

(2024) 12 MP CK 1233

In the Madhya Pradesh High Court, Indore Bench

Case No : Miscellaneous Petition No. 6022 of 2024

Aditya Birla Real Estate Ltd Previously Known As Century Textiles and Industries Led. @ APPELLANT @Hash Shramik Janata Sangh And Others

Date of Decision : 13-12-2024

Acts Referred:

Limitation Act, 1963 — Section 5
Madhya Pradesh Ucha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2, 2(1)
Land Acquisition Act, 1894 — Section 4
Constitution of India 1950 — Article 226, 227

Citation : (2024) 12 MP CK 1233

Hon'ble Judges : Vivek Rusia, J, Binod Kumar Dwivedi, J

Bench : Division Bench

Advocate : Vivek Patwa, Bharat Dixit, Ayush Agrawal, Kailash Channdrra Yadav

Final Decision : Disposed Off

Judgement

JUDGMENTTAG-JUDGMENT

Vivek Rusia, J

Regard being had to the similitude to the controversy involved in the present cases, with the joint request of the parties, both these petitions are finally heard and decided by this common order. Facts are being taken from Misc. Petition No.6022 of 2024.

2. Petitioner has filed the present petition being aggrieved by order dated 16.10.2024 passed by Industrial Tribunal, Indore in case No.11/ID/2024, whereby an application filed under Section 36(3) & (4) of Industrial Disputes Act, 1947 (hereinafter referred as "I.D. Act") by respondent No.1 has been decided against the petitioners. The respondents No.2 & 3 (in this writ petition) have also challenged the order dated 16.10.2024 as well as the order dated 22.10.2024 by way of Misc. Petition No.6648 of 2024.

3. The petitioner is a company registered under the Companies Act having its

registered office at Century Bhawan, Annie Besant Road, Worli, Mumbai. Previously the petitioner was known as Century Textiles & Industries Ltd. The petitioner is engaged in the manufacturing and sale of denim and century yarn from its unit situated at Village and Post Satrati, District Khargone (M.P.). The petitioner has sold its unit to respondents No.2 & 3.

4. The respondent No.1 is a Union registered under the provisions of Trade Unions Act, 1926. The members of the union were employee of Century Textiles & Industries Ltd. Century Textiles & Industries Ltd., which issued a notice dated 29.06.2021 to them intimating about intention to sale two units to respondents No.2 & 3 and also offered Voluntary Retirement Scheme / Voluntary Separation Scheme to be availed by the workmen within 15 days of the issuance of the notice. The respondent No.1 challenged the said notice by way of Writ Petition No.11885 of 2021, which was disposed of vide order dated 03.08.2021 with a liberty to avail the remedy available under the I.D. Act. The respondent No.1 preferred a Writ Appeal No.746 of 2021 which was dismissed vide order dated 13.09.2021. There after respondent No.1 approached the Labour Commissioner by filing an application under Section 10(2) of I.D. Act seeking reference of industrial dispute before the Industrial Tribunal. Vide order dated 14.12.2021, the Labour Commissioner refused to refer the dispute to the Industrial Tribunal. The respondent No.1 challenged the aforesaid order by way of Writ Petition No.28206 of 2021 and vide order dated 13.09.2023, the Writ Court allowed the writ petition and directed the Labour Commissioner to make a reference of dispute in the Industrial Tribunal. Thereafter, Century Textiles & Industries Ltd. filed a Writ Appeal No.1768 of 2023 which came to be dismissed vide order dated 23.01.2024.

