
(1973) 11 BOM CK 0005
In the Bombay High Court
Case No : Spl. C.A. No. 1959 of 1973

A.D. Shastri

APPELLANT

Vs

S.D. Patil and Another

RESPONDENT

Date of Decision : 22-11-1973

Acts Referred:

Industrial Disputes Act, 1947 — Section 11, 33C(2), 36, 36(1), 36(2)

Citation : (1975) 30 FLR 206 : (1975) 1 LLJ 458

Hon'ble Judges : S.M. Hajarnavis, J;N.P. Nathwani, J

Bench : Division Bench

Judgement

Per Nathwani, J.—These two writ petitions under Art. 227 of the Constitution are disposed of by a common judgment as they raise a common question whether an office-bearer of a registered trade union who also happens to be a legal practitioner is entitled in his capacity as such officer to represent workmen before a Labour Court or Industrial Court under S. 36(1)(a) of the Industrial Disputes Act, 1947 without obtaining consent of the other party required under S. 36(4) of the Act.

2. Messrs. Caprihans India Private Limited Co. (hereinafter referred to as the company) carries on business as manufacturers and owns factories at several places including Thana. The General Labour Union (Red Flag) and Caprihans Employees' Association, the petitioners in Special Civil Application No. 1960 of 1973, are both trade unions registered under the Trade Unions Act, 1925 and represent respectively. Company's factory workmen and staff employees, Mr. A. D. Shastri, the petitioner in Special Civil Application No. 1959 of 1973 is the vice-president and general secretary respectively of the General Labour Union and the Caprihans Employees' Association. He is also enrolled as an advocate since 1963. Miss. Indira Jaising is also the secretary of the Caprihans Employees' Association and is also an advocate.

3. In July, 1972, a dispute between the company and its workman employed in its factory at Thana was referred to the Industrial Tribunal for adjudication by the

Government of Maharashtra. The said reference was heard as Reference No. (IT) No. 246 of 1972. Before the Tribunal Mr. Rawell appeared as an advocate for the company and Mr. Shastry and Miss Indira Jaising appeared for workmen, as the vice-president and secretary respectively of the general Labour Union and Caprihans Employee's Association. The workmen objected to Mr. Rawell's appearance for the company and, therefore, the company also raised objection against Mr. Shastry's and Miss Indira Jaising's appearance under S. 36(4). The Tribunal by its order dated February 16, 1973 disallowed Mr. Rawell to appear as advocate for the company under S. 36(4). The Tribunal also disallowed both Mr. Shastry and Miss Indira Jaising to appear for the workmen as in its view unfair advantage would be secured by the employees over the company if they, who are admittedly legal practitioners, were allowed to represent the workman as the office bearers of their said respective trade unions. Against the said decision Mr. Rawell and the company filed Sp. C.A. No. 853 of 1973 and the General Labour Union and Caprihans Employees' Association filed the present Sp. C.A. No. 1960 of 1973.

4. In the meanwhile, in another industrial dispute between the company and its workmen pending before the Fifth Labour Court, Bombay, being Ref. (I.D.A.) No. 135 of 1972 in respect of application filed by workman under S. 33C(2) of the Act, Mr. Rawell appeared as an advocate for the company and Mr. Shastry, as the general secretary of the Caprihans Employees' Association appeared for the employees. Both the sides raised objections to the other side being represented by a legal practitioner. The Labour Court, by its order dated April 24, 1973, disallowed under S. 36(4) Mr. Rawell to appear for the company and also Mr. Shastry, as in its opinion, the latter was not a regular office-bearer of Caprihans Employees' Association and by allowing him to appear unfair advantages would be secured by the workmen who objected to Mr. Rawell's appearance as an advocate for the company. Both Mr. Rawell and Mr. Shastry filed respectively Sp. C.A. No. 1387 of 1973 and Sp. C.A. No. 1589 of 1973 in this Court against the said order disallowing their appearances.

5. Before dealing with the present petitions, it may be pointed out that two other Sp. C.A. Nos. 853 of 1973 and Sp. C.A. No. 1387 of 1973 came up for hearing before a Division Bench of this Court. In the said petitions the questions of interpretations and validity of sub-s. (4) of S. 36 were raised. By its judgment dated August 2, 1972 the Division Bench rejected the said petitions.

6. In Sp. C.A. No. 1959 of 1973 it is fairly conceded before us by the learned advocates for the company that Mr. Shastry is a regular office-bearer of the General Labour Union. Therefore, the only question that falls for determination in both the petitions is whether the right of Mr. Shastry and Miss. Indira Jaising as office-bearer of their respective trade unions to represent workmen is subject to the provision of sub-s. (4) of S. 36 by reason of the fact that they also happen to be practising lawyers.

