

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15470 of 2022

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NTPC Limited - Barh STPP Patna - 803215 through its Chief General Manager, Asit Dutta, aged about 58 years, Gender- Male, Son of Late A K Dutta.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Labour Resources Department, Government of Bihar, Niyojan Bhawan, Bailey Road, Patna - 800001.
2. Workmen represented by NTPC Karamchari Sangh bearing Registration No. 4068/2009, NTPC Campus, Barh, Patna - 803215 through its General Secretary, Purushotam Kumar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kr. Sinha, Sr. Adv.
	:	Mr. Manish Kumar, Adv.
	:	Mr. Indrajeet Bhushan, Adv.
For the Respondent/s	:	Mr. Raghwendra Kumar (Sc 22)

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT

Date : 18-02-2025

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

reliefs:-

“A. For quashing/setting aside the order dated 02.09.2022 (Annexure 'P-1') passed in Reference Case No. 14 (C) of 2022 by the learned Industrial Tribunal, Patna by which the learned Tribunal has illegally, erroneously and arbitrarily debarred/prohibited the petitioner management from being allowed to be represented by an Advocate thereby upholding the objection raised in this regard by the NTPC Karamchari Sangh (Respondent no.2) through its petition/letter dated 18.05.2022 (Annexure 'P-3') and;

B. For holding and declaring that Section 36 (3) & (4) of the Industrial Disputes Act, 1947 (hereinafter for brevity referred to as 'the ID Act, 1947') putting embargo on the



appearance of an Advocate/Legal Practitioner is no longer relevant and stands overridden by enforcement of Section 30 of the Advocate Act, 1961 from 15.06.2011, which is a subsequent legislation and which now grants right to every Advocate to practice before all Courts and Tribunals, legally authorised to take evidence, and

C. For further holding and declaring that in regard to the subject matter of appearance of lawyers before all Courts, Tribunals and other authorities, the Advocate Act, 1961 would be considered to be a special Act which would prevail over 'the ID Act, 1947', and;

D. For further holding and declaring that the impugned order dated 02.09.2022 (Annexure 'P-1') passed in Reference Case No.14 (c) of 2022 debarring the appearance of Advocate on behalf of the petitioner management also amounts to infringing Article 19 (1) (g) of the Constitution of India which guarantees any person to carry on any profession thereby conferring the lawyers with the fundamental right to practice profession of law in India and,

E. For grant of any other relief or reliefs for which the petitioner is found to be entitled to in the facts and circumstances of the case.”

3. Learned counsel appearing on behalf of the petitioner

has stated that the Tribunal without taking into account the provisions of the Industrial Disputes Act, 1947 (ID Act) and the various judgments rendered by the Hon'ble Supreme Court as well as the other High Courts has dismissed the application made by the petitioner seeking appointment of an advocate. Learned counsel has stated that as per the provisions of the Act, the permission of the Tribunal and consent of the worker is necessary for appointing



an advocate on behalf of the employer before the Industrial Tribunal. Learned counsel has further stated that unless and until an advocate is appointed, the matter cannot be effectively adjudicated as any person authorized to appear on behalf of the employer will not be well versed with the provisions of the law or the nuances of law. Learned counsel has stated that the petitioner is willing to bear the entire expenses for appointing counsel on behalf of the employee/ worker and no prejudice will be caused to him if an advocate is appointed to appear on behalf of the petitioner. Learned counsel has relied on the following judgments to buttress his case.

i. *I.C.I. India Ltd. Versus Presiding Officer Labour Court (Iv) And Another* reported in *1992 (1) LabLR477*

ii. *A And B Fashions Pvt. Ltd. vs Ramesh Kumar & Ors.* reported in *AIRONLINE 2021 DEL 1459*

iii. *Paradeep Port Trust Versus Their Workmen with Management of Keonjhar Central Co Operative Bank Limited Versus Their Workmen* reported in *1977 (2) SCC 339*

iv. *Aeltemesh Rein vs. Union of India* reported in *AIR 1988 (SC) 1768*

v. *Saji vs. Union of India 2011* reported in *2011 (3) KerLT 936*

vi. *A. Latha Suman vs. District Collector, Alappuzha* reported in *2013(2) KerLT 233*

vii. *Paramjit Kumar Sariya vs. The Union of India and Another* reported in *AIR 2014 (P&H) 121*