5. The Labour Commissioner, Indore vide order dated 01.03.2024 has referred the dispute between the petitioner and respondent No.1 to the Industrial Tribunal. Before the Industrial Tribunal, respondent No.1 submitted the statement of claim and the petitioner and respondents No.2 & 3 marked their presence through advocate. The respondent No.1 filed an application under Section 36(3) & (4) of I.D. Act objecting the representation of the petitioner and the respondents No.2 & 3 (i.e. petitioners in MP No.6648 of 2024) by the advocates. The petitioner being a second party filed the reply stating that the second party No.1 became a member of the Association of Industries and Institution which is an association of various entities and persons stated to be owing and running the industrial / commercial establishment, factory, institution, etc. The petitioner also filed a resolution of association of industries and institution dated 25.08.2022 disclosing the name of post holders and members, therefore, by virtue of resolution and the provisions of Section 36(2) of ID Act, all the members and post holders can represent the company before the Court of law. In support of the aforesaid contention, judgment dated 20.02.2007 passed by the High Court of Madras in case of R. Rajamani V/s Presiding Officer, 2007 II LLJ 704 and order passed by the High Court of Andhra Pradesh at Hyderabad in the case of P. Mallesh V/s Industrial Disputes Tribunal (Labour Court), Hyderabad

and others, MANU/P/0344/1971 was cited. The learned Tribunal vide impugned order dated 16.10.2024 has held that the petitioner cannot be permitted to represent through advocate under Section 36(3) & (4) of ID Act hence, this writ appeal before this Court.

6. Shri S.C. Bagadiya, learned senior counsel appearing for the petitioner submitted that the learned Tribunal has wrongly discarded the proposal dated 25.08.2022 which shows that Shri Girish Patwardhan, senior advocate has been working as an officer of association. In this writ petition the petitioner has filed the copy of resolution dated 25.08.2022 to show that Shri Girish Patwardhan, senior advocate has been a President of Working Committee of M.P. Chapter of Association of Industries and Institution. The petitioner has also filed the letter written by National General Secretary of Association of Industries and Institution, whereby the Aditya Birla Real Estate Ltd. was granted membership of the association of industries and institutions. Therefore, there is no reason to disbelieve these two documents by the Tribunal.

7. Ms. Medha Patkar, representing the respondent No.1 contended that the learned Tribunal has rightly passed the order which is not liable to be interfered with under Article 226 of the Constitution of India. Ms. Patkar further submits that Shri Girish Patwardhan being a senior advocate cannot represent by virtue of sub-section (3) & (4) of Section 36 of ID Act without consent of other party and with the leave of Labour Court, Tribunal or National Tribunal, as the case may be. In support of her contention she has placed reliance on a judgment passed by the Hon'ble Apex Court in the cases of (i) Paradip Port Trust V/s Workmen, (1977) 2 SCC 339, (ii) Thyssen Krupp Industries India Pvt. Ltd. and others V/s Suresh Maruti Chougule and others, 2023 SCC OnLine SC 1707, (iii) Prakash Meena V/s Ultratech Cement Ltd., 2019 SCC OnLine MP 1788 and (iv) Siemens Limited V/s K.K. Gupta and another, ILR (2005) II Delhi 876.

8. It is further submitted by Ms. Patkar that Shri Girish Patwardhan, being a senior advocate cannot be treated as Officer of the association because he is an enrolled advocate under the provisions of the Advocates Act, 1961 and Bar Council of India Rules which prohibits an advocate to be an employee in any of the establishment.

9. Objecting the representation of the respondents No.2 & 3 before the Labour Court by an advocate, similar application was filed by the respondent No.1. The said application was opposed by the respondents No.1 & 2. Vide impugned order dated 16.10.2024, the respondents No.2 & 3 have also been restrained to be represented by an advocate. Thereafter, the petitioner filed an application seeking time to file a resolution passed by the Board of Director in respect of appointment of any authorized representative.

10. Shri Ravindra Singh Chhabra, learned senior counsel appearing for the petitioner in MP No.6648 of 2024 submits that the order dated 16.10.2024 has been passed without giving any opportunity to the petitioner and now by virtue

of the aforesaid order, the petitioner cannot be represented by a legal practitioner. We have heard the learned counsel for the parties and perused the record.

11. For ready reference, Section 36 of ID Act is reproduced 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 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 [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].

