



2024:DHC:1016



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 19th January, 2024**

+ **W.P.(C) 10480/2016 & CM APPL. 41115/2016**

ORIENTAL BANK OF COMMERCE Petitioner

Through: Kittu Bajaj, Advocate.

versus

SHRI RAJ KUMAR BANSAL Respondent

Through: In person.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“In view of the submissions made above, the Petitioner, therefore, most respectfully prays that this Hon’ble Court be pleased to quash and set aside the -

(1) impugned order dated 02/08/2016 passed by the Ld. Central Govt Industrial Tribunal in I.D. 46/2001 TITLED R.K.Bansal Vs. Oriental Bank of Commerce.

(2) pass any other order or direction as this Hon’ble Court may deem fit and proper on the facts and in the circumstances of this case. ”

2. The relevant facts necessary for the adjudication of the instant petition



are as follows:

- a) The petitioner is Oriental Bank of Commerce (“petitioner Bank” hereinafter) which is a nationalized Bank incorporated under the Banking Regulations Act, 1949. The respondent herein was employed by the petitioner Bank.
- b) The respondent workman was suspended on 12th February 1987 and was eventually dismissed from his service on 21st June 1996 with retrospective effect from 25th May 1996.
- c) Thereafter, the respondent was convicted under Sections 498 and 406 of the Indian Penal Code, by the learned Metropolitan Magistrate, New Delhi *vide* order dated 25th May, 1995. Pursuant to which, the petitioner Bank issued a show cause notice dated 27th May, 1996, to the respondent and further *vide* order dated 21st June, 1996, dismissed him from the service.
- d) Thereafter, the respondent raised an industrial dispute before the Appropriate Government, Delhi and *vide* notification dated 10th July, 2001 the Appropriate Government referred the said dispute to the learned Central Government Industrial Tribunal (“CGIT” hereinafter), for adjudicating upon the issue -whether the action of the management of petitioner Bank in dismissing the services of the respondent w.e.f. 25th May, 1996, was legal and just and if not then what relief the respondent is entitled to.



- e) The petitioner was represented before the CGIT from 2nd January, 2003, by Ms. Kittoo Bajaj who is a legal practitioner and is also the Executive Member of the Indian Employers Association.
- f) Subsequently, by way of an application dated 12th September, 2013, filed before the CGIT, under Section 36 of the Industrial Disputes Act, 1947 (“the Act” hereinafter), the respondent sought debarring of the Authorized Representatives (“AR’s” hereinafter) namely Ms. Kittoo Bajaj and Ms. Sadaf Naaz who are practicing advocates, to appear before the CGIT on behalf of the petitioner.
- g) Pursuant to the aforesaid application the learned CGIT passed the impugned order dated 2nd August, 2016, in favor of the respondent herein, and held that the petitioner Bank is not entitled to defend its case through a legal practitioner or an advocate.
- h) Therefore, being aggrieved by the impugned order, the petitioner Bank has assailed the same by way of the instant petition under Article 226/227 of the Constitution of India.
3. The learned counsel appearing on behalf of the petitioner submitted that learned Tribunal erred in passing the impugned order as it has been passed without taking into consideration the entire facts, circumstances and settled position of law.
4. It is submitted that the petitioner is being represented by the AR i.e.,



Ms. Kittoo Bajaj since 2nd January, 2003, who is an executive member of the Indian Employers Association. The respondent did not object to her representation initially, it was only at a later stage that the respondent preferred the application dated 12th September, 2013, challenging the same. The said challenge preferred at a belated stage amounts to implied consent on behalf of the respondent and hence, the respondent is now estopped from challenging the same.

5. It is submitted that an authorized representative who is a legal practitioner can appear before the Tribunal without submitting their license to practice law, in the capacity of an 'officer' of the employer as per Section 36(2) of the Act, for which consent by the opposite party and leave of the Tribunal is not required to be sought.

6. It is submitted that the observations made by the learned Tribunal that lawyers cannot be officers of employer's association and that they cannot be employed under the association is against the ratio as settled by the Hon'ble Supreme Court in *Paradip Port Trust v. Workmen*, (1977) 2 SCC 339.