7. Section 36, as the marginal note says provides for representation of parties.

Sub-section (1) confers upon employees the right to be represented by any person holding any of the capacities mentioned in cls. (a), (b) or (c) thereof and in view of the words "shall be entitled" therein such a right, apart from the provisions of sub-s. (4), is absolute as there are no qualifying words to restrict the same. Sub-section (2) similarly confers right upon an employer to be represented by persons holding any of the capacities mentioned in cls. (a), (b) or (c) thereof. Sub-section (3) prohibits, and sub-s. (4) restricts, a party from being represented by a legal practitioner in the proceeding therein mentioned. Now, an officer holding any of the capacities mentioned in sub-s. (1) may also be a practising lawyer. Similarly, a person seeking to represent employers as holding any capacity specified in cls. (a), (b) and (c) of sub-s. (2) may happen to be a legal practitioner. The question, therefore, arises whether an employee's right to be represented by any officer holding any capacity mentioned in sub-s. (1) is qualified or restricted by sub-s. (4) merely on the ground that such an officer is a legal practitioner, In order to answer this question it is necessary to bear in mind that such an officer appears before the industrial forum for workmen in his capacity as such designated officer under sub-cls. (a), (b) or (c) and not at all as a legal practitioner. It is, no doubt, true that if such designated officer appearing as a representative of workman happens to be a practising lawyer, he does not part with his knowledge and experience acquired by him as such lawyer. Still such a distinction between an agent appearing in his capacity as an office-bearer of workers trade union and his appearing in his capacity as a lawyer on behalf of such workers is crucial for our present purpose. So read-and this appears to be plain grammatical meaning of the words "represented by" - there does not appear any inconsistency between the provisions of sub-s. (1) and sub-s. (4). Further the legislative history and the object underlying S. 36 also support the above construction of sub-ss. (1) and (4) thereof. Sub-section (3) of S. 36 as it originally stood permitted lawyers to appear either for party; it was substituted by present sub-s. (4) by S. 34 of the Industrial Disputes (Appellate Tribunal) Act (No. 48 of 1950). By the said amendment of 1950 the right of a party to be represented by a lawyer is made subject to the consent of the other party to the proceeding and to the leave of the Labour Court or Tribunal. However, the right of persons designated in sub-ss. (1) and (2) to represent workers or employers respectively was not made subject to such restriction in case such a person happened to be a practising lawyer. If the Legislature had intended so to restrict the right of parties to be represented by the officers named in sub-ss. (1) and (2), it could have done it easily by adding after the persons specified therein the words "provided he is not a legal practitioner." Thus the right of workmen and employers to be represented by persons designated in cls. (a), (b) and (c) of sub-ss. (1) and (2) remained unimpaired even after the said amendment of 1950. Further the view that the right of workers and employer to be so represented is absolute, derives support from the following observations of Mr. Justice Chandrachud in a Division Bench case of this Court in K.K. Khadilkar Vs. Indian Hume Pipe Co. Ltd. and Another, , (1966) 69 Bom. L.R. 273. Though the actual point before us did not arise in that case (p. 277) :

"..... The reason why the three categories are specifically mentioned in sub-s. (2) is that the Legislature wanted to confer an unqualified right on an employer to be represented by the class of persons mentioned in the three clauses of sub-s. (2). Under S. 11 of the Act. The Tribunal can follow such procedure as it thinks fit, which includes the right to determine the mode of representation which a party before it may adopt. The employer, however, is entitled to tell the Tribunal that it wants to be represented by any of the persons mentioned in cls. (a) (b) and (c) of sub-s. (2) and the Tribunal would have no right to say that it will not recognise that form of representation. Thus, the object of sub-s. (2) is to create a right in an employer to be represented by a class of persons and not to restrict the right of representation to the classes enumerated.

Since the words used in S. 36(1), (2) are clear and unambiguous the meaning of the words used therein relating to parties' right to be represented is not to be gathered by any notions of what is just and expedient. (See Maxwell on Interpretation of Statutes, 1969, 12th edn., page 29). It is also material to notice that so far as the right of a party to be represented by certain class of agents is concerned, sub-s. (1) and sub-s. (2) deal equally with employees and employers. We, therefore, hold as a matter of construction that sub-s. (1) is not subject to the provisions so sub-s. (4) and that sub-s. (1) creates an absolute right in the persons mentioned in its three clauses to represent the workmen and the fact that such a person representing workmen happens to be a legal practitioner is irrelevant and does not attract S. 36(4).

8. Therefore, there was no scope in the present case for the Tribunal to consider whether unfair advantage was being secured by the employees by being represented by Mr. Shastry and Miss. Indira Jaising as the office-bearers of their union because both of them also happened to be legal practitioners. The Tribunal, however, has referred to and sought support from the ruling of this Court in *Alembic Chemical Works Ltd. v. Vyas*, 1954 III L.L.J. 148; (1953) 56 Bom. L.R. 917. In that case a couple of days before an industrial dispute between the Alembic Chemical Works Ltd. (therein referred to as "the company") and its workmen was to be heard by Industrial Tribunal Mr. P. C. Hathi who was practising lawyer was appointed a director of the company. He appeared before the Tribunal on behalf of the company in his capacity as its director. An objection was raised on behalf of workmen to Mr. Hathi's appearance on the ground that he was a legal practitioner, and, therefore, he could not represent the company without the consent of workmen having regard to the provisions of S. 36(4). The Tribunal held that as Mr. Hathi was a legal Practitioner, the device of making him a director with a view to circumvent the provisions of S. 36(4) should not be allowed to succeed, and therefore, disallowed his appearance. Both the company Mr. Hathi filed a writ petition for setting aside the said order. Mr. Justice Tendolkar held that S. 36 was an enabling section and did not exhaust all cases of representation other than the right of a party (individual) to appear in person, that it did not include the case of a corporation party which is incapable of appearing in person because it has no visible personality and must, therefore, of

