
(2015) 06 CAL CK 0051

In the Calcutta High Court

Case No : FMAT No. 001 of 2015 and CAN No. 040 of 2015

Air India Limited

APPELLANT

Vs

The Presiding Officer and Others

RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:

Advocates Act, 1961 — Section 29, 30, 33
Constitution of India, 1950 — Article 19(1)(g), 226, 32
Customs Act, 1962 — Section 129(6)
Industrial Disputes Act, 1947 — Section 10(d), 10A, 2(f), 2(s), 33B
Legal Services Authorities Act, 1987 — Section 12(f)

Citation : (2015) LabIC 3071

Hon'ble Judges : Dipankar Datta, J; R.K. Bag, J

Bench : Division Bench

Advocate : R.N. Majumdar and Shyamali Ganguly, for the Appellant

Final Decision : Dismissed

Judgement

Dipankar Datta, J—Questioning the legality and/or propriety of the judgement and order dated 30th March, 2015 passed by a learned Judge whereby its writ petition [W.P. No. 107 of 2015] was dismissed upon a contested hearing, the appellant has presented this writ appeal.

2. An application for stay had been filed by the appellant in connection with the writ appeal. While hearing such application, we proceeded to hear the writ appeal itself on merits with the consent of the parties.

3. A quick recap of the facts and circumstances giving rise to the writ petition and noting the submissions of the rival parties with reference to the relevant statutory provision involved in the writ appeal, as a prologue to our decision, would be in order.

4. The Government of India, Ministry of Labour (hereafter the GoI) vide order dated 11th August, 2008 referred an industrial dispute between the appellant and the respondents 3 to 19 to the Central Government Industrial Tribunal at

Kolkata (hereafter the CGIT) for adjudication. The CGIT was required to give its award within a period of three months on the following issue:

- "i) Whether the action of the Management of Indian Airlines Ltd. (now NACIL), Port Blair in not regularizing the services of the sixteen casual workers (as per annexure) working on regular basis for a number of years is justified and legal?
- ii) To what reliefs are the concerned workmen entitled?"

5. The annexure referred to in the issue extracted supra contained the names of the respondents 4 to 19 herein (hereafter the workmen), being members of the respondent No. 3, the Employees' Union (hereafter the Union).

6. The aforesaid order of reference gave rise to ID Case No. 18 of 2008 on the file of the CGIT. The first order dated 15th September, 2008 of the Presiding Officer required issuance of notices to the parties and 24th October, 2008 was fixed for first hearing of the case. The workmen were directed to file statement of claim within 15 days from the date of receipt of such notice complete with relevant documents and list of witnesses. Although the appellant was represented by learned advocates before the CGIT on 14th January, 2009, 2nd April, 2009 and 17 August, 2010, order dated 17 August, 2010 recorded that proof of service of notice upon the workmen had not been received from the postal department and accordingly, the case was adjourned till 5th October, 2010. The next order dated 5th October, 2010, inter alia, directed issuance of fresh notice to the President of the Union. It would appear that thereafter, a petition dated 9th December, 2010 was received by the CGIT from the workmen praying for two months' adjournment. Such prayer was allowed by an order of even date and 9th February, 2011 was fixed for filing of statement of claim by the workmen. However, the workmen in the meanwhile had applied for transfer of the case to the Labour Court at Port Blair and citing pendency of such application, sought for adjournments before the CGIT without entering appearance. The Presiding Officer was charitable in granting adjournments. From time to time, the Presiding Officers changed but there was no slip in grant of adjournments.

7. In the meanwhile, the order of reference was challenged by National Aviation Company of India Limited (hereafter NACIL) by filing a writ petition before this Court, registered as W.P. No. 136 of 2009. By an order dated 13th March, 2012, one of us (Dipankar Datta, J.) declined to entertain the challenge to the order of reference and disposed of the writ petition with liberty to the parties to approach the Presiding Officer of the CGIT for adjudication of the industrial dispute referred to it as early as possible, and granted further liberty to NACIL to raise all points that are available to it in law.

8. While the reference was pending before the CGIT, the appellant was being represented by its learned advocates. They appeared before the CGIT on the basis of letter of authority in Form F, appended to the Industrial Disputes (Central) Rules, 1957 (hereafter the Central Rules).

9. There was no substantial progress of the reference before the CGIT even after the order dated 13th March, 2012 referred to above was passed and ultimately the Union applied for transfer of the reference case to the Labour Court at Port Blair. The application not having been considered resulted in the presentation of a writ petition before this Court by the Union, registered as W.P. No. 507 of 2012. By an order dated 8th February, 2013, a learned Judge disposed of the writ petition with direction upon the GoI to consider the issue of transfer sympathetically within four weeks from the date of communication of the order.