7. It is submitted that a pre condition for becoming an officer of such association under the purview of Section 36(2), it would amount to barring legal practitioners from becoming officers of association. Since it would amount to an advocate mandatorily surrender his license to practice in order to become a member of an association which is perverse to the dictum of *Paradip Port Trust (Supra)* wherein it was held that a legal practitioner who is an officer of the association represents the case before a Tribunal in the capacity of an officer and not as a legal practitioner.



8. It is submitted that the respondent is being represented by two trade union leaders who are labour law practitioners however the petitioner has been deprived of similar opportunity thus, causing serious prejudice to the interest of the petitioner Bank.

9. It is submitted that this Court in ***Management of Association of Cement Companies Ltd. Vs. Workman, Smt. Saroj Arora, 2001 LLR 113, Delhi*** categorically held that the officer bearers of an association of employers would constitute an officer within the meaning of Section 36(2) of the Act. Hence, the impugned order is liable to be quashed being contrary to the law laid down by this Court.

10. It is submitted that the learned Tribunal has wrongly placed reliance upon the ratio ass laid down in case titled ***Siemens Limited Vs. K.K. Gupta, 2005 SCC OnLine Del 1108*** which held that if an advocate wants to become member of association of employers of an industry, in that eventuality such as an advocate is required to surrender his/her license, however, the said observation is contrary to the dictum of ***Paradip Port Trust v. Workmen, (Supra)***, whereby, the Hon'ble Supreme Court has clearly held that a lawyer may become an "officer" of an association of employers and would be entitled to represent an employer under the Act, in the capacity of an "officer" of the association, and not as a lawyer *simpliciter*.

11. It is contended that Section 36 (4) of the Act is *ultra vires* of Article 14 and Article 19(1)(g) of the Constitution of India since it is unreasonable to preclude a lawyer from representing the case before the Labour Court and



presume that a layman is competent enough to represent his case.

12. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner seeks that the instant petition may be allowed, and the reliefs as sought may be granted.

13. *Per Contra*, the respondent appearing in person vehemently opposed the instant petition submitting to the effect that the impugned order has been passed after duly considering the entire facts and circumstances available on its record, and there is no illegality or infirmity thereto hence, the same is liable to be dismissed being devoid of any merits.

14. It is submitted that contention raised by the petitioner challenging the validity of Section 36(4) of Act is perverse as the same has been upheld by the Hon'ble Supreme Court in the case of ***N.K. Bajpai Vs. Union of India, (2012) 4 SCC 653.***

15. It is submitted that Indian Employers Association is not an association of employers within the meaning of Section 36(2) of the Act since advocates and students are members of the said association and such individuals do not fall under the category of employers.

16. It is submitted that the learned Tribunal has correctly relied upon the case titled ***Siemens Limited (Supra)***, wherein the issue of employers association has been dealt with and it was held that for an advocate to become a member of an association of employers he must surrender his license.

17. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondent prayed that the instant petition, may



be dismissed, being devoid of any merits.

18. Heard the learned counsel for the parties and perused the record.

19. It is the case of the petitioner Bank that the AR's representing his case before the learned Tribunal are 'officers' within the meaning of Section 36(2) of the Act. The AR's are executive members of the Indian Employers Association i.e. an officer of an association of which an employer is part of and have been appearing in that capacity of an officer alone and not as legal representatives of the petitioner. It is further contended that the respondent is not entitled to challenge the said representation at a belated stage as the respondent is barred by the principle of estoppel since no such objection was raised at the initial stage of the proceedings. It is further submitted that the learned Tribunal had discriminated between the petitioner and the respondent, since the respondent was by allowed to be represented by the office bearers of the trade union of the workman who are labour law practitioners and the learned Tribunal passed the impugned order without considering the settled position of law with regards to Section 36 of the Act.

