

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

WRIT PETITION NO. 1808 OF 2018

PRAGGNA PUJARA

... PETITIONER

Indian Inhabitant of Mumbai, Aged 35 years,
R/at. Flat No.9, Vasudha Building,
7th Cross Road, Near Diamond Garden,
Chembur, Mumbai – 400 071.

V/s.

J. P. MORGAN SERVICES INDIA PVT. LTD.,

... RESPONDENT

A Company registered under the Indian
Companies Act, 1956, having its registered
office at : Address -1 : Prism Towers,
Level Nos. 9 to 11, Mindspace, Link Road,
Goregaon (W), Mumbai – 400 104.
And other office at Address 2 : L & T Business
Park, Gate No. 5, Saki Vihar Road,
Powai, Mumbai – 400 072.

Ms. Pragzna Pujara, the Petitioner - in- Person.

Mr. K. M. Naik, Senior Advocate a/w. Mr. Lancy D'Souza, Ms.
Dipika Agarwal, Mr. Mohit Advani, Mr. Varun Shankar i/by
Cyril Amarchand Mangaldas for the Respondent.

CORAM : S. C. GUPTE, J.

DATE : JULY 25, 2018

**Shalikram
Pralhadrao
Borey**

ORAL JUDGMENT :

Digitally signed by
Shalikram
Pralhadrao Borey
Date: 2018.08.02
16:50:08 +0530

1 Heard. Rule. By consent of parties, Rule is made
returnable forthwith and heard finally.

2 This Petition, filed by an individual workman, challenges an order passed by the Labour Court at Bandra, Mumbai in a reference made to it under section 10 of the Industrial Disputes Act, 1947 (for short, hereinafter referred to as the "I.D. Act"). The impugned order was passed on three miscellaneous applications made to the court under Sections 36 (4) and 36 (2) of the I.D. Act. The first application was made by the second party workman under Section 36(4), whilst the two other applications were made by the first party employer. The controversy pertains to the employer's right to be represented under Section 36 of the I.D. Act.

3 The reference was made to the Labour Court at the instance of the Petitioner-workman, challenging her termination from the services of the Respondent herein, with effect from 14th November, 2016. At the very outset of the hearing of the reference, the Petitioner raised an objection under Section 36 (4) of the I. D. Act to the appearance of the Respondent herein through an advocate. The objection was filed in the form of Misc. Application, designated as Exh.U-1. The Respondent, for its part, filed two Misc. Applications, being Exhs. C-6 and C-9. By Exh. C-6 it sought permission for filing of memo of appearance of one Vasanti Kunder, who was instructed by the Respondent herein to appear in the matter; whereas Exh. C-9 was a memorandum of appearance filed on behalf of the Respondent herein under section 36(2) of the I.D. Act. One

Vikrant Gurha, on behalf of the Respondent, authorizing four individuals, namely, Mr. Lancy D'Souza, legal advisor to Bombay Chamber of Commerce and Industry alongwith Ms. Deepika Agarwal, Ms. Vasanti Kunder, Ms. Priyanka Sawant and Ms. Priyanka Chaurasiya, described as legal associates of the Chamber to act, appear and plead on behalf of the Respondent. In its impugned order passed on these miscellaneous applications, the Labour Court rejected the Petitioner's application being Exh. U-1 and allowed the Respondent's applications being Exhs. C-6 and C-9, permitting Mr. Lancy D'Souza and other legal associates to represent the Respondent (the first party company) in the reference. This order is assailed by the Petitioner in the present petition.

4 The Petitioner, who appears in-person, objects to the impugned order on four counts. Firstly, it is submitted that Bombay Chamber of Commerce and Industry (for short, hereinafter referred to as "BCCI"), is not an association of employers covered under Clause (a) of Sub-section (2) of Section 36 of the I.D. Act. It is next contended by the Petitioner that the Respondent herein is not a member of BCCI. Thirdly, it is submitted that "officer" of an association of employers referred to under Clause (a) of Sub-section (2) of Section 36 of the Act only includes an individual officer and not a group or collection of officers. It is lastly submitted that neither of the persons, for whom authority to represent the Respondent herein is sought, is

an “officer” of BCCI. The Petitioner relies on several judgments, both of the Supreme Court and this Court, in support of her case.

5 On the other hand, it is submitted by Mr. Naik, learned Senior Counsel appearing for the Respondent. that BCCI is indeed an association of employers, of which his client is a member. Learned counsel submits that a legal adviser / associate an association such as BCCI is included in the expression “officer” appearing in clause (2) of Sub-section (2) of Section 36 of the I.D.Act. Learned Counsel also places reliance on judgments of the Supreme Court and this Court in support of his submissions.