4. *Per contra*, the respondent/ employee who is appearing party in person has vehemently opposed the very maintainability of the present writ petition. The party in person has argued that the provisions of the I.D. Act are very clear and unambiguous, the employer cannot appoint any counsel on their behalf to argue the cases before the Labour Court unless and until the Labour Court gives permission and the employee gives his consent for the same. The party in person has stated that there is no need to appoint any counsel on behalf of the employee as he does not require any counsel. The party in person has relied on the judgment of the Hon'ble Supreme Court rendered in ***Thyssen Krupp Industries India Private Limited Vs. Suresh Maruti Chougale and Others*** and prayed for dismissal of the present writ petition.

5. Admittedly, as seen from the record, the petitioner herein is an employer who has filed an application seeking appointment of an advocate on his behalf to argue the case filed by the employee, the Tribunal has dismissed the application duly taking into consideration the provisions of the Act, more specifically, Section 36(3).



6. In order to appreciate the issue involved in the present writ petition, it is necessary to extract the provisions of the Act, more particularly, Section 36 which reads as under;

“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) *2 [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 2 [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 2 [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 3 [with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be]”

7. Though the learned counsel appearing on behalf of the petitioner has relied on the judgments of the Hon’ble Supreme Court and various other High Courts to buttress his case and has tried to distinguish the judgments from the one relied by the respondent employee rendered in ***Thyssen Krupp Industries India Private Limited Vs. Suresh Maruti Chougale and Others***, the fact remains that the Hon’ble Supreme Court duly taking into consideration the judgments relied by the petitioner has rendered its judgment, wherein it has clearly held as under;

“The workman is at liberty to engage an advocate, and the fee of the said advocate shall be paid by the Management. The appellant shall be permitted to be represented by an Advocate. As this direction is being given in view of the complaint of the workman that he is suffering due to the delay it is deemed that the workman has no objection to the appellant engaging an advocate. The Labour Court is directed to proceed with Reference IDA No. 121 of 2016 expeditiously and decide the matter within a period of six months from today.”

8. Though learned counsel has tried to impress upon this Court that it would be beneficial for the employee to accept to have a counsel and that the employer/ petitioner is willing to bear the entire expenses, it should not be lost sight that unless and until



the employee consents for the appointment of an advocate, this Court cannot substitute its wisdom, opinion or go against the will of an employee. The provisions of the I.D. Act are plain, simple and unambiguous, there is no scope for any other interpretation to suit the needs of the employer. The judgments relied by the petitioner are all distinguishable on the facts of the individual cases and are not applicable to this particular case. The Hon'ble Supreme Court in categorical terms has stated that unless and until the employee agrees for appointment of an advocate, an advocate cannot be engaged. Even though the counsel for the petitioner has stated that it would be difficult for the company which is having various branches at different places to assist the Labour Court as the persons who are in charge of the legal affairs of the employer company may not be well conversant with the provisions of the law and would not be in a position to assist the Court, the same cannot be a ground for allowing the application made by the petitioner/ employer.

9. Having regard to the above, and also the judgment of the Hon'ble Supreme Court rendered in *Thyssen Krupp Industries India Private Limited Vs. Suresh Maruti Chougale and Others*, this Court does not find any merit in the present writ petition and the same is accordingly dismissed.



10. However, it is made clear that in case the employee on the future date agrees for appointment of an advocate on his behalf, the expenses for the same shall be borne by the employer. And the employer would also be entitled to engage a counsel on their behalf.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2025.
Transmission Date	NA