20. In the instant petition, the petitioner has prayed for the issuance of the writ of certiorari, and it is apposite to state the law in such regard, as has been reiterated time and again by this Court with respect to the position as to what must be observed by the High Court while issuing a writ in the form of certiorari. It can be fairly summed via two cardinal principles of law, *firstly*, the High Court does not exercise powers of an appellate authority and it does not review or re-weigh the evidence upon which the consideration of the inferior Court purports to have based. The writ of certiorari can be issued if



an error of law is apparent on the face of the record and *secondly*, in such cases, the Court has to take into account the circumstances and pass an order in equity and not as an appellate authority. Tersely stated, writ of certiorari is issued for correcting errors of jurisdiction exercised by inferior Courts, for Courts violating principles of natural justice and acting illegally and the Court issuing such a writ shall act in supervision, and not appeal.

21. Aggrieved by the impugned order, the petitioner Bank has approached this Court quashing of the impugned order dated 2nd August, 2016, passed in favor of the respondent herein, which held that the respondent Bank is not entitled to defend its case through the AR's who are legal practitioner or advocates. The relevant paragraphs of the impugned Order are reproduced herein below:

“6. It is necessary to point out here that the controversy involved in the present case is confined to the provisions of sub section 4 of Section 36, which specifically provides that the parties to the dispute may be represented by legal practitioner with the consent of the other parties to the proceedings and with the leave of the Court or Tribunal, as the case maybe. Thus, there are two imperative components of the above sub section, i.e., (i) consent of the other party, i.e., the workman who has filed the case, and (ii) leave of the Labour Court or Tribunal, as the case maybe. Use of the expression ‘and’ makes it abundantly clear that both the conditions are required to be fulfilled simultaneously before permitting an advocate to represent the case of the respondent-management.

7. At this stage, it is appropriate to refer to the case of A.R Vajpai vs Union of India (AIR 2012 SC 1310). Though it was not a case under the Industrial Disputes Act or any of the



labour enactments, yet the Hon'ble Apex Court dealt at length with the question of right to practice of a legal practitioner under the provisions of Advocates Act vis-à-vis provisions contained in Section 129(6) of Customs Act (CESTAT). Section 129(6) of the Act provides that the President, Vice-President or other Members shall not be entitled to practice before such Appellate Tribunal after they had retired or demitted their office. Appellant, Mr. N.K. Bajpai started practice before CESTAT and- earlier he remained a member of Appellate Tribunal after having served the Customs and Excise Department. He demitted office in March 1993 and being a Law graduate, was enrolled as an advocate with Bar Council of India on 18.03.1993. He made a representation before the Tribunal, that, the provisions of Section 129(6) of the, CESTAT Act were arbitrary and he was entitled to appear before the Tribunal. This plea of the appellant was rejected and the Ministry also clarified upon the representation made by the appellant that he cannot practice before the Custom Appellate Tribunal. It was against this background that the Hon'ble Supreme Court in para 16 of the judgement held as under:

“Therefore, the right to practice, 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. An argument could be raised that a person who has obtained a degree of law is entitled to practice 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 in any of the State rolls. This argument would be fallacious in 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 that profession.”

8. Though the controversy involved in the present case is different in as much as the question is not before this Court as to whether a person who has remained member of the Tribunal or Court can practice before such Tribunal or not but whether in the face of bar contained in Section 36(4) of the Act, any legal practitioner or advocate can appear to defend the case of the management without consent of the workman and leave of the court.

9. In the above case, Hon'ble Supreme Court in para 25 of the judgement has made reference to the case of Paradip Port Members Vs. other Workmen (AIR 1977 SC 36) wherein question directly involved was the same as is before this Court, i.e. whether a legal practitioner can represent an employer before the Industrial Tribunal without consent of the opposite party and leave of the Tribunal.

10. It was strongly urged that provisions of section 36(4) of the Act are contrary to the provisions of section 34 of the Advocates Act, which gives right of practice to the legal practitioner throughout the country. Submission was also made on behalf of the employer that right of practice cannot be restricted by provisions of any other enactment. However, the Hon'ble Apex Court refuted the above contentions by holding the Industrial Disputes Act was a special piece of legislation with the aim of labour welfare as such provisions of special law would prevail upon provisions contained in general enactments, i.e. Advocates Act. It was also brought to the notice of this Court that even under the provisions of Family Court Act, appearance of an advocate from the side off the respondent can always be objected to by the petitioner and advocates



cannot appear as a matter of right in proceedings before the Family Court. Restrictions contained in such special enactments is held to be reasonable restriction, which is valid in view of the provisions contained in Article 19(1)(g) of the Constitution which gives all citizens the right, to practice any profession, or carry out any occupation, trade or business. The term 'any profession' would certainly include legal practice. However, this is not an absolute right and as such reasonable restriction under Article 19(6) of the Constitution, it cannot be a gainsaid when litigants are also members of general public and if in their interest any provisions of law or rule imposes restrictions on the appearance of advocate from the side of the management, such restriction is to be held as reasonable restriction under the law.