10. The GoI considered the application of the Union and in exercise of the powers conferred by section 7A read with sub-section (1) of section 33B of the Industrial Disputes Act, 1947 (hereinafter the ID Act), by order dated 18th March, 2013 withdrew the proceeding from the CGIT and transferred the same to the Labour Court at Port Blair under section 10(d) of the ID Act for proceeding further, either de novo or from the stage of transfer. Ultimately, the Presiding Officer of the CGIT by order dated 27th March, 2014 directed transfer of the reference case to the Labour Court at Port Blair.

11. On transfer, the Presiding Officer of the Labour Court at Port Blair by his order dated 17th April, 2014 fixed 9th June, 2014 for appearance of the parties and for further order. On 9th June 2014, the following order appears to have been recorded:

"09.06.14

Both the parties are present and files hazira. 2nd party files "Vakalatnama". As the P.O. is out of station the case is adjourned. Fix 27.06.14 for hearing.

Sd/- P.O"

The aforesaid order must have been passed by the Presiding Officer-in-charge on that day. Strangely, there appears to be no such indication in the order. Be that as it may.

12. On 27th June, 2014, the parties were present by filing "hazira". The Union by filing a petition prayed for adjournment and considering the same, the Presiding Officer allowed the prayer and 28th July, 2014 was fixed for filing "statement of demands by 1st party". On that day, the workmen prayed for adjournment because the President of the Union, who was to represent them, was ill. The prayer was granted. Then again, on 28th August, 2014, hearing was adjourned by the Presiding Officer who granted time for filing of statement of demands by the workmen and fixed 25th September 2014 as the next date of hearing.

13. On 25th September, 2014, the representative of the workmen filed a petition raising objection to the representation of the appellant before the Labour Court by two learned advocates. According to the petition case, neither consent was obtained from the Union or any of the workmen nor did the Labour Court grant leave to the appellant to be represented through legal practitioner; consequently, it was prayed that the appellant should not be allowed to be represented by any

legal practitioner.

14. The Presiding Officer of the Labour Court heard the parties and by order dated 27th January, 2015 allowed the petition filed by the Union. It was held that the conduct of the workmen was not such that consent on their part to the appellant being represented by a legal practitioner could be implied and accordingly, the appellant was debarred from being represented by any legal practitioner.

15. The said order dated 27th January, 2015 upon being challenged in the writ petition was upheld by the learned Judge by the judgment and order under appeal.

16. Appearing in support of the writ appeal, Mr. Majumdar learned advocate submitted that neither the ID Act nor the Central Rules provide for the form or manner in which consent is to be given by a party permitting the other party to be represented by a legal practitioner and that such consent could be implied from the attending facts and circumstances after the reference is registered. According to him, the appellant was represented by its lawyers during the entire course of pendency of the reference case before the CGIT and also after its transfer to Port Blair and during this period, the workmen never objected to the appellant being represented by its lawyers. There was, therefore, an implied consent. Insofar as grant of leave by the Presiding Officers of the CGIT and the Labour Court are concerned, it was contended that permission to file the letter of authority in Form F appended to the Central Rules before the CGIT and the vakalatnama before the Labour Court and acceptance thereof by the concerned presiding officers amounted to deemed permission of the CGIT/Labour Court to the appellant to be represented by a legal practitioner. He submitted that after such deemed permission, the Presiding Officer of the Labour Court committed a grave error of law in allowing the petition of the Union and the learned Judge by upholding such erroneous order had failed to exercise jurisdiction vested in His Lordship.

17. In support of his contention, Mr. Majumdar relied on two decisions of the Bombay High Court reported in *Mscs (P) Limited Vs. S.D. Rane and others*, (1982) 1 LLJ 434 and *Punjabi Ghasitaram Halwai Karachiwala Vs. Sahadeo Shivram Pawar and Others*, (1994) 1 BomCR 302 : (1993) 95 BOMLR 925 : (1994) 68 FLR 528 : (1994) 1 LLJ 1022 . He also relied on the decision reported in *Reckitt and Colman of India Ltd. and Others Vs. Jitendra Nath Maitra and Others*, AIR 1956 Cal 353 : (1956) 1 CALLT 124 : 60 CWN 648 : (1957) 1 LLJ 63 for the proposition that consent and leave could be inferred.

18. He, accordingly, prayed that upon setting aside of the order of the Presiding Officer of the Labour Court and the judgement and order impugned in the writ appeal, the appellant be permitted to be represented by a legal practitioner before the Labour Court.