[36A. Power to remove difficulties.—(1) If, in the opinion of the appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit.

(2) The Labour Court, Tribunal or National Tribunal to which such question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties.]

[36B. Power to exempt.—Where the appropriate Government is satisfied in

relation to any industrial establishment or undertaking or any class of industrial establishments or undertakings carried on by a department of that Government that adequate provisions exist for the investigation and settlement of industrial disputes in respect of workmen employed in such establishment or undertaking or class of establishments or undertakings, it may, by notification in the Official Gazette, exempt, conditionally or unconditionally such establishment or undertaking or class of establishments or undertakings from all or any of the provisions of this Act.]

12. The aforesaid Section 36 deals with the representation of the parties before the Labour Court, Tribunal or National Tribunal. As per sub-section (1)(a), a workmen who is a party to a dispute shall be entitled to be represented by any member of executive or other office bearer of a registered trade union of which he is a member, any member of executive or office bearer of federation of trade union and if he is not member of any trade union then by any member of executive or office bearer of any trade union connected with in the industry. There is no dispute in respect of the representation by Ms. Medha Patkar to the respondent No.1. The respondent No.1 raised an objection under Section 36(3) & (4) of ID Act in respect of appearance of Shri Girish Patwardhan, senior advocate on behalf of the petitioner. The aforesaid objection has been filed treating that Shri Patwardhan is appearing in the capacity of sr. advocate for the petitioner before the Industrial Tribunal. It is correct that under sub-Section (3) & (4) of Section 36 of ID Act, no party to a dispute shall be entitled to be represented by any legal practitioner in any conciliation proceeding or any proceeding under the ID Act before the Court and as per sub-section (4) of Section 36, a legal practitioner can appear with the consent of other parties to the proceedings and with the leave of the Labour Court, Tribunal or National Tribunal. So far as sub-section (3) & (4) are concerned, the petitioner and respondents No.2 & 3 cannot be represented through legal practitioner unless the respondent No.1 gave consent, and the leave is granted by the Labour Court, Tribunal, National Tribunal or Industrial Tribunal.

13. The respondent No.1 has wrongly filed an application under sub-section (3) & (4) of section 36 of ID Act. In fact, the objection ought to have been filed by the petitioner under Section 36(4) of ID Act seeking leave to be represented by legal practitioner, however, the petitioner is not seeking representation through Shri Girish Patwardhan in the capacity of senior advocate. Shri Girish Patwardhan, senior advocate is representing the petitioner in the capacity of an Officer of association of employers.

14. Ms. Medha Patkar who is representing respondent No.1 argued that the Section 36(2) of ID Act has to be read with sub-section (3) & (4) of Section 36 of ID Act and in sub-section (4) the consent of opposite party is required.

15. We are not agreeing with the aforesaid submission because the Apex Court in case of Paradip Port Trust (supra) has held that right to representation under Section 36(1) & (2) of the ID Act are unconditional and are not subject to

condition laid down under Section 36(4) of ID Act, the said two sub-sections are independent and stand by themselves. Relevant para is reproduced below:

"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."

16. The validity of the aforesaid judgment was doubted in the case of Thyssen Krupp Industries India Pvt. Ltd. & others (supra) and referred to the Larger Bench. Now, the Larger Bench in case of MUFG Bank Ltd. V/s Jayanand Nayak and others, 2023 SCC OnLine SC 1707 has upheld the judgment passed in the case of Paradip Port Trust (supra), therefore, the submission of Ms. Medha Patkar is hereby rejected.