11. *It is also appropriate to refer to the judgement of Hon'ble High Court of Delhi in the case of Prasar Bharti Broadcasting vs. Suraj Pal Sharma (1999 DLT 269) wherein similar question came for consideration before the Hon'ble High Court. In fact, in the industrial case, workmen filed application before the Tribunal under Section 36 of the ID Act objecting to the appearance of an advocate, on behalf of the management and objections raised by the workman was upheld by the Industrial Tribunal holding that an advocate on behalf of the management cannot appear in view of the objection of the workman. In the above case, plea of implied consent was also raised and same was rejected by holding as under:*

"5. Though sub section (3) of Section 36 of the ID Act clearly prohibits a legal practitioner from representing any party to a dispute in any conciliation proceedings under the Act or in any proceedings before a Court, there is no such total prohibition in the case of a proceeding before a Labour Court, Tribunal or National Tribunal. Sub section (4) of Section 36 enables a legal practitioner



to represent a party to a dispute in a proceeding before a Labour Court, Tribunal or National Tribunal with the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal. The consent of the other parties and the leave of the Labour Court/Tribunal/National Tribunal are mandatory prerequisites. In this case the workman had not given his consent for the representation of the management by a legal practitioner. On the other hand the workman filed a formal application objecting to the appearance of the legal practitioner. According to the petitioner, the management was earlier represented by government Counsel Shri Suraj Singh and Shri U. M. Kaira and it was not objected to by the workman. The question is not whether the workman had objected to or not. The question is whether the workman had given his consent or not. However, the petitioner has not placed on record any material to show that the workman had given his consent for the representation of the management by the Government Counsel. Sub-section (4) allows a legal practitioner to appear on behalf of a party to a dispute subject to two specific conditions: (i) The other, parties to the proceedings have given the consent for such appearance of the legal practitioner, and (ii) The Labour Court/Tribunal/National Tribunal has granted leave for such appearance. There is nothing to show that the workman in case had given his consent for the appearance of any of the Government Counsel or that the Tribunal had granted leave for such appearance.”

12. There is also judgement in the case of KC Gope vs. Government of Bengal (2014 Lab.I.C. 4571) wherein similar objection was raised by the workman relating to appearance of legal practitioner on behalf of the management when the matter was pending before the Industrial Tribunal and such objection



was allowed by the Labour Court. When the matter reached before the Hon'ble High Court it was urged that the consent referred to in Section 36(4) of the Act includes implied consent and having regard to the fact that the workmen do not raise any objection when vakalatnama was filed, as such it is to be presumed that the workmen had implied given consent to the representation of the management through a legal practitioner. This contention did not find favour with the Hon'ble High Court and placing reliance upon the judgment of the Hon'ble Supreme Court in Paradip Port Trust (supra). It was held by the Hon'ble Supreme Court that a 'consent' of the party is not an idle alternative but a ruling factor in Section 36(4). The requirement of the statute cannot, therefore, be given a go by or wished away. This requirement is to be complied with in order to give full effect, to the provisions of Section 36(4) of the Act. Giving or refusing consent is purely a matter of the will of the party if the consent is refused by one of the opposite parties, the question of leave of the adjudicator, does not arise.

13. Also in management of Associated Cement Cos. Ltd. vs. Workman Saroj Arora (2001(1) LLJ 828 Delhi) was held that a legal practitioner as such cannot represent either the workman or the employer in any proceedings before Labour Court or Tribunal but he can do so with the consent of the other party and with the leave of the Court.