19. Per contra, Mr. George, learned advocate representing the respondents 3 to

19 contended that the order impugned in the writ petition as well as the judgement and order under appeal does not suffer from any legal infirmity warranting interference. He urged that during the time the reference case was pending before the CGIT, the respondents 3 to 19 had despatched couple of prayers for adjournment by post. There was no occasion for the respondents 3 to 19 to be aware of any legal practitioner representing the appellant before the CGIT, since no vakalatnama had been filed. The letter of authority in Form F in terms of rule 36 of the Central Rules is not relatable to sub-section (4) of section 36 but to subsections (1) and (2) thereof and that in the absence of any vakalatnama being filed before the CGIT, the Union was under the impression that the appellant had not engaged a legal practitioner to represent it before the CGIT. Referring to the proceeding before the Labour Court on transfer, it was contended that the Presiding Officer was not in station on 9th June, 2014 and, therefore, filing of vakalatnama and hazira by the appellant went unnoticed. On 27th June, 2014, adjournment was prayed for on the ground of the claim petition having not been finalised, whereas adjournment was prayed for on 28th July, 2014 on the ground that the President of the Union, who was to represent the workmen, was unwell and unable to attend the Labour Court. Once again on 28th August, 2014, hearing was adjourned granting time for filing of statement of demands by the workmen and on the next date of hearing i.e. 25th September 2014, the petition which was ultimately allowed by the Presiding Officer of the Labour Court was filed. Relying on the decision of the Supreme Court reported in *Paradip Port Trust, Paradip Vs. Their Workmen*, AIR 1977 SC 36 : (1977) 43 CLT 419 : (1976) LabIC 770 : (1976) 2 LLJ 409 : (1977) 2 SCC 339 : (1977) 1 SCR 537 , it was contended that section 36(4) of the ID Act not only required consent of the other party, but leave to be granted by the Labour Court which was never sought and hence not granted. He, accordingly, prayed for dismissal of the appeal.

20. We have heard the parties at some length, perused the materials on record and considered the decisions cited at the bar.

21. Section 36(4) of the ID Act being at the heart of the controversy involved in this appeal, the same is set out herein below for facility of reference:

"36 Representation of parties -

(1)

(2)

(3)

(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 proceeding and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be."

22. On a plain reading, what sub-section (4) of section 36 ordains is the

fulfilment of the twin conditions of "consent" and "leave" prior to a party to the dispute being entitled to representation by a legal practitioner before the adjudicatory authority specified therein.

23. The decisions cited by Mr. Majumdar support the line of judicial thought that there is no particular form or manner in which consent is to be given by a party permitting the other party to be represented by a legal practitioner and hence, such consent could be implied from the circumstances and the conduct of the parties.

24. It seems to us that in Jitendra Nath Maitra (*supra*), a learned Judge of this Court for the first time on consideration of section 36(4) of the ID Act propounded that:

"There is nothing in S. 36(4), that the consent was to be in any particular form."

His Lordship thereafter held:

"The Tribunal had informed the Union of the intention of the company to be represented by a lawyer and there was no objection at that stage. Therefore it must be inferred that the Union consented to the appearance of a lawyer and that the Tribunal granted it, because in fact it allowed the lawyer to appear in the case. The conduct of the Union in objecting at a later stage, amounts to a revocation of its consent. There is no provision in the Act by which consent or leave once given can be revoked or retracted. If this was allowed, then it is easy to see that when the case had advanced the party losing might at once retract the consent and the other side would be intensely prejudiced. It might be done in the middle of cross-examination, or in the middle of the exposition of a difficult point of law. This will be an absurd construction of the particular provision of law. In my opinion, the order of the Tribunal at such a stage refusing to allow the company to be represented by a lawyer is illegal and cannot be supported."

25. We have, however, noted that in regard to grant of leave by the adjudicatory authority, there is no elaborate discussion in the decision and that grant of leave was inferred from the fact specifically referred to in paragraph 14 reading as follows:

"(T)here was no objection at the commencement of the hearing when Mr. Jinwalla appeared and the case was opened at length. At a subsequent stage the Union objected to the appearance of a lawyer. By that time it must be taken to have consented to such appearance".

(underlining for emphasis by us)

26. It is, therefore, clear that this decision arose out of a case where the lawyer for the company at the commencement of hearing had opened the case at length without any objection being raised by the union.

27. The facts, with which we are concerned, however, are different in the sense that even the statement of claim of the workmen is yet to be filed, let alone

opening of the case for either side. This is a relevant fact which has to be borne in mind in deciding this writ appeal which, unfortunately, was either overlooked or could have escaped the notice of the learned Judges of the various High Courts while rendering its decisions following Jitendra Nath Maitra (supra).

28. A learned Judge in S.D. Rane (supra) while acknowledging that leave normally would be in writing and consent would also be given in writing, expressed doubt as to whether it would follow that the consent of the other side or the leave of the Court must always be in writing. Ultimately, it was observed that section 36(4) does not contain any such requirement and, therefore, it cannot be held that an implied consent is negated by the statute. The facts of the case reveal that approach was made by the representative of the union to the advocate engaged by the employer for obtaining an endorsement at the foot of a petition for adjournment, and after obtaining such endorsement the petition was moved and adjournment was granted. Thereafter the union turned around and dishonestly sought to object to the appearance of the advocate. In such fact situation, it was held by the learned Judge that consent could be inferred from the facts and circumstances. Reliance was placed by the learned Judge on a Division Bench decision of the Bombay High Court reported in *Engineering Mazdoor Sabha, Bombay Vs. Meher (M.R.)* (Industrial Tribunal, Bombay) and Others, (1966) 1 LLJ 580 which, according to His Lordship, was a direct authority for the proposition that the consent of the other side can be implied from the facts and circumstances of the case.

