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HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 67 of 2019**

General Manager, South Eastern Coalfields Ltd., Korba Area, Post
Office Korba Colliery, District Korba Chhattisgarh.

---- Petitioner**Versus**

1. D. P. Saraf, Quarter No. E-22, 15 Block, SECL Colony Korba,
Tahsil And District Korba Chhattisgarh.
2. Presiding Officer, Under the Industrial Dispute Act, 1947-cum-
Labour Court, Bilaspur District Bilaspur Chhattisgarh.

--- Respondents

For petitioner – Shri Vinod Deshmukh, Advocate.
Respondent No.1-Shri D.P. Saraf in person.

Hon'ble Shri Justice Goutam Bhaduri**Order****01/10/2019**

Heard.

1. Instant petition is against the order dated 24/11/2018 and 3/08/2017 passed by the Labour Court under the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act of 1947'). By such order an application filed under section 36(4) of the Act of 1947 seeking to represent the petitioner in a ID reference case before the Labour Court was disallowed.
2. The admitted facts are that a reference having been made by the Central Government the industrial dispute fell for consideration before the Labour Court, Bilaspur in Case No. 4/IDA/20D Ref. An application under section 36 (4) of the Industrial Disputes Act seeking permission to represent the case through a lawyer on behalf of SECL was preferred by the petitioner herein before the Presiding Officer, Labour Court, Bilaspur in the aforesaid case. At the same time, the order would reveal that an

application was also filed by the respondent wherein the said prayer was opposed. The said application was dismissed by the Labour Court on 3/08/2017. Subsequently, on the ground that in other proceeding under the ID Act reference permission has been granted another application was moved by the petitioner to represent the corporation through a counsel before the Labour Court. The said application too was dismissed on 24/11/2018, therefore the instant petition.

3. Learned counsel for the petitioner would submit that the Labour Court without application of mind has passed the order. It is further contended that mere on the objection of the opposite party permission to represent by a lawyer cannot be made interdependent. He submits that in a reference the respondent No.1 subsequently after his retirement on 30/06/2017 is a practicing lawyer bearing enrollment No.625/2017 because of the fact that he happened to be the Joint Secretary at the initial stage, subsequently the position has changed. Consequently, the petitioner herein cannot be denied the opportunity to be represented through a counsel. He placed his reliance in case of **S.T. Microelectronics Pvt. Ltd. Vs. Alok Garg & Anr.** reported in **[2019 (160) FLR 1010]** and submit that under the circumstances this ratio of the case would be applicable and the petitioner is also required to be represented through a lawyer. He further submits that the Labour Court did not apply its mind would be evident from the fact that in a similar like nature of petitions the petitioner was allowed to be represented by a lawyer. It is contended that after the first application was dismissed for representation through a lawyer the second application was filed since in other cases permission to represent by lawyer were allowed. Therefore, the order of the Labour Court dated 24/11/2018 and 3/08/2017 be set aside and the petitioner be allowed to be represented through a lawyer.

4. Shri D.P. Saraf respondent No.1 appears in person and would

submit that the order of the Labour Court is well merited. He further submits that claim of representation through a lawyer cannot be automatic and it is interdependent on the consent as per sub section 4 of Section 36 of the Act of 1947. He placed his reliance in case of **Paradip Port Trust, Paradip Vs. Their Workmen** reported in **(1977) 2 SCC 339** and further would submit that the petitioner therefore cannot as a matter of right can claim to be represented by lawyer. It is further contended that the respondent happens to be the office holder of the union. Consequently, his appearance in the case was not in the capacity of a lawyer, therefore he can represent the union. The SECL cannot claim their right under section 36(4) of the Act of 1947. He submits that the instant petition is devoid of all merits and it has not been filed properly as the vakalatnama has been signed by General Manager, SECL whereas the affidavit has been sworn by some other person namely Jayant Kumar Mishra, therefore there is no consistency in the pleading. He further submits that as per the law laid down in case of **State Bank of Travancore Vs. Kingston Computers India Private Limited** reported in **(2011) 11 SCC 524** in order to represent a company it is to be under the seal of the company and such seal are missing here, therefore instant petition is also not tenable.