14. Yet in another case, i.e., S. Yellappa vs. Steel Authority of India (Civil Appeal No. 3784 of 2010, in Order dated 08.05.2014), It has been held as under:

"Leave granted. Hearing Expedited. The pendency of the appeal shall not operate as stay of proceedings before the Labour Court. Proceedings before the Labour Court shall continue subject however to the condition that no side shall be represented before it by any practicing lawyer or anyone who has a, subsisting and alive licence granted by



any Bar Councils under the Advocates Act.”

15. The reliance was placed by learned A/R for the management upon the case of BHARAT HOTELS LIMITED Vs GOVT. OF NCT OF DELHI & Others decided on 05-05-2011 and M/SBHAGAT BROTHERS Vs PARAS NATH UPADHYAY decided on 13-08-2006 by High Court of Delhi. It not of much help in the face of latest judgment discussed above. The A/R for the management who is admittedly a practicing advocate and has not surrendered her license issued under the advocate Act as such she cannot be permitted to appear as a member of the associate of the employer, in terms of Section 36(2) in the Industrial disputes Act. The law is now fairly settled that if an advocate wants to become member of association of employers of an industry, in that eventuality such as an advocate is required to surrender his/her license. In this regard reference can be made to the case of SIEMENS LIMITED Vs K.K. GUPTA & ANR decided on Oct 21, 2005 by High Court of Delhi. In the said case also, objections was taken by workman against a legal practitioner engaged by management who claimed to be officers of PHD Chambers of commerce and industry. The plea of management was rejected by placing reliance upon judgment of Paradip Port Trust case (supra). Wherein it was held as under:

"16. If, however a legal practitioner is appointed as an officer of a company or corporation and is in their pay and under their control and is not a practicing advocate the fact that he was earlier a legal practitioner or has a 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 the 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 office 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 not a legal practitioner will not affect the position if the qualifications specified in Section 36(1) and Section (2) are fulfilled by him."

16.A perusal of the above extracts shows that a significant factor in the decision of the Supreme Court judgment was the fact that the person concerned was a practicing Advocate earlier, implying clearly that he had ceased to be an Advocate after becoming an officer of the Association. Similarly, the phrase 'legal practitioner' in the italicized portion of the extract in the above mentioned judgment would also mean that such a legal practitioner has ceased to be a practicing advocate. If the two concerned representatives of the petitioner continue to enjoy the licenses of the Bar Council, they had not ceased to be Advocates and whether or not they were borne on the record of PHDCCI they could not therefore, be officers of the Association by virtue of effective registration with the Bar Council of Delhi.

17.The Hon'ble Apex Court is already seized of the matter so far as question of constitutional validity of such provisions under special enactments is concerned. However, till then view already taken by the Hon'ble Supreme Court in Paradip Port Trust as well as N.K. Bajpai cannot be ignored wherein Hon'ble Apex Court has held that right of the legal practitioner to appear before such Courts or Tribunal is not absolute and is subject to reasonable restriction within the meaning of Article



19(6) of the Constitution.

18. As a sequel to my discussion herein above, it is clear that in view of the specific objections taken by the workman herein regarding appearance of the management through an advocate cannot be ignored and it held that the management is not legally entitled to defend its case through legal practitioner or advocate. An order is, accordingly passed.”

22. Upon perusal of the aforesaid paragraphs of the impugned order, it can be summed up that the learned CGIT confined its reasoning only to sub section 4 of Section 36 of the Act and while adjudicating upon the same, it held that the aforesaid sub-section contains two mandatory conditions which needs to be complied with i.e., consent of the other party and leave of the Court/Tribunal.

23. The learned CGIT placed reliance on various judgments of the Hon’ble Supreme Court as well as this Court and majorly based its reasoning upon two such judgments, namely ***Paradip Port Trust (Supra)*** and ***N.K. Bajpai (Supra)***. In light of the two judgments, it was observed that the right of a legal practitioner to appear before a Tribunal is not absolute and is subject to reasonable restriction as per Article 19(6) of the Constitution of India.

24. It was further opined that if a workman makes a specific objection with regards to appearance of an advocate before the Tribunal, the same must not be ignored and shall be restricted in accordance with the law settled by the Hon’ble Supreme Court and express bar under Section 36(4) of the Act.