29. In *Meher* (supra), on September 12, 1963, the union of the workmen was represented by one Sri Joshi, who prayed for adjournment. His adversary, one Sri Phadke appearing for the employer, did not oppose the prayer for adjournment and, accordingly, hearing was adjourned. Sri Phadke again appeared for the employer on September 21, 1963, when an objection to his appearance was raised. The tribunal went on to hold that if the union wanted to object to Sri Phadke's appearance, it should have done so at the first hearing of the matter and that it was too late for the union to object to his appearance. It was this order of the tribunal that found concurrence of the Division Bench. It was held by the Division Bench that even though the union had not given express consent to the appearance of Sri Phadke, they must be held to have given its consent at least impliedly by not objecting to the appearance of Sri Phadke on September 12, 1963.

30. The learned Judge who decided *Sahadeo Shivram Pawar* (supra), after agreeing with the decisions in *Jitendra Nath Maitra* (supra), *Meher* (supra) and *S.D. Rane* (supra), held that the facts of the case were different and that the question of consent, express or implied, could arise only after the other party enters appearance and never before it.

31. In the decision reported in *Calicut Co-operative Milk Supply Union Vs. Calicut Co-operative Milk Supply Workers Union*, (1986) 2 LLJ 422, a learned Judge of the Kerala High Court had the occasion to observe as follows:

"6. The learned counsel for the petitioner submits that Section 36(4) of the Industrial Disputes Act, for short the I.D. Act, does not contain a provision enabling the 1st respondent to revoke the consent once given and which is the basis of the order of the 2nd to engage a lawyer to represent its case. The order, Ext. P3, under challenge therefore is liable to be set aside, the learned counsel submits.

8. This section does not prescribe that the consent must be given in a particular manner or in a particular form. If that be so, the consent of a party which is the basis for the grant of leave to the other party for being represented by a lawyer in a proceeding under the I.D. Act, can be inferred from the surrounding circumstances as also the conduct of the consenting party. Consent can be implied. The section does not insist upon a written consent. Consent once given cannot be revoked at a later stage because there is no provision in the I.D. Act enabling such withdrawal or revocation. To put it pithily the consent once given by a party, entitling the other party to be represented in the proceeding, by a lawyer would enure to his benefit till the proceeding is finally disposed of. I am fortified in this view by a decision of the Calcutta High Court in *Reckitt and Colman v. Jitendra Nath*, (supra)."

32. That consent of a party could be implied is also recognised in several other decisions, viz. the Division Bench decision of the Orissa High Court reported in *Orissa Cement Ltd. Vs. State of Orissa and Others*, (1995) 2 LLJ 266 , the decision of another learned Judge of the Bombay High Court reported in *T.K. Varghese Vs. Nichimen Corporation*, (2001) 4 BomCR 168 : (2001) 4 BOMLR 917 : (2001) 90 FLR 91 : (2002) 4 LLJ 1018 : (2001) 3 MhLj 711 , the decision of a learned Judge of this Court reported in *Britannia Engineering Products and Services Ltd. Vs. Second Labour Court and Others*, (2002) 4 CHN 704 : (2003) 97 FLR 981 : (2002) 2 ILR (Cal) 246 : (2003) 2 LLJ 1024 , and the decision of the Madras High Court reported in *The Management, Hindustan Motors Earth Moving Equipment Division Limited, Chennai Car Plant Vs. The Presiding Officer, Principal Labour Court, Mr. T. Soundrarajan and Catter Pillar India Private Ltd., (Erstwhile Hindustan Motors Limited, Earthmoving Equipment Division)*, (2007) 2 CTC 31 : (2007) 2 LLJ 59 .

33. In another decision of the Kerala High Court reported in *Francis Gomez and Another Vs. President, Thiruvananthapuram Shops and Commercial Employees' Union and Others*, (1999) 81 FLR 219 : (1999) 3 LLJ 1250 , it was held by a learned Judge that:

"4. In this case, vakalath filed by the Advocate on behalf of the management was accepted by the Labour Court without any objection from the Union, on the first day itself. Therefore, oral objection raised on the sixth posting date is not maintainable as implied consent once given cannot be subsequently taken away. If there was any objection on the Union side regarding appearance of an

Advocate on behalf of the management, it should have raised during the first posting day itself. The averments in the original petition are not disputed by filing counter-affidavit."

34. The view expressed in the decision of the Bombay High Court reported in *Salvation Army Vs. Sunil J. Ingle*, (2005) 5 BomCR 851 : (2005) 107 FLR 932 is much the same. A learned Judge opined that taking of vakalatnama on record is indicative of leave which must be read and regarded as having been granted by the Labour Court.

