

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.20007 of 2013

In the matter of an application under Articles 226 & 227 of the Constitution of India.

M/s. Orissa Forest Development Corporation Limited

Petitioner

Mr. Somnath Mishra, Advocate

-versus-

Minati Behera

Opp. Party

Mr. S.K. Mishra, Advocate

PRESENT:
JUSTICE BISWAJIT MOHANTY
JUSTICE BIRAJA PRASANNA SATAPATHY

JUDGMENT

13.05.2022

1. This writ application has been filed by the petitioner praying for quashing of order dated 20.6.2013 passed by the learned Presiding Officer, Labour Court, Bhubaneswar in I.D. Case No.37 of 2012 filed under Section 2A(2) of the Industrial Disputes Act, 1947 permitting engagement of a lawyer by the opposite party to conduct her above noted case.

2. Mr. Somnath Mishra, learned counsel for the petitioner while drawing our attention to sub-section 4 of Section 36 of the Industrial Disputes Act, 1947, for short "the Act" submitted that despite objection from the petitioner side, the above noted order has been passed which clearly violates the above noted provision which makes it clear that a legal practitioner cannot be engaged by a party if the other party does not consent to the same. In such background, he prayed that the impugned order be set aside. In this context, he drew our attention to the memo of objection under Annexure-4 filed by the petitioner to the prayer of the opposite party -

workman for engagement of a lawyer. In this context, he also relied upon the decision of the Supreme Court in the case of **Paradip Port Trust, Paradip v. Their Workmen** reported in **(1977) 2 SCC 339**. He submitted that the said decision makes it clear that the word "and" used in sub-section 4 of Section 36 of "the Act" cannot be read as "or" and that the word "consent" of the other parties as used in that sub-section is not an idle alternative but a ruling factor in the said sub-section. Since the prayer of the opposite party for engagement of a lawyer has been allowed by the learned Labour Court, Bhubaneswar though no consent was given by the petitioner Management to such prayer, the impugned order under Annexure-5 is legally vulnerable and ought to be set aside.

3. Mr. S.K. Mishra, learned counsel representing the opposite party strongly defended the impugned order and relied upon a host of decisions. But he mainly put emphasis on the decision of Allhabad High Court in the case of **I.C.I. India Ltd. v. Presiding Officer, Labour (IV) and others** reported in **(1992)(64) FLR 968** wherein sub-section 4 of Section 36 of "the Act" has been held to be unconstitutional. Advancing his arguments further, he submitted that as per the decision of the Supreme Court in the case of **Kusum Ingots & Alloys Ltd. v. Union of India and another** reported in **(2004) 6 SCC 254**, it is settled that an order passéd in a writ petition questioning the constitutionality of a parliamentary Act whether interim or final shall have effect through out the country. Accordingly, he submitted that sub-section 4 of Section 36 of "the Act" no more exists in the statute book and arguments advanced by learned counsel for the petitioner based on such provision ought not to be given credence. He also submitted that in Paradp Port Trust case

(supra) vires of sub-section 4 of Section 36 of "the Act" was never challenged or decided. Even there the Supreme Court has made it clear that sub-sections 1 & 2 of "the Act" making provisions for representation of the parties are not exhaustive. Accordingly, he submitted that the learned Labour Court has not committed any wrong in permitting the representation of the opposite party, who was a Junior Clerk having little knowledge about the procedure under "the Act", by a lawyer in the interest of justice. Lastly, he submitted that though the writ petition challenging constitutional validity of Section 36(4) of "the Act" is pending before the Supreme Court in Civil Appeal No. 6586 of 2019, W.P.(Civil) No.1169 of 2018 & Civil Appeal No.6587 of 2019 in the case of Thyssen Krupp Industries India Private Limited v. Suresh Murti Chougule and others, however, from order dated 22.8.2019 referring the matter to larger Bench, it appears that the attention of the Supreme Court has not been drawn to the fact that the issue of vires has already been settled by Allhabad High Court in the case of I.C.I. India Ltd. case (supra).

4. Heard learned counsel for the parties.
5. Perused the writ petition and Annexures.
6. The opposite party, a lady employee, who was working with the petitioner Management as a Junior Clerk was retrenched from her services with effect from 29.10.2007. She filed an application before the learned Labour Court, Bhubaneswar under Section 2A(2) of "the Act" under Annexure-1, which was registered as I.D. Case No.37 of 2012 praying for reinstatement with full back wages on the ground that her retrenchment was done in violation of Section 25N of "the Act". The petitioner filed its written statement under Annexure-2. It is not disputed that Shri Ashok Kumar Swain, Law Officer of the petitioner was engaged on behalf of the

petitioner to look after the above noted case pending before the learned Labour Court, Bhubaneswar, who filed written statement and other documents and took active part in hearing of that case. Probably, in such background, the opposite party filed a petition on 16.4.2013 under Annexure-3 praying for permitting her to conduct her case through a legal practitioner as she had no knowledge about the law and procedure of the court whereas the authorized representative of the petitioner happened to be a law knowing person. This was objected to by the petitioner vide Annexure-4 stating therein that since the Management is being represented by their employee, it is not practicable to allow the legal practitioner to represent the workman. Apart from this, the petitioner also took a plea in its objection that sub-section 3 of Section 36 of "the Act" prohibits engagement of legal practitioner in any proceeding before the Court. However, the learned Labour Court on 20.6.2013 passed the impugned order taking into account the fact that Shri Ashok Kumar Swain, who is the Law Officer of the petitioner has filed the written statement on behalf of the management along with other documents and is taking active part in hearing of the case and that the opposite party is a mere Junior Clerk having little knowledge about the proceeding under "the Act". Keeping in view the engagement of Shri Swain on behalf of the Management and for the interest of justice, the petition for engagement of lawyer was allowed by the learned court below.

7. Though before the Labour Court, the petitioner under Annexure-4 took the plea that Sub-Section 3 of Section 36 of "the Act" prohibits engagement of legal practitioner, mercifully the said point was rightly not canvassed by Shri Mishra, learned counsel for the petitioner as the word "Court" used in

Section 36(3) of "the Act", obviously means a "Court of Inquiry" as constituted under "the Act" as per the definition of the word "Court" as contained in Section 2(f) of "the Act". Now with regard to submission of Mr. Somnath Mishra that the impugned order is legally vulnerable as the same has been passed in violation of sub-section 4 of Section 36 of "the Act", it may be noted that no doubt the Supreme Court in Paradip Port Trust case (supra) has made it clear that consent of the opposite party is not an idle formality but a ruling factor in Section 36(4) of "the Act" and that the word "and" in Section 36(4) of "the Act" cannot be read as "or", however, in the said case, there was no challenge to constitutionality of sub-section 4 of Section 36. However, as indicated earlier Allhabad High Court in I.C.I. India case (supra) has declared the above sub-section as unconstitutional after making it clear that in Paradip Port Trust case (supra) vires of Section 36(4) of "the Act" was never decided. Learned counsel for the parties also fairly did not dispute that in Paradeep Port Trust case (supra) vires of Section 36(4) of "the Act" was never decided. For declaring the said provisional unconstitutional, Allhabad High Court has given the following reasons:

"3. xxx xxx xxx It is well known that Industrial Law is a complicated branch of law, and only persons who have knowledge of labour laws, and also some practical experience, can properly represent the parties before the Labour Court/Tribunal. The principles of Labour Laws are quite different from the principles of ordinary civil law, and what to say of a lay man even an ordinary civil lawyer, unless he has studied labour law, cannot properly present the case before the Labour Court/Tribunal. For example it is an established principle in labour create contracts, and to enforcer contracts of personal service Labour law is largely Judge made law, and hence only a person who has studied this branch of law can properly represent a party before the Labour Court. It has become a highly technical branch, and only trained persons can properly assist the Labour Court/Tribunal in the matter. Hence, to debar lawyers merely because the opposite party objects is wholly unreasonable and arbitrary.

4. The argument that lawyers will cause, delay is, in my opinion, wholly frivolous. No doubt the aim of industrial adjudication is to expeditiously decide an industrial dispute because industrial

friction affects not only the employer and the workmen, but also the public at large, but it is not understandable how the appearance of a lawyer will obstruct expeditious disposal. On the contrary a lawyer who is trained in labour law can quickly focus the attention of the Labour Court/Tribunal to the main points of the dispute, and place the relevant case law so that the Labour Court can quickly dispose of the dispute. Hence, debarring of lawyers, even with the proviso that a lawyer can appear if the other side gives consent, is in my opinion, wholly arbitrary. As a matter of fact, it is well known that this arbitrary provision in the two Industrial Disputes; Act, viz. Section 36 (4) in the Industrial disputes Act and Section 6-I(2) of the U.P. Industrial Disputes Act, has led to all sorts of subterfuges. Lawyers have had to resort to creation of artificial employer's or employees' organizations of which they claim to be representatives, or appear as Officers of the concern. This invites all sorts of objections and much time of the labour court has to be wasted and devoted to first deciding this matter before proceeding to dispose of the dispute on merits. The provisions to my mind is clearly arbitrary, and hence violative of Articles 14 of the Constitution of India.

5. The procedure in the Labour Courts, though slightly different from those of the civil court, is still similar to it, and hence this requires study of the procedure also, which an untrained person does not know. For example certain provisions of the Civil Procedure Code apply to the Labour Courts, vide Section 11(3) of the Central Act. Similarly many other provisions in the Industrial Disputes Act are similar to the provisions in the Civil Procedure Code. It is, therefore, wholly unreasonable to expect a layman to present, his case properly before the Labour Court without assistance of a specialized lawyer.

6. In my opinion, the aforesaid provisions in both the Central and U.P. Acts are also violative of Articles 19(1)(g) of the Constitution of India since they amount to unreasonable restriction on a lawyer's right to practise his profession. A whole class of labour lawyers has sprung up after enforcement of the Industrial Disputes Act, and the aforesaid provisions amount to unreasonable restriction on their right to practise. To say that lawyers raise all sorts of technical objections to delay the disposal of the case, is to my, mind, a wholly frivolous objection. The Presiding Officer of the Labour Court/Tribunal can always conduct the proceedings firmly and in such a manner that no delay is caused, and he can always reject any objection which he finds to be frivolous or hyper technical and which comes in the way of speedy disposal of the dispute.

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Nothing has been brought to our notice that aforesaid judgment of Allhabad High Court has been overruled/annulled in the meantime.

8. The next thing that remains to be decided here is the impact of the judgment of Allhabad High Court on pan India

scenario. In this context, observations of the Supreme Court made in *Kusum Ingots & Alloys Ltd. case* (supra) assume significance. There it has been made clear that an order passed in a writ petition questioning the constitutionality of a parliamentary Act whether interim or final keeping in view the provisions contained in Article 226(2) of the Constitution of India, will have effect though out the territory of India subject of course to the applicability of the Act. Here there exists no dispute that "the Act" applies to whole of India as made clear by sub-section 2 of Section 1 of "the Act", which obviously includes the State of Odisha and accordingly, without doubt Allhabad High Court judgment in *I.C.I. India case* (supra) will have full effect/full application in the State of Odisha. No doubt, in *Thyssen Krupp Industries India Private Limited case* (supra) the matter of constitutional validity of sub-section 4 of Section 36 of "the Act" has been challenged and the matter has been referred to a larger Bench by the Supreme Court on 21.8.2019. Though a copy of the said order was produced before us in course of hearing, however, a perusal of the same does not indicate that attention of the Supreme Court was drawn to Allhabad High Court judgment in *I.C.I. India Ltd. case* (supra).

9. In such background, we have no hesitation in coming to a conclusion that the petitioner management cannot take the plea of sub-section 4 of Section 36 of "the Act" to challenge the impugned order because as per the judgment of Allhabad High Court in *I.C.I. India Ltd. case* (supra), the said provision has already been declared to be unconstitutional. Thus, the plea raised by the petitioner that the impugned order is legally vulnerable on account of violation of sub-section 4 of Section 36 of "the Act" has no legs to stand. Accordingly, the challenge fails and the writ application is dismissed but

without any costs and interim order granted in this case stands vacated.

10. Since the case is an old one, we direct the learned Labour Court to take expeditious steps to dispose of the aforesaid case in accordance with law preferably within a period of six months from the date of receipt / production of certified copy of this order. Parties are directed to cooperate in the matter.

(Biraja Prasanna Satapathy)
Judge

(Biswajit Mohanty)
Judge

High Court of Orissa, Cuttack
Dated 13th of May, 2022/ amit