17. Ms. Patkar further argued that Shri Girish Patwardhan, senior advocate cannot be treated as an Officer of association of employer because he is an enrolled senior advocate of State Bar Council of M.P. This issue has also been considered by the Division Bench of High Court of Bombay in case of Associated Cement Staff Union V/s Associated Cement Companies Ltd. reported in 2001 SCC OnLine Bom 1002. Para 12 to 16 are reproduced below:

"12. It appears that before the learned single Judge an argument was advanced that the word "Officer" which is used in sub-section (2) which provides for representation of employer is different from the word "Office bearer" which is used in sub-section (1) which provides for representation of workmen and that therefore Pavaskar being a member of the Executive Committee cannot be said to be an officer. Support was derived from the facts that parliament substituted the word "officer" in sub-section (1) with the words "any member of the executive or other office bearer". It was, therefore, argued that a member of the executive is not covered by the word "Officer". This argument has been rejected by the learned single Judge after referring to the Trade Unions Act, 1926 in which the word "Office bearer" was substituted for the word "Officer" by Act No. 38 of 1964. Further reliance was placed on the statement of objects and reasons to the bill introduced at the time of amending section 36 of the Industrial Disputes Act. The reason given in the Bill is:—

"3. Word "officer" is not considered appropriate in the case of trade unions and has therefore sought to be substituted by the word "office bearer"."

13. The learned Single Judge relied on, and in our opinion rightly, on the decision of the Division Bench of the Calcutta High Court in Infar (India) Ltd. (supra) where that Court has held that the word ?officer? has been used in the context of an employer and the word ?office bearer? has been used in the context of the trade unions. The Calcutta High Court has noted that earlier it had not taken

note of the definition of the term "office bearer". Section 2(111) of the Industrial Disputes Act, 1947 which defines that term as follows:—

"Office bearer" in relation to a trade union, includes any member of the executive thereof, but does not include an auditor."

14. In our view it is clear that the word "officer" was substituted as aforesaid so as to include, in relation to workmen, any member of the executive committee of other office bearer, probably having regard to the structure of trade unions. It does not, however, follow that because the word "officer" in relation to representative of employer has not been amended, it excludes a mere member of the executive committee of the association of employers. The word "officer" must be given its plain meaning, that is any person who holds an office or an appointed or elected functionary. We are, therefore, of the view that a member of the executive committee of an association of employers must be taken to be an officer of the employers association.

15. In the circumstances, we approve the view of the learned single Judge who has also relied on a judgment of the single Judge of the Karnataka High Court in the case of Hotel Ashoka v. Presiding Officer, Addl. Labour Court, 1984 (4) F.L.R. page 297 and a judgment of the single Judge of the Delhi High Court in Management of the Associated Cement Cos. Ltd. v. Workman, Saroj Arora, 2001 (1) C.L.R. 739.

16. We find that the learned single Judge has rightly disagreed with the decision of the Division Bench of the Orissa High Court in Kalinga Studios Limited v. Presiding Officer, Industrial Tribunal, 1994 II LLJ 108, where that court has held that a person can be said to be an officer if he is in the service and the regular officer of the association of the employers. This view was taken by the Orissa High Court in the context that the person in question was merely co-opted to the executive committee and nominated as an officer to give legal advise to conduct cases on behalf of the members of the association. Even otherwise, we find that if a person holds office or is appointed as a functionary on the executive committee of an association of employers, he would qualify for being treated as an officer of an association of employers within the meaning of section 36(2) of the Industrial Disputes Act irrespective of the manner in which he came to hold office. Having regard to the view, we have taken we are also unable to agree with the decision of the Andhra Pradesh High Court in the case of The Andhra Pradesh Power Diploma Engineers Association Generation Wing, Kothagudem Thermal Power Station Zone, Paloncha v. Andhra Pradesh State Electricity Board, Hyderabad, 1996 (1) LLJ 1082."

Therefore, the aforesaid submission is also not tenable and is hereby rejected.

18. In view of the above, impugned orders dated 16.10.2024 & 22.10.2024 passed by Industrial Tribunal, Indore in case No.11/ID/2024 are hereby quashed. The petitioner and respondents are entitled to be represented by Officer of association of industries and institution in the pending reference.

19. With the aforesaid, both the present Miscellaneous Petitions stand allowed.
Certified copy, as per rules.