25. Accordingly, the learned CGIT held that the objection of the workman regarding representation of the petitioner by an advocate merits interference and the petitioner is not legally entitled to be represented by an advocate.

26. Before advertng on the merits of the case, this Court further deems it necessary to reproduce the provisions as contained under Section 36 of the Act as the instant petitioner challenges the impugned order passed by the Learned Tribunal as per the said provision. The provisions of Section 36 of the Act are reproduced herein below:

“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 office bearer of a registered trade union of which he 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 of which he is a member;

(b) an officer of a federation of association 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 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.”

27. Section 36 of the Act provides for ‘representation of parties’ wherein sub-section (1) provides for who may represent a workman and states three classes of officers namely any member of the executive or office bearer of a registered trade union of which he is a member, any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in previous clause is affiliated or 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 in such regard. The sub-section (2) of the aforesaid Section provides for who may represent an employer and states three classes of officers namely an officer of an association of employers of which he is a member, an officer of a federation of association of employers to which the association referred to in previous clause is affiliated or 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 in such regard. Further, Sub Section (3) lays down a complete ban on representation of parties by a legal practitioner and lastly Sub Section (4) provides for an exception to sub section 3 wherein with the consent of the opposing party and by the leave of the Tribunal/Court a party may be represented by a legal practitioner.

28. At this juncture, this Court deems it necessary to state the law, as settled by the Hon'ble Supreme Court and High Courts with regard to representation by a legal practitioner in the capacity of 'officer or office bearers' before a Tribunal under Section 36 of the Act.

29. The Hon'ble Supreme Court in ***Paradip Port Trust (Supra)***, discussed the scope of Section 36 of the Act in detail. The relevant paragraphs of the aforesaid case are reproduced herein below:

".....11. Section 36 provides for representation of parties before the tribunals and the labour court. Under Section 36(1) a workman who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by three classes of officers mentioned in (a), (b) and (c) of that sub-section. Similarly under Section 36(2) an employer who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by three classes of officers mentioned in (a), (b) and (c) of that sub-section. By sub-section (3) a total ban is imposed on representation of a party to a dispute by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a court of enquiry. Then comes Section 36(4) which introduces the requirement of prior consent of the opposite party and leave of the tribunals and of the labour court, as the case may be, for enabling a party to be represented by a legal practitioner.



12. Since the dispute, itself, in a large number of cases takes the character of industrial dispute from participatory involvement of the trade union, the Act confers an unbartered right upon the workmen to be represented by a member of the executive or by an office-bearer of a registered trade union. It is, therefore, in the very scheme of things that a workman's absolute right to be represented by an office-bearer of the union is recognised under the Act. Indeed it would have been odd in the entire perspective of an industrial dispute and the objects and purposes of the Act not to give due recognition to the union. But for a provision like Section 36(1) of the Act, there may have been difficulty under the general law in the way of the office-bearers of the union representing workmen before the adjudicating authorities under the Act unless, perhaps, regulated by the procedure under Section 11 of the Act. To put the matter beyond controversy an absolute right is created in favour of the workmen under Section 36(1) in the matter of representation. Having made such a provision for the workmen's representation the employer is also placed at par with the workmen in similar terms under the Act and the employer may also be represented by an officer of the association of employers of which the employer is a member. The right is extended to representation by the office-bearers of the federation of the unions and by the officers of the federation of employers. The provisions of Section 36(1) and 36(2) confer on the respective parties absolute rights of representation by persons respectively specified therein. The rights of representation under Section 36(1) and Section 36(2) are unconditional and are not subject to the conditions laid down under Section 36(4) of the Act. The said two sub-sections are independent and stand by themselves.