35. There is another discernible line of judicial thought. Decisions are not rare, which have interpreted section 36(4) of the ID Act absolutely differently. It is time to take note of such decisions.

36. In the decision reported in *Dipak Puri Vs. 5th Industrial Tribunal and Others*, 89 CWN 772 : (1986) 2 LLJ 157 , a learned Judge of this Court held that the conditions in section 36(4) are mandatory in nature and that question of any inference in regard to the consent does not and cannot arise.

37. While dealing with section 36(4), a learned Judge of the Delhi High Court in the decision reported in *Prasar Bharati Broadcasting Corporation of India Vs. Shri Suraj Pal Sharma and Another*, (1999) 1 AD 268 : (1999) 77 DLT 269 : (1999) 1 LLJ 1306 , observed that:

"8. Learned counsel for the petitioner contended that the failure of the workman to raise the objection during the early stages of the proceedings amounted to "implied consent" and that there was no provision for revoking the consent already given. To consider the above contention of the learned counsel it is necessary to have a correct perception of the provisions contained in Section 36 of the ID Act. Intention of the law is to discourage representation of parties by legal practitioners in such proceedings. The law also recognise the unequal strength of the parties in adjudication before a Tribunal. Section 36(4) permits representation of a party by a legal practitioner only with the consent of the other parties to the proceeding and with the leave of the Tribunal. Such consent has to be clear and positive. There should be some positive act or conduct on the part of the party indicating his consent. To consider the failure or inaction of a party in raising the objection at the early stages of the proceeding as "implied consent" and to deny him the right to object to the representation of the other party by a legal Practitioner, will be against the spirit and content of the provisions of Section 36 of the ID Act. The concept of "implied consent" cannot be imported to the provision in Section 36(4) of the ID Act. As per Section 36(4) the consent of the other parties to the proceeding and the leave of the Tribunal are mandatory preconditions for the representation of a party by a legal practitioner. There is no specific provision in the ID Act or in the Rules issued thereunder, which lays down a particular procedure for seeking the consent of the opposite parties or the leave of the Labour Court/Tribunal. Hence the Labour Court/Tribunal will have to follow a reasonable and fair procedure for giving

effect to the provisions of Section 36(4). The procedure has to be in tune with the principles underlying the particular provision and also in furtherance of the object of the provision. Hence if a party to the proceeding intends to engage a legal practitioner, he should specifically seek leave of the Tribunal and the Tribunal, after ascertaining and considering the stand of the other parties, should record its decision, granting or refusing leave. In this process the other parties to the proceeding will get an opportunity to positively express their consent or objection to the representation of a party by a legal practitioner. The record of the proceedings before the Tribunal will also disclose whether the other parties to the proceeding have given their consent or not. Thus the occasion for giving consent by the other parties to the proceeding arises only when a party formally seeks leave of the Tribunal for representation by a legal practitioner and when the said request is considered by the Tribunal. If a party to the proceeding has given his consent in the manner stated above he may be precluded from revoking the consent already given. But in the absence of any consent given in the manner stated above the question of revocation of consent does not arise."

38. The Full Bench of the Punjab and Haryana High Court in the decision reported in *Indrasan Parsad Vs. Presiding Officer and Another* after discussing the law and taking note of the divergent views of the various High Courts, finally held that:

"39. *** consent of the party must be specific and after consent had been granted leave by the court must also be specifically given under Section 36(4) if a legal practitioner is to appear for any of the parties. Furthermore such grant of specific consent and specific leave should be at the beginning of the proceedings so that there remains no ambiguity in the status of the legal practitioner who appears after due consent and leave. Implied consent of the party or implied leave of the court are alien to the provisions of Section 36(4) of the Act. ***"

39. Having noticed the divergent views, it would be profitable to take note of few other decisions, in chronological order, where too section 36(4) of the ID Act came up for consideration.

40. In the decision reported in 1975 LAB IC 103 (*Management of the Basavanagudi Co-operative Society Ltd. Vs. N. Nagesha Rao*), the Division Bench of the Karnataka High Court succinctly laid down the law as follows:

"3. *** Ordinarily legal practitioners are not allowed to represent parties before Industrial Tribunals and Labour Courts. Sub-section (4) set out above lays down the conditions under which legal practitioners can be permitted to represent the parties. It requires two conditions to be satisfied and the conditions are cumulative and not alternative. The two conditions are: (1) consent of the opposite party; and (2) the exercise of discretion by the Labour Court or Tribunal, as the case may be, to grant or refuse leave. If the opposite party does not consent for the representation by a legal practitioner, the question of exercising discretion by the Tribunal or Labour Court does not arise at all. ***"

41. A learned Judge of this Court in the decision reported in 1999 (82) FLR 736

(Rathin Mukherjee v. Durgapur Cinema) expressed similar view regarding the legal requirements of section 36(4) and observed as follows:

