



\$~48

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 8716/2023, CM APPL. 32973/2023**

**RAJIV ADYA**

.....Petitioner

Through: Ms. Saurabh Kansal, Advocate.

versus

**M/S SARVAGUN AUSHDI PVT. LTD.**

.....Respondent

Through: Mr. Rishesh Sikarwar, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**ORDER**

**28.04.2025**

%

1. By way of present petition, the petitioner seeks to challenge the impugned order dated 15.04.2023 passed by the Presiding Officer, Labour Court-06, RADDC, New Delhi, whereby the petitioner's application under Section 36 (4) of Industrial Disputes Act 1947 (hereafter, the 'ID Act') was dismissed.

2. Petitioner was employed by the respondent firm as a Manager-Project & Legal. He resigned from his job on 25.06.2019, alleging manhandling and mistreatment. The Petitioner filed a complaint before the Labour Court in June 2021 seeking reinstatement along with full back wages. The respondent firm engaged an advocate to represent them in the said proceedings before the Labour Court. The Petitioner moved an application on 13.12.2021 under Section 36 (4) of the ID Act seeking to restrain the Respondent from representing their case through legal practitioner. The said application was



dismissed by the Labour Court vide order dated 15.04.2023, holding that since the petitioner was a law graduate and posted as legal manager, the respondent was allowed to be represented by an advocate of its choice to put the parties on equal footing. Aggrieved by the said dismissal, the petitioner filed an application under Section 11 of the ID Act, seeking recalling of order dated 15.04.2023. During the pendency of the said application, the petitioner filed the present petition.

3. Learned counsel for the petitioner submits that the Labour Court erred in allowing the respondent to be represented by a practicing advocate as the same is barred by Section 36(4) of the ID Act, which requires the consent of the other party before allowing a party to be represented by a 'legal practitioner', and that the petitioner had not given any such consent. It is further submitted that the petitioner is a 'law graduate' and not a 'legal practitioner' and merely having a law degree would not equate the petitioner with a practicing advocate, who would have a clear advantage over the petitioner. It is submitted that the petitioner has graduated in 2016 and is not enrolled with any bar council or bar association. It is submitted that the ARs of the respondent, namely *Mr. Harshvardhan Garg*, *Mr. Ankit Sharma* are law graduates and capable of representing the respondent. It is stated, on instructions, that the petitioner has no objection in case the respondent is represented by them. Reliance is placed on the decisions in Paradip Port Trust, Paradip v. Their Workmen<sup>1</sup>, Thyssen Krupp Industries India Private v. Suresh Maruti Chougule and Ors<sup>2</sup>, Sailendra Narayan Lenka v/s Sanofi

---

<sup>1</sup> (1977) 2 SCC 339

<sup>2</sup> Civil Appeal No. 6586/2019 decided on 21.08.2019



India Ltd., Mumbai and others,<sup>3</sup> Oriental Bank of Commerce Vs. Shri Raj Kumar Bansal.<sup>4</sup>

4. *Per Contra*, learned counsel for the respondent submits that the impugned order does not suffer from any infirmity. It is submitted that the petitioner is admittedly a law graduate, possessing a diploma in Labour Law and was the legal head of the respondent company. It is submitted that the respondent was entitled to representation by an equal before the Labour Court. It is submitted that the petitioner has himself engaged the services of legal practitioners in matters against the respondent company.

5. I have heard learned counsel for the parties and gone through the records.

6. The issue which arises in the present case is whether the respondent could have engaged a legal practitioner without the consent of the petitioner. Section 36 of the ID Act deals with the issue of representation of parties. Sub section (4) states that a party to the dispute may be represented by a legal practitioner in any proceeding before a Labour Court, Tribunal or National Tribunal, provided they have the consent of other parties to the proceeding and the leave of the forum they have instituted the proceeding. The language of section is clear that both the consent of opposite party and leave of tribunal will have to be secured. Consent of the opposite party is not a mere formality but rather the entire purpose of the provision. However, if a legal practitioner or person possessing a law degree is an officer of the company or corporation and under their pay and control, then that legal degree will not be a bar to him representing the company. A reference in this

---

<sup>3</sup>WP(C) No.26815 of 2023

<sup>4</sup>MANU/DE/1012/2024



regard may be made to the decision in Paradip Port Trust v. Workmen (Supra) wherein a 3-Judge Bench of Supreme Court held the following:-

*“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.*

xxx

*21. We have given anxious consideration to the above submission. It is true that “and” in a particular context and in view of the object and purpose of a particular legislation may be read as “or” to give effect to the intent of the legislature. However, having regard to the history of the present legislation, recognition by law of the unequal strength of the parties in adjudication proceedings before a tribunal, intention of the law being to discourage representation by legal practitioners as such, and the need for expeditious disposal of cases, we are unable to hold that “and” in Section 36(4) can be read as “or”.*

*22. Consent of the opposite party is not an idle alternative but a ruling factor in Section 36(4). The question of hardship, pointed out by the Solicitor General, is a matter for the legislature to deal with and it is not for the courts to invoke the theory of injustice and other consequences to choose a rather strained interpretation when the language of Section 36 is clear and unambiguous.*



7. Certain doubts were raised against the interpretation of Section 36(4) of the ID Act in Paradip Port Trust (Supra) and the matter was referred to a larger bench by the Supreme Court in Thyssen Krupp Industries(Supra). A 3-Judge Bench in Thyssen Krupp Industries India (P) Ltd. v. Suresh Maruti Chougule<sup>5</sup>, while deciding the reference, upheld the law laid down in Paradip Port Trust(Supra). It held as follows:-

*“7. 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.*

*8. We really find no ground to revisit the well settled position of law which has prevailed for almost half a century.*

*9. We answer the reference accordingly.”*

8. In the present case, the respondent has not denied engaging a legal practitioner in the proceedings before the Labour Court. As per section 36(4) of the ID Act, consent of the petitioner was required before the respondent could engage a legal petitioner. The reasoning employed by the Labour Court, that since the petitioner possessed a law degree and was a Manager-Project & Legal, the respondent would be entitled to engage a law practitioner, is erroneous and wrong. The petitioner graduated in law in 2016 and is statedly not enrolled with any Bar council or a member of any Bar association. The petitioner also claims to have never practiced law before any court/forum. Furthermore, there is no such provision in the ID Act which circumvents the statutory requirement of consent of the other side on the ground of putting the parties on an equal footing. Similarly, no exception has been carved out to relax the obligation of obtaining consent of workmen

---

<sup>5</sup>2023 SCC OnLine SC 1707



who possess a legal degree. Thus, the respondent could not have engaged a legal practitioner without the consent of the petitioner. However, as laid down in Paradip Port Trust (Supra), it was open to the respondent to use its officers possessing a law degree to represent them in the proceedings under Section 36(2) of the ID Act. The petitioner, while referring to the authorisation filed by the respondent states that he has no objection if the Authorised representatives mentioned therein possessing a law degree represents the respondent before the Id. Tribunal. It would be open to the respondent to represent itself through them or any other similarly qualified officer.

9. In view of the above, the present petition is allowed and the impugned order dated 15.04.2023 is set aside. Let a copy of this order be communicated to the Trial Court.

10. The petition is disposed of in the above terms.

**MANOJ KUMAR OHRI, J**

**APRIL 28, 2025/ry**