necessity appear through some agency and that it was open to the Tribunal to determine by way of procedure under S. 11 of the Act how a corporation should appear before it. He also observed that in exercise of that power the Tribunal had adopted the practice of allowing a corporation to be represented by a director or an officer being one of the modes in which a corporation could be represented. Then the learned Judge proceeded to consider whether the Tribunal should not allow a party to appear if the effect of allowing it to appear would be to defeat the provisions of S. 36(4). The learned Judge observed that there were two extreme views of sub-ss. (1) and (4) regarding the right of representation and stated (p. 921) :

"..... Neither of these two views appears to be wholly right ... it appears to me that if an officer of any trade union who is referred to in sub-s. 36(1) as qualified to represent a workman or an officer of an association of employers who is qualified to represent an employer under sub-s. (2) or an officer or director of a corporation through whom a corporation is entitled to be represented by the procedure governing the Tribunal happens to be a legal practitioner, that fact by itself cannot disqualify him from appearing before the Tribunal. But this presupposes that such an officer is a regular officer either of the trade union or the association or in the case of an officer of a corporation, a regular officer of the Corporation, and in the case of a director that he is a bona fide director not elected a director merely for the purpose of enabling him to appear in a pending proceeding before a Tribunal. In other words, if a legal practitioner is transformed into an officer of a registered trade union or of an association of employers or of a corporation or is appointed a director of a corporation, in order to get over the disability imposed on a legal practitioner representing a party, then such a person shall not be allowed to appear and represent a party. But short of an intention to circumvent the provisions of S. 36(4), if a legal practitioner is ordinarily a regular officer either of a trade union or an association of employers referred to in Ss. 36(1) and (2) or of a corporation or if he is a director bona fide appointed as a director, I see nothing in sub-s. (4) to prevent his appearing on behalf of the party merely by reason of the fact that he happens to be a legal practitioner."

We are, with respect, unable to agree with the above view of the learned Judge. In that case Mr. Hathi was appearing as a director of the company and the question arose whether the company's right to be represented by such an agent, which was not covered by sub-s. (2) and was, therefore, outside S. 36, was subject to the provisions of S. 36(4), though the said agent did not appear as a legal practitioner. It is clear from the passage above quoted that the learned Judge treated the right of a company to be represented by its officer or director at par with its right to be represented by the class of officers named in sub-s. (2). The learned Judge was with respect, right in treating them alike so far as their to represent the company was concerned. But in considering whether such right of company's representative was absolute or subject to any reservation under sub-s. (4), in case such a representative happened to be a legal

practitioner, the learned Judge, with respect, does not seem to have attached sufficient importance to the distinction drawn in S. 36 regarding the capacity in which a person was seeking to appear on behalf of a party and to the language of S. 36(1) and (2) which create an absolute right in the parties to be represented by the class of persons enumerated therein.

9. Further, since such a right is absolute, in our opinion, the question of exercising such a right bona fide is not relevant. There is no duty owed by the party, i.e., either workmen or employers, to anyone else in exercising its choice of its agent to represent it in any proceeding before a Labour Court or Tribunal. There is no warrant either in the language of sub-ss. (1) and (2) or the context of S. 36 for spelling out such a duty or obligation on the part of a party.

10. In the above view we are fortified by the decisions of the High Courts of Calcutta, Assam and Rajasthan. They have taken the view that sub-s. (1) or sub-s. (2) is not subject to the provisions of sub-s. (4) and a person qualified to represent a party under sub-s. (1) or sub-s. (2) is entitled to appear on its behalf before the Tribunal, irrespective of the fact that he happens to be a lawyer. See *Hall and Anderson, Ltd. Vs. S.K. Neogi and Another*, ; *Sarbeswar Bardoloi v. Industrial Tribunal*, AIR 1955 GAU 148 and *Duduwalla and Co. and Others Vs. Industrial Tribunal and Another*,

11. From the foregoing discussion, it follows that Mr. Shastri and Miss Indira Jaising in their capacity as the office-bearers of their trade unions were entitled to appear before the Labour Court and the Tribunal and the fact that they were practising lawyers did not disqualify them from so appearing without the consent of the company and the question whether employees would secure an unfair advantage by their so appearing was irrelevant to their right to represent the workmen.

12. In the result the petitions are allowed, Rules made absolute and the impugned order set aside. In the circumstances of the case there will be no order as to costs of these petitions.