13. As stated earlier, Section 36 deals with representation of the parties. Neither the Act nor Section 36 provides for appearance of the parties themselves when they are individuals



or companies or corporations. The tribunals and the labour courts being quasi-judicial authorities dealing with rights affecting the parties cannot adjudicate their disputes in absence of the parties. It is, therefore, incumbent upon the tribunals and labour courts to afford reasonable opportunity to the parties to appear before them and hear them while adjudicating industrial disputes. This position is indisputable. Section 36, therefore, is not exhaustive in the sense that besides the persons specified therein there cannot be any other lawful mode of appearance of the parties as such. As indicated earlier Section 36 does not appear to take count of companies and corporations as employers. It is, however, common knowledge that industrial disputes are raised in a predominantly large number of cases where companies or corporations are involved. Since companies and corporations have necessarily to appear through some human agency there is nothing in law to prevent them from being represented in any lawful manner. As Salmond says:

“Every legal person, therefore, has corresponding to it in the world of natural persons certain agents or representatives by whom it acts....” (Salmond on Jurisprudence, 12th Edn., p. 312)

It is not intended under the Act that companies and corporations are confined to representation of their cases only through the officers specified in Section 36(2) of the Act. They can be represented by their directors or their own officers authorised to act in that behalf in a lawful manner provided it is not contrary to any provision of the Act. This would not, however, mean that the companies and corporations, and for the matter of that any party, are free to engage legal practitioners by means of a special power of attorney to represent their interests before the tribunals without consent of the opposite party and leave of the tribunal.

14. *Again, although under Section 36(2)(c) there is provision*



for the contingency of an employer not being a member of an association of employers, the device of representation provided therein would not fit in the case of a government department or a public corporation as an employer. These categories of employers, known to the Act, will be put to the most unnatural exercise of enlisting the aid of an outside association, albeit connected with the same type of industry, to defend their cases before tribunals. Such an absurd intent cannot be attributed to the legislature in enacting Section 36, which will be, if that section is the be-all and end-all of the types of representations envisaged under the Act. The impossibility of the position indicated above is a crucial pointer to Section 36 being not exhaustive but only supplemental to any other lawful mode of representation of parties.

15. The parties, however, will have to conform to the conditions laid down in Section 36(4) in the matter of representation by legal practitioners. Both the consent of the opposite party and the leave of the tribunal will have to be secured to enable a party to seek representation before the tribunal through a legal practitioner qua legal practitioner. This is the clear significance of Section 36(4) of the Act.

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

17. It must be made clear that there is no scope for enquiry by the tribunal into the motive for appointment of such legal practitioners as office-bearers of the trade unions or as officers of the employers' associations. When law provides for a requisite qualification for exercising a right, fulfilment of the qualification in a given case will entitle the party to be represented before the tribunal by such a person with that qualification. How and under what circumstances these qualifications have been obtained will not be relevant matters for consideration by the tribunal in considering an application for representation under Section 36(1) and Section 36(2) of the Act. Once the qualifications under Section 36(1) and Section 36(2) are fulfilled prior to appearance before tribunals, there is no need under the law to pursue the matter in order to find out whether the appointments are in circumvention of Section 36(4) of the Act. Motive of the appointment cannot be made an issue before the tribunal.

18. We may note here the difference in language adopted in Section 36(1) and Section 36(2). While Section 36(1) refers to "any member of the executive" or "other office-bearer". Section 36(2), instead, mentions only "an officer". Now "executive" in relation to a trade union means the body by whatever name called to which the management of the affairs of the trade union is entrusted [Section 2(gg)]. "Office-bearer" in relation to a trade union includes any member of the executive thereof but does not include an auditor [Section 2(lll)]. So far as trade unions are concerned there is no difficulty in ascertaining a member of the executive or other office-bearer and Section 36(1) will create no difficulty in practical



application. But the word “officer” in Section 36(2) is not defined in the Act and may well have been, as done under Section 2(30) of the Companies Act. This is bound to give rise to controversy when a particular person claims to be an officer of the association of employers. No single test nor an exhaustive test can be laid down for determining as to who is an officer in absence of a definition in the Act. When such a question arises the tribunal, in each individual case, will have to determine on the materials produced before it whether the claim is justified. We should also observe that the officer under Section 36(2) is of the association or of the federation of associations of employers and not of the company or corporation....”

30. Bearing in mind the ratio as settled by the Hon’ble Supreme Court, it can be summarily stated that the right of representation by office bearers and officers as provided under Section 36(1) and Section 36(2) is unconditional and is not subject to the consent of the other party and leave of the court as provided under Section 36(4) of the Act.

31. If a legal practitioner is appointed as an officer of a company or corporation and is paid and controlled by them but is not a practicing advocate, the fact that he was previously a legal practitioner or has a legal degree will not preclude him from representing the company or corporation. The Hon’ble Court further held that if a legal practitioner who is an officer of an association of employers (but not of the company or corporation) and a legal practitioner who is an officer-bearer of a trade union or a member of its executive, they shall be entitled to represent the company or corporation and workman before the learned Tribunal as per Section 36(2) and Section 36(1) respectively. In such circumstances the said person will not appear in the



capacity of a legal practitioner rather will represent 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. Therefore, any person who meets the criteria as stipulated under Sections 36(1) and 36(2) of the Act, his status as a legal practitioner has no bearing on his position.

32. Further, the Act does not intent to confine the representation of companies and corporations only through officers specified under Section 36(2) and they can be represented by their directors or officers authorized in a manner which is within the provisions of the Act. Lastly, the Court observed that as the Act does not provide for an express definition of an ‘officer’ as stipulated under Section 36(2) thus, it is bound to create controversy and to cater to the same it opined that Tribunals must decide the same in every case according to the material placed before it.

33. The Hon’ble Supreme Court in the judgment of *Thyssen Krupp Industries India Private Limited & Ors v. Suresh Maruti Chougule & Ors.* [Civil Appeal No. 1169/2018, decided on 4th October, 2023] wherein reference was made for review of *Paradip Port Trust* (Supra) and the Hon’ble Court upheld the aforesaid judgment. The relevant portion of the judgment has been reproduced herein below:

“We are in agreement with the view adopted in Paradip Port Trust, Paradip’s case (supra). As emphasized, the matter is not to be reviewed from the point of view of the legal practitioner but from the aspect of the employer and workmen who are the principal contestants in an industrial dispute as observed in the aforesaid judgment. We really find no ground to revisit the well settled position of law which has prevailed for almost half a



century. We answer the reference accordingly.”

34. After carefully examining the impugned order, this Court is of a considered view that the reasoning of the learned Tribunal is founded upon the fact that the petitioner was represented by a legal practitioner and but, the learned Tribunal failed to appreciate that the AR i.e., Ms. Kittoo Bajaj and Sadaf Naaz are executive members of the Indian Employers Association therefore, the representation by them since 28th September, 2004, was in the capacity of an ‘officer’ of the said Association and not as a practicing advocate. Moreover, the judgments so relied upon by the Tribunal in support of its are not applicable to the facts and circumstances of the instant case.

35. Further, reliance placed on the judgment of ***Paradip Port Trust (Supra)*** is misplaced as the Hon’ble Supreme Court in the aforesaid judgment has specifically observed that the representation by officers, as provided under Section 36(1) and 36(2) is permissible and the same neither requires the consent of the opposing party nor the leave of the Tribunal/Court.

36. This Court observes that merely because the person representing the petitioner is a legal practitioner will not preclude the said person from representing the petitioner since it fulfils the qualifications as enunciated under Section 36 (1) and Section 36 (2) of the Act. Hence, there is no impediment for the petitioner to be represented by the person engaged as an officer bearer in accordance with Section 36(2)(a) and in such an event, the opposite party has no right to object to the same.



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37. This Court is of the view that the impugned award suffers from infirmity on the face of the record since, the same has not been passed in accordance with the settled position of law on the issue of representation by a legal practitioner in the capacity of 'officer or office bearers' before a Tribunal under Section 36 of the Act. Hence, the petitioner has been able to make out his case and the impugned order merits interference of this Court.

38. In view of the aforesaid observation as well as the law settled by the Hon'ble Supreme Court, it is held that the impugned order dated 2nd August, 2016, passed by Sh. Avtar Chand Dogra, Presiding Officer, Central Government Industrial Tribunal cum Labour Court No.1, Karkardooma, Delhi, in I.D No. 72/2016, suffers from infirmity and in view of the same it is liable to be set aside.

39. Accordingly, the instant writ petition is allowed and the impugned order is set aside.

40. Hence, the instant petition stands disposed of along with pending applications, if any.

41. Lower Court record be returned to Tribunal for further adjudication.

42. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 19, 2024
Rk/ds/db