"4. The language of Section 36(4) is absolutely clear. It appears that it contains two conditions for the purpose of being represented by a legal practitioner in an Industrial Dispute. The first condition is the consent of the other party to the proceedings and the second condition is which is conjunctive, with the leave of Tribunal. This particular enactment is absolutely silent that it is necessary on the part of the party which to give consent, to raise written objection before the Tribunal that consent was not given. Such an interpretation goes against the spirit and intention of this particular enactment. The language of Section 36(4) of the I.D. Act is to clear that it can be construed with confidence that a duty has been cast by the legislature on the Tribunal itself before allowing the prayer for representation by an Advocate or legal practitioner to be satisfied that those two conditions as mentioned above have been fulfilled. It is a legal requirement and, therefore, it is the incumbent on the part of the Court or the Tribunal to be sure that those two condition have been fulfilled before allowing such petitions. ****"

(underlining for emphasis by us)

42. The next one is a Division Bench decision of this Court, reported in Shiraz Golden Restaurant Vs. State of West Bengal and Others, (2000) 86 FLR 978 : (2000) 2 LLJ 1101 . The point that the Division Bench was called upon to answer was whether consent and leave once granted could be revoked by the party/ adjudicator. Referring to various authorities, majority of which have been considered by us, the Division Bench opined that once leave had been granted in terms of section 36(4) of the Act by the tribunal, there was no provision in the Act to review the same. The relevant observations of the Division Bench in this regard are to be found in paragraphs 11 and 15 of its decision. It also appears from paragraph 12 that the decision in Suraj Pal Sharma (supra) was distinguished on the ground of the facts being different, whereas paragraph 18 would reveal that the case at hand was akin to S.D. Rane (supra). Since the issue in Shiraz Golden Restaurant (supra) was entirely different, we do not feel persuaded to record our dissent with some of the views expressed therein.

43. Finally, the decision of the Bombay High Court reported in (1998) 78 FLR 406 [Sandoz (India) Ltd. Vs. Association of Chemical Workers] also requires to be noticed albeit for a different purpose. The decision, while holding that consent could not be inferred on facts and in the circumstances, does not lay down a principle of law that could be of any assistance to us but while referring to the decisions in Meher (supra) and S.D. Rane (supra) noted above importantly opines that the same "turn on their own facts".

44. While it cannot be gainsaid that a decision is an authority for the proposition which it actually decides and not what can logically be deduced therefrom, it is axiomatic that the correct principles ought to be applied in the given facts of a particular case. However, what are the correct principles would exercise our

consideration. Since divergent opinions expressed by the various High Courts including this Court on the proper interpretation of section 36(4) of the ID Act are manifest, we would be failing in our duty if we do not endeavour to proffer justification in support of the view we propose to take particularly having regard to the fact that there is no authority of the Supreme Court directly on the point. Paradip Port Trust (supra) is the only decision on section 36(4) of the ID Act and contains certain observations for properly guiding us in our endeavour to decide the points in issue, but the same is not a clear authority for the points to be dealt with by us.

45. In the conspectus of the above discussions, the following questions emerge for decision:

(i) Whether "consent" of the other party in regard to representation of a party by a legal practitioner as found in sub-section (4) of section 36 of the ID Act could be implied or has to be specific?

(ii) Whether there could be deemed grant of leave by the adjudicatory authorities referred to in sub-section (4) of section 36 of the ID Act or the "leave" referred to therein should be express?

(iii) Whether Form "F" in the Central Rules is relatable to subsection (4) of section 36 of the ID Act or to sub-sections (1) and (2) thereof?

(iv) Whether, in the present case, the workmen by their conduct consented to representation of the appellant by its legal practitioners before the CGIT/Labour Court, and the Presiding Officer of the Labour Court by allowing the vakalatnama of the appellant to be retained with the record of the case could be deemed to have granted the appellant leave to be represented by a legal practitioner?

46. In our considered view, the scheme of section 36(4) read with the other provisions of the ID Act would require serious consideration to answer the first three points formulated above. The answer to the fourth point would follow from the answers to the previous three.

47. The predominant aim and object of the ID Act is to bring about peace in the industrial sector and in the process to impart social justice to a workman, as defined in section 2(s) thereof. The ID Act, it has been held in the decision reported in *Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others*, AIR 1988 SC 37 : (1987) 4 JT 129 : (1988) LabIC 225 : (1988) 1 LLJ 263 : (1987) 2 SCALE 798 : (1987) 4 SCC 691 : (1988) 1 SCR 546, to be one enacted as a social security measure in order to ensure welfare of labour providing a machinery for collective bargaining, and that the object of industrial adjudication has been a countervailing force to counteract the inequalities of bargaining power which is inherent in the employment relationship. However, nothing in the ID Act precludes an adjudicator of an industrial dispute from declining relief to a workman if he is remiss either in his conduct or is a derelict in the discharge of

his duty. In its decision reported in J.K. Cotton Spinning and Weaving Mills Co., Ltd. Vs. Badri Mali and Others, AIR 1964 SC 737 : (1964) 3 SCR 724 , the Supreme Court held that the object of industrial adjudication is to help the growth and progress of national economy and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication on principles of fair-play and justice.