6 Section 36 of the I.D. Act, which deals with the issue of representation of the parties before an industrial judicator in any reference or application made under the I. D. Act, is in the following terms:-

36. Representation of parties.-(1) *a workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by -*

(a) [any member of the executive or other office bearer] of a registered trade union of which is a member;

(b) [any member of the executive or other office bearer] of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) *Where the worker is not a member of any trade union, by [any member of the executive or other office bearer] of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed.*

(2) *An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by -*

(a) *an officer of an association of employers to which he is a member;*

(b) *an officer of a federation of associations of employers to which the association referred to in clause (a) is affiliated;*

(c) *where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in the industry in which the employer is engaged and authorised in such manner as may be prescribed.*

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

(4) *In any proceedings [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*

proceeding and [with the leave of the Labour Court, Tribunal or National Tribunal as the case may be.

Sub-section (1) of Section 36 provides for entitlement of a workman to be represented in any proceeding under the Act by a member of the executive or office bearer of a registered trade union of which the workman is a member or of a federation of trade unions to which such trade union is affiliated or any member or executive or office bearer of any trade union connected with the industry or any other workman employed in the industry, in case the workman is not a member of any particular trade union. As for the employer, three categories of persons are entitled to represent him under Sub-section (2). The first is any officer of an association of employers of which the employer is a member. The second is an officer of a federation of associations of employers to which such association is affiliated and the third, an officer of any association of employers connected with the industry in which the employer is engaged, where the employer is not a member of any association of employers. As is apparent from the foregoing provisions, the rights of workmen and employers to be represented in proceedings under the I. D. Act have been perfectly balanced and do not give either party an edge over other. Sub-section (3) of Section 36 contains a prohibition for legal practitioners to represent any party to an industrial dispute either in conciliation proceedings or before the adjudicator. The only exception is

contained in Sub-section (4) of Section 36, whereunder a legal practitioner is allowed to represent any party - (i) with the consent of the other parties to the proceedings and (ii) with the leave of the Court. These provisions, however simple and straight-forward they seem to be, have given rise to a number of judicial disputes themselves and have led to generation of a bulk of case law. In the light of this law, which is cited at the Bar by both sides, we shall now discuss the four legal issues raised in the present petition.

7 In the first place, it is submitted by the Petitioner that “association of employers” within the meaning of Clause (a) of Sub-section (2) of Section 36 of the I.D. Act has to be an association of employers and employers alone and not an association of employers and others. The Petitioner relies on the case at **Siemens Limited Vs. K.K. Gupta**¹, decided by Delhi High Court. In this case, Delhi High Court, has extensively discussed case law on Section 36 (2). It has taken note of several judgments delivered by High Courts in India including the decision of Gujarat High Court in the case of **Hosing Ardasar Icchaporiya Vs. Mahavir General Hospital, Surat**,² the decision of Andhara Pradesh High Court in **Andra Pradesh Power Diploma Engineers Association Vs. Andhra Pradesh**

1 2006-II-LLJ-66 (Delhi H.C.)

2 1994-II-LLJ-326 (Gujarat H.C.)

State Electricity Board,³ the decision of Mysore High Court in **Workman of B.R. Durbar Ginning & Pressing Factory Vs. B. R. Durbar Ginning & Pressing Factory** ⁴, all of which hold that the phrase “association of employers” used in Section 36 (2) would imply that the status of the members of the association would be that of “employers”. The use of the words being specific and there being no ambiguity, the words are to be understood in their natural sense and are susceptible only to one meaning and that is, that the association must be of persons, all of whom must be employers and should have formed themselves into an association because of their status as such. No doubt the word “exclusively” is not there in any of the clauses of section 36, including Sub-section (2). Yet, at the same time, the expression “association of employers” cannot be read as meaning an association of employers and non-employers. I am in respectful agreement with these decisions. The law stated by them is in keeping with the principle of purposive interpretation. Industrial disputes are essentially to be raised and contested only by employers or their associations on the one hand and the employees or their unions on the other. Going by the plain meaning of the expression “association of employers” and its purposive interpretation and the case law discussed above, it is abundantly clear that the expression “association of employers” must be given a restrictive meaning to imply an association of

3 1996-I-LLJ-1082 (AP)

4 1969-II-LLJ-25 (DB) Mysore HC.

employers and not of employers and others, who may be non-employers.

8 The law on the point being thus put in place, let us now examine the facts of the present case. From the material available on record, it appears that BCCI has, as its members, not just regular and special corporate members, but even individual members. These latter include individuals of high repute who are or have been engaged in any business, trade, commerce, industry, agriculture, profession or vocation. The consolidated list of members of the association shows architectural firms, chartered accountancy firms as well as law firms and a few individuals as its members. It is by no means certain that these are all industrial employers. This aspect of the matter is not discussed or even reflected in the impugned order of the Labour Court nor is it possible to say with any assurance on the basis of the material placed before the Court, and which forms part of the record of the present petition, that this question, namely, whether BCCI is an association of employers, can be said to have a clear answer. One may have to hear the matter at length, allowing the parties, if necessary, to even lead evidence for deciding this question. Ordinarily, that would have called for remand of the matter to the Labour Court. Since, however, I have found against the Respondents herein on two other submissions of the Petitioner, I do not propose to do so.

9 The second aspect of the matter is the meaning of the expression “officer” under Clause (a) of Sub-section (2) of Section 36. The clause permits any officer of the association or federation, as the case may be, to represent an employer. He is obviously meant to be an individual officer. A plain meaning of the expression as used in Clause (a) does not admit of representation by more than one officer. The particular clause, seen in the backdrop of the other clauses permitting representation of the workmen as well as of the employers, would plainly suggest that representation contemplated therein must come from an individual representative and not a group or collection of individuals. I am fortified in this view by the judgment of Delhi High Court in **Siemens Limited** (Supra), where the Court found that the employer, as a member of an association, should not be allowed to have representation by more than one officer of the association in view of the clear reference to the singular in Section 36(2) of the Act. The Labour court has, accordingly, clearly erred in law in permitting a group or collection of individuals to represent the Respondent employer. This by itself, however, would not dispose of the controversy, since the Respondent, in that case, would be entitled to drop all representatives save one whom he could continue as his representative. Therefore, even if the Labour Court has erred in appointing more than one representative to represent the employer in the present case, I do not propose to decide this matter solely on that point.

10 The third objection raised by the Petitioner, and which really goes to the root of the matter, pertains to the alleged membership of the Respondent herein of BCCI, as an association of employers. It is submitted that the Respondent is not a member, but a mere associate, who, by definition, is not entitled to be treated as a member. The membership issue is essentially a mixed question of law and facts. Learned counsel for the Respondent submits that this question was not in terms raised before the Labour Court. I am afraid that does not appear to be quite correct. The record of the case does bear out that the question was not only raised by the petitioner but in fact arguments were advanced before the Court in that behalf and what is more, the Court even decided it. The Petitioner's reply to Exhibit U-9 (reply designated as U-12), in terms, raises the issue of membership. The petitioner contends in her reply (para 5) that the Respondent herein has to demonstrate its membership of BCCI. The reply even refers to the judgment of Delhi High Court in **Siemens Limited** (supra) which inter-alia has discussed this point. On the basis of this contention, it is submitted by the petitioner in her reply that for want of access to membership details of BCCI, despite requests, the so called officer engaged as representative would not fall within Clause (a) of Sub-section (2) of Section 36 of the I.D. Act. The Court, for its part, has discussed this issue in paragraph 15 of its judgment. The Court held that it was clear from the Articles of Association of BCCI and the list of its members and associates as on 16th May, 2018 that the first

party employer i.e. the Respondent herein, was its member and associate. Thus, there is no merit in the submission that this issue was not in terms discussed before, or decided by, the Labour Court.

11 So far as the factual aspect of this issue is concerned, I must note at the outset that it is not a matter of dispute that the Respondent herein is an associate of BCCC. As regards the status of an associate and the eligibility of such associate as a member of the association, we have before us a conclusive document in the form of Articles of Association of BCCI and are thus spared of having to delve into facts; we merely have to apply law to admitted facts to consider whether or not the Respondent qualifies as a member of BCCI. The original Articles of Association of BCCI defined the expression “member” as a member of the Chamber for the time being but not including an associate member. The Chamber, under clause 3 of the Articles of Association, is said to consist of 1500 members and 1000 associates members. An associate member, under Article 5, does not have the right to vote for any purpose or hold any office or represent the Chamber on any public or semi-public bodies. Clause (a) of Article 6 provides for eligibility as an associate member. Any person, society, firm or body corporate engaged or interested in any business, trade, commerce, industry, agriculture, profession or vocation is eligible to be appointed as an associate member. In the new Articles of BCCI, the position of 'associate

member' has been done away with. Instead, the new Articles provide for 'associate(s)' to mean (Clause 2.4 of Article 2) “the associates for the time being of the Chamber”. Article 4.3 of the new Articles provides that on the date of adoption of these Articles, existing associate members shall be re-designated and renamed as 'associates'. The new Articles have a separate definition of 'member(s)' contained in clause 2.14 of Article 2, which provides that a 'member (s)' means any “Regular Corporate Member, Special Corporate Member and/or any Individual Member, as the context may require”. Articles 3 and 4 of the new Articles separately provide for categories of members and their rights and the categories of associates and their rights. All these Articles make it clear that an associate of the chamber, and it is an admitted position that the Respondent is an associate, is not a member of the Chamber. Mr. Naik submits that there are specific provisions in the Articles for admission of associates, their rights and even subscription fee for their appointment. That is neither here nor there. Neither by virtue of their separate rights being provided for nor by virtue of the subscription fee required for their appointment as associates, they become members of the association. In the face of these Articles and Constitution of the Chamber, it cannot possibly be suggested that an associate of the Chamber such as the Respondent can be termed as a 'member' within the meaning of Clause (a) of Sub-section (2) of Section 36 of the I.D. Act.

12 We now come to the most important aspect of this controversy and that is the meaning of the expression “officer” used in Clause (a) of Sub-section (2) of Section 36. In the present case, four representatives of the Chamber (as association of employers) have been allowed to represent the first party employer, as they are, in the opinion of the Court, officer bearers of the Chamber. This opinion appears to have been formed by the Labour Court purportedly “under such circumstances”, as have been noted earlier in the order. The only circumstances that one finds discussed in the order are the following : (i) the authority given by the Chamber to these individuals, (ii) request of the Respondent herein to the Chamber for representing it by Mr. Lancy D'souza as a “Legal Associate” of BCCI and (iii) capacity of Mr.Lancy D'Souza as “Advisor” of BCCI and of Adv. Vasanti Kunder as “Consultant” of one of its committees. I am afraid none of these circumstances can really qualify any of these four individuals as officers of the Chamber. It is not in dispute that none of them is an employee of the Chamber. It is also not in dispute that none of them is on the executive committee or managing body of the Chamber. Mr. Lancy D'souza is said to be 'legal advisor' of the Chamber. Mr. Naik submits that in his capacity as 'legal advisor' of the Chamber, Mr. Lancy D'souza qualifies as an officer of the association of employers. Learned counsel relies on the cases of **Paradip Port Trust, Paradip Vs. Their Workmen** ⁵; **Associated Cement Companies Ltd., Vs.**

5 AIR 1977 Supreme Court 36.

Associated Cement Staff Union ⁶ (decided by a learned single Judge of this court), and **Associated Cement Staff Union Vs. Associated Cement Companies Ltd.** ⁷ (a decision of the Division Bench of this court, affirming the decision of the learned single Judge in the aforesaid case) in this behalf. Relying on these judgments, learned counsel submits that once a person can be termed either as an officer or office bearer of an association, it is immaterial that he is also qualified as a lawyer. Undoubtedly that is so, but the question here is whether the persons concerned here can be said to be either officers or office bearers of the association.

13 In the case of **Paradip Port Trust** (supra), the Supreme Court considered whether a legal practitioner, appointed as an officer of a company or corporation, and who is not in their pay and under their control and not a practising advocate, could qualify as an officer within the meaning of the expression “officer” used under Sub-section (2) of section 36 of the I.D.Act. The Court observed in paragraph 16 as follows :

“16. If, however, a legal practitioner is appointed as an officer of a company or corporation and is in an their pay and under their control and is not a practicing advocate the fact that he was earlier a legal practitioner or has a

6 2001 III CLR 949 – Bombay High Court.

7 2002-II-LLJ 768 – Bombay High Court.

legal degree will not stand in the way of the company or the corporation being represented by him. Similarly if a legal practitioner is an officer of an association of employers or of a federation of such associations, there is nothing in Section 36 (4) to prevent him from appearing before the Tribunal under the provisions of Section 36(2) of the Act. Again, an officer bearer of a trade union or a member of its executive, even though he is a legal practitioner, will be entitled to represent the workmen before the Tribunal under Section 36(1) in the former capacity. The legal practitioner in the above two cases will appear in the capacity of an officer of the association in the case of an employer and in the capacity of an office bearer of the union in the case of workmen and not in the capacity of a legal practitioner. The fact that a person is a legal practitioner will not affect the position if the qualifications specified in Section 36(1) and Section 36 (2) are fulfilled by him.”

14 Though in **Paradip Port Trust** case, the Supreme court was dealing with officers as employees of a company or corporation, that is to say, individuals under pay and control of the company or the corporation, the expression has been interpreted expansively by various High Courts including our Court. A learned Single Judge of our Court in the case of

Associated Cement Companies (supra) has in terms discussed this point. That was a case where a person seeking to represent the employer was on the Central Executive Committee of 'Employees Federation of India', of which the employer before the court was a member. The Court noted that the expression "officer" under a trade union before its amendment meant someone holding office in the trade union; those holding office in the trade union would be its office bearers. The court noted that the same meaning would have to be assigned to the word "officer" of association to include even those holding office in the association. The court, accordingly, observed that the expression would cover those who constitute executives of the association or, in other words, its office bearers. The expression could not be identified only with those in the employment, whether of union or association. This interpretation of the expression "officer" appearing in Clause (a) of Sub-section (2) of section 36 found favour with the Division Bench of our Court, when the matter was carried in appeal from the order of the learned Single Judge. The Division Bench, in its order, after noting similar views expressed by Karnataka and Delhi High Courts, observed as follows :

"10. In our view it is clear that the word 'officer' was substituted as aforesaid so as to include, in relation to workmen, any member of the executive committee or other office bearer, probably having regard to the structure of trade unions. It does not, however, follow that because the

word 'officer' in relation to representative of employer has not been amended, it excludes a mere member of the executive committee of the association of employers. The word 'officer' must be given its plain meaning, that is any person who holds an office of an appointed or elected functionary. We are, therefore, of the view that a member of the executive committee of an association of employers must be taken to be an officer of the employers association.”

15 In the light of the law noted above, it cannot be gainsaid that the expression “officer” appearing in Clause (a) of Sub-section (2) of Section 36 of the I.D. Act includes not only officers of the association, who are on its pay roll or under its direct control, but also its office bearers, who in turn control the affairs of the association. The four individuals, with whom we are concerned in the present case, including Mr. Lancy D'Souza, are neither on the pay roll or under direct control of BCCI nor in any sense in the management of BCCI or controlling its affairs as office bearers or executive committee members. Mr. Lancy D'Souza is merely said to be a 'legal advisor' of the Chamber and the others are his legal associates. A mere legal adviser of an association, who has no role to play in the management of the association, cannot be termed as its office bearer in any sense of that term. He is thus unqualified to act as an “officer” of the

association within the meaning of Clause (a) of Sub-section (2) of Section 36 of the ID Act.

16 Any expansive meaning of the expression “officer” in Clause (a) of Section 36 (2) so as to include legal advisors of the association, who are neither on its pay-roll or under its direct control nor its office -bearers as executive or managing committee members, is bound to introduce a back door entry of all and sundry legal practitioners and that would work a grave prejudice to workmen, who can be represented only by members or office bearers of trade unions or federation of trade unions. It is one thing to say that an employee or office bearer of an association , as much as a member or office bearer of a trade union, can represent an employer as an officer of the association, even if he happens to be a trained lawyer, but quite another to say that an association can engage a lawyer as a legal advisor and then project him as its officer to represent its member- employer.

17 In the light of the above discussion, the Labour Court has clearly erred, and in a matter of law and jurisdiction, in allowing the four named individuals as representatives of the Respondent employer. The order, in the premises, cannot be sustained.

18 In the premises, Rule is made absolute by quashing and setting aside the order of the Labour Court dated 23rd May, 2018 and allowing Exh. U-1 filed by the Petitioner herein and

rejecting the applications of the Respondent being Exhs. C-6 and C-9. No order as to costs.

19 Mr. Naik applies for stay of this order. Learned counsel submits that this order may affect his client across the board in a number of matters, since the Chamber has been representing employers, who are its members, likewise in a number of matters. Whilst that may be so, stay of an order, ordinarily at any rate, implies stay of its operative part. The judgment by itself is hardly ever stayed, though the court is free to do so in appropriate cases. In the present matter, whilst the Respondent may take the matter forward and contest the rationale of this judgment, inter-alia, by putting in issue the capacity of the Chamber and its officers to represent its member - employers, there is no reason why the individual case of the present petitioner should be held up on this count. The Respondent is a reputed organization with adequate means and resources at its disposal and can very well engage one of its own officers or office bearers to contest the individual case of the hapless workman in the present case who is waiting desperately to start her matter. The legal issue, which affects the Chamber in a number of matters, may simultaneously be carried before a higher forum by contesting this order. The application for stay, in the premises, is refused.

(S.C. GUPTE, J.)