, it should have done so at the first hearing of the matter and that it was late on behalf of the second party to object with appearance of advocate for first party. The provision is always subject to the scrutiny of the Labour Court/Tribunal and it can always decide the question of refusal of consent by the other party and can over rule the refusal of the consent on merits independently while considering to grant or refuse the leave contemplated under section 36(4) of the Act.

18. When once the workman gives up his right to object to the appearance of the advocate at the earlier stage and allowed the proceedings to go on. In this matter though the

union representative for workman is present on 1-2-2017 failed to take objection on the same on appearance of the advocate Shri Chaitanya Torgal for first party. Thus, as per section 36(4) second party failed to take objection on the very first day of the filing vakalatnama for the first party. Hence, I pass the following order:

ORDER

- 1) Application is rejected.
- 2) No order as to cost."

(emphasis supplied)

8 Having regard to the exposition of law in the judgments discussed above and the observations and findings of the Labour Court, I am unable to find any fault in the impugned order of the Labour Court. The Labour Court has clearly held that on 1 February 2017 when the Application (Exhibit C-1) and Vakalatnama were filed by the Respondent-Company no objection was taken by the representative of the Petitioner-workman on that day. As a matter of fact the Labour Court in paragraph 2 of the impugned order has categorically stated that it was on 7 February 2017 that the objection was made by the representative of the workman that he has objection for appearance of the advocate Shri Torgal on the Application (Exhibit C-1) dated 1 February 2017. The attempt now before this Court by the Petitioner-workman to show that the endorsement on the Application

Exhibit C-1 objecting to the appearance of the Advocate was made by the Petitioner-workman on 1 February 2017 itself is clearly mischievous and an afterthought and cannot be accepted. This was not even the case of the Petitioner-workman before the Labour Court. Moreover, it is seen that the impugned order was passed on 5 April 2017 and the present Petition is filed only on 5 December 2017 and no attempt was made to move this Court for any interim orders. In the meantime, the Respondent-Company has already filed its Written Statement through its Advocate and issues have been framed and matter is now ripe for hearing before the Labour Court.

9 For the reasons stated above, no interference is called for in the impugned order of the Labour Court. The Petition is accordingly dismissed. Rule is discharged.

(A.A. SAYED, J.)

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