48. The Supreme Court, once again, in the decision reported in Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, AIR 1995 SC 1715 : (1995) 2 CTC 208 : (1995) 71 FLR 211 : (1995) 4 JT 348 : (1995) 2 LLJ 728 : (1995) 3 SCALE 440 : (1995) 5 SCC 75 : (1994) 1 SCC 268 Supp : (1995) 3 SCR 1118 : (1995) 2 UJ 318 had the occasion to observe that the policy of law emerging from the ID Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen un-encumbered by the plethora of procedural laws applicable to civil courts. Certain other observations considered apt are reproduced below:

"25. *** At the same time, we must emphasise the policy of law underlying the Industrial Disputes Act and the host of enactments concerning the workmen made by Parliament and State legislatures. The whole idea has been to provide a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of Civil Courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedures followed by Civil Courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the Courts and Tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and remake the contracts, settlements, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extra-ordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a Civil Court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the Courts in interpreting these enactments and the disputes arising under them."

(underlining for emphasis by us)

49. We are conscious that the above observations were made while laying down principles to solve the perennial problem concerning the jurisdiction of the civil courts qua special tribunals and charting out the small area of jurisdiction of the

civil court in deciding a dispute, which answers the definition of "industrial dispute" in the ID Act, but nonetheless must be borne in mind while exercising the power of judicial review when an order made under the ID Act is under challenge.

50. There is another principle which cannot be lost sight of. It is settled law that if a provision of a social welfare legislation is capable of two constructions, the Court ought to prefer that construction which fulfils the policy of the statute in question and is more beneficial to the persons in whose interest the statute has been brought into existence. It is thus needless to observe that while interpreting section 36(4) of the ID Act, in case of interpretational difficulty the construction favouring the workmen has to be given preference.

51. For the sake of convenience, we shall consider the first two points together.

52. More often than not, an industrial dispute between an employer and a workman turns out to be an unequal tussle between the lion and the lamb. In order to ensure that an industrial dispute before an industrial adjudicator could be fought out on equal terms and without the employer being in a position to flex its muscles with money power by engaging a whole array of legal practitioners, section 36 was conceived of to regulate representation of parties to the dispute before the adjudicator or in course of conciliation proceedings by their representatives.

53. A glance at the first three sub-sections of section 36 reveals this. Sub-sections (1) and (2) provide who can represent a workman and an employer respectively, in proceedings under the ID Act. A legal practitioner is not included in either sub-section. Sub-section (3) relates to representation of parties in conciliation proceedings and before a Court [as defined in section 2(f) of the ID Act]. Therefore, before the fora specified for resolution of an industrial dispute in course of conciliation proceedings and/or for adjudication of the reference arising out of the industrial dispute, no party has the absolute right to claim representation by a legal practitioner. Section 36 while imposing restriction does not refer to an arbitrator despite proceedings before an arbitrator being adjudicatory in nature, and a fortiori, such restriction cannot be extended to arbitration proceedings before an arbitrator under section 10A of the ID Act.

54. The legislature was alive to the situation that there could be an industrial dispute where its very nature would warrant representation of the parties through legal practitioners. It is with this in mind that the concept of "consent" and "leave" was introduced in sub-section (4) and by reason of the plain meaning thereof as well as interpretation in Paradip Port Trust (supra), the statutory mandate cannot be stultified. Sub-section (4) of section 36 forbids parties to an industrial dispute from being represented by a legal practitioner except when the twin conditions contemplated therein are fulfilled. In Paradip Port Trust (supra), the argument that "and" between the words "with the consent of the other parties to the proceeding" and "with the leave of the ***" ought to

be read as "or" was repelled. In view thereof, these conditions are not alternative but cumulative and when not fulfilled, a party willing to be represented by a legal practitioner is left with no other alternative but to press/defend the claim by its representative, who is not a legal practitioner. The Court considered section 30 of the Advocates Act, 1961 (although such provision had not yet been given effect) and ruled that since the ID Act was a special legislation brought into operation with the avowed aim of labour welfare, such special legislation would prevail over the Advocates Act, which is a general piece of legislation. What follows is that the right of a legal practitioner to practice in any court or tribunal has to yield to the restriction imposed by section 36(4) of the ID Act.

55. In this connection, reference may usefully be made to the decision of the Supreme Court in reported in N.K. Bajpai Vs. Union of India (UOI) and Another, AIR 2012 SC 1310 : (2012) 2 CTC 449 : (2012) 190 ECR 159 : (2012) 3 RCR(Civil) 459 : (2012) 3 SCALE 452 : (2012) 4 SCC 653 : (2012) AIRSCW 1974 : (2012) 2 Supreme 417 where the following questions came up for consideration:

"(i) Whether Section 129(6) of the Customs Act, 1962 which stipulates that on demitting office as member of the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT") a person shall not be entitled to appear before CESTAT, is ultra vires the Constitution of India?

(ii) Whether the said provision applies to the petitioner, as it was introduced after the petitioner had not only joined as a member of the CESTAT but also demitted office as such member?"

56. While answering the first question in the negative and the second in the affirmative, the Supreme Court considered sections 29, 30 and 33 of the Advocates Act and had the occasion to observe as follows:

"24. A bare reading of these three provisions clearly shows that this is a statutory right given to an advocate to practise and an advocate alone is the person who can practise before the courts, tribunals, authorities and persons. ?. Where the advocate has a right to appear before an authority or a person, that right can be denied by a law that may be framed by the competent legislature.

25. Thus, the right to practise is not an absolute right which is free from restrictions and is without any limitation. ?. Therefore, the right to practise, 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."

57. The right to practise that an advocate can claim is not an unbridled right; it is regulated by reasonable restrictions imposed by law and section 36 of the ID Act is one such law.

58. There could be a case where a party may have consented to the other party being represented by a legal practitioner, yet, may not be permitted such

representation since the adjudicator has the final say. If he does not grant leave in the exercise of his discretion, it would be the end of the matter. Conversely, even though the adjudicator may consider the desirability of allowing a legal practitioner to represent a party who is willing to engage him in course of deciding the industrial dispute referred to him, leave granted by the adjudicator to the parties to engage legal practitioners in the absence of even implied consent would be contrary to the provisions of section 36(4) of the ID Act. We are thus not persuaded to agree with the view that grant of leave is more decisive than consent, as held in T.K. Varghese (supra), because one condition is not to be read in derogation of the other. That the view expressed in T.K. Varghese (supra) is not good law has been laid down by another Division Bench of the Bombay High Court in the decision reported in Chandrakant Ganpatrao Deshkar and Others Vs. All India Reporter Ltd. and Another, (2005) 2 BomCR 173 : (2005) 1 MhLj 1027 . In view of Paradip Port Trust (supra), it is settled law that both the conditions have to be fulfilled if a legal practitioner is to represent a party before the adjudicator.

59. That consent could be implied from the circumstances and conduct of a party is the dictum traceable in the decision of this Court in Jitendra Nath Maitra (supra), since followed in subsequent decisions of the other High Courts. A discordant note was struck almost thirty years after the decision in Jitendra Nath Maitra (supra) by this Court in Dipak Puri (supra) without, however, the learned Judge being shown the former decision. Again, in Britannia Engineering Products & Services Ltd. (supra), the learned Judge of this Court did not have the occasion to consider Dipak Puri (supra), and Jitendra Nath Maitra (supra) having been cited was followed.

60. Let us consider the problem from the practical view point concerning a workman belonging to the lowest rung, who is dismissed from service and on an industrial dispute being raised by him, the issue is referred to the industrial adjudicator for decision. The workman enters appearance before the industrial adjudicator on the first day, when the employer is represented by a legal practitioner who files vakalatnama and the same is allowed by the industrial adjudicator to be taken on record without even the workman being told of the right, which he has under the statute, of not consenting to representation of the employer by a legal practitioner. If a further date is fixed and on that date the workman upon receiving legal advice or otherwise raises objection to representation of the employer by a legal practitioner, could the conduct of the misinformed workman on the first day be construed as an implied consent on his part? Even if the proceedings continue for some days without completion of pleadings and without commencement of actual hearing but objection is raised at that stage, would such conduct still amount to an implied consent on his part? The answers to both the questions cannot be in the affirmative. Consent, in our view, could be implied if despite being told that he has a right to withhold consent, the workman remains silent and an abandonment of such right is inferable. We are also of the view that there could be no question of an implied

consent merely because at the initial stages of the proceedings the employer is allowed to be represented by a legal practitioner without demur from the side of the workman in ignorance of his statutory right. The decision in Jitendra Nath Maitra (supra), which has stood the test of time and followed in subsequent decisions, is clearly not applicable in all situations and could be relied on as an authority applicable in cases where objection is sought to be raised after commencement of hearing. The distinction is fine, but real.

61. It is, therefore, held that non-raising of a demur by a party at the initial stages of the proceedings before the adjudicator to representation of the other party by a legal practitioner, when the pleadings are not complete and actual hearing before the adjudicator has not commenced, may not amount to implied consent in the absence of the former being apprised of his/its right to object to such representation. However, consent could be inferred when no demur is raised to the engagement of a legal practitioner by the other party either on the first day or even thereafter by the former party despite being apprised of such right of objection. Necessarily, each case would require decision on its own peculiar facts.

62. Notwithstanding an implied consent and slipping in of a vakalatnama across the table to be retained in the records of the case by the legal practitioner engaged by a