5. Heard the learned counsel for the parties.

6. The record would reveal that initially by an order dated 3/08/2017 an application to represent the case before the Presiding Officer, Labour Court under Section 36(4) of the Act of 1947 was dismissed. Perusal of the initial application seeking permission (Annexure P-3) shows that it was contended that since question of law and facts are involved in this dispute, therefore SECL is required to be represented through a legal practitioner before the court for proper assistance and defence on behalf of the SECL. To understand the nature of adjudication required and for the nature of dispute the schedule of reference on which the adjudication is required is

relevant and reads as under:-

The Schedule

“Whether the action on the part of SECL management, Korba in deducting the wages in case of Rameshwar Talhan and 96 others as per the list submitted by Shri D.P. Saraf towards not attending duty on strike date i.e. 19th, 20th and 21st January, 2009 and not refunding the deduction amount from their salary in respect of 97 employees in the enclosed list and only paying to Shri D.P. Saraf tantamounts to discrimination and whether it is appropriate, justified and legal? If not, what relief Shri Rameshwar Talhan and 96 others in the list espoused by Shri D.P. Saraf are entitled to?”

7. On a plain reading of the schedule of reference the primary inference can be drawn that the issue would require elaborate discussion of law as also on facts supported by the legal precedent and interpretation of law. This fact is not denied as filed in rejoinder that the respondent No.1 who was representing the union stands retired on 30/06/2017 and is practicing lawyer bearing enrollment no.625/2017. Reading section 36(4) of the Act of 1947 alongwith the ratio of the judgement in case of **S.T. Microelectronics Pvt. Ltd. Vs. Alok Garg & Anr** (supra) reflect that underline principle of section 36(4) is for just and fair trial and equal opportunity to both the contesting party. The respondent No.1 having retired and is a regular practitioner simply the submission of the respondent that he represent the union in the capacity of an officer bearer of the union will not come to the rescue for the reason that if such argument are accepted then the parties shall lose their level playing field for contesting the case.

8. This fact cannot be ignored that the respondent is a regular practitioner as on date, therefore by change of robes it will not make the other party incapacitated as required under section 36(4) of the Act of 1947. The ratio of judgement in case of **Paradip Port Trust, Paradip Vs. Their Workmen** (supra) would show that in such case an officer claim to

be in the role of the corporation and stated that he was consultant of the trust wherein tribunal came to a conclusion that after examining the terms and condition governing the relationship of the officer with the trust he was not in pay of the company nor under the control and enjoyed the freedom as other legal practitioner to accept the case from the other parties. Therefore it was held that officer who want to represent the trust cannot appear. If such ratio is made applicable to this case then the respondent who has changed his position and is practicing lawyer but claim to be the officer bearer of the union he cannot be allowed to object to the prayer of the petitioner. The position of respondent as a lawyer apart from that of an office bearer will not lose its status of lawyer. Therefore it cannot be claimed as a matter of right that the respondent can be allowed to be represented through a lawyer but the other party cannot claim, it would amount to defeat the fair opportunity of hearing to the petitioner.

9. It goes without saying that a person who has good knowledge of labour law can properly represent the case before the labour court or tribunal. The object of section 36(4) of the Act of 1947 was predominantly on the ground that the labour may not engage the skillful advocate as against the establishment. However in a given set of facts when the employee is represented by an officer bearer who also holds degree of law and is practicing lawyer it would be completely unfair to deny the prayer of opposite party to be represented by a lawyer. It would create a disadvantageous situation and the object of section 36 (4) of the Act of 1947 itself would be defeated. Whether employer or employee they are equal before the law and the court and it cannot be laid down that though the union can be allowed to be represented by a lawyer though he may be an office bearer but the management will not have such right it will lead to a interpretation of malice in law.

10. With respect to the submission of the respondent that the petition

has not been properly filed the nature of petition shows it is the corporation, SECL who is before the court. Order 29 Rule 1 of the CPC allows the pleading to be verified and verification pleading can be made by any principal officer of the corporation. There is no objection to this regard by any officer on behalf of the SECL that the petition has not been properly filed. The document filed along with the rejoinder also fortifies the fact that power was conferred to for filing of this petition. Further I do not find this issue to go into detail for the purpose of deciding subject of order.

11. Accordingly, the petition is allowed and order of the Labour Court dated 24/11/2018 and 3/08/2017 are set aside. Petitioners application dated 27/06/2017 and 29/06/2018 with respect to the same issue are allowed, meaning thereby the petitioner shall be allowed to represent through a counsel in reference case 4/IDA/20D Ref before the Labour Court.

Sd/-

(Goutam Bhaduri)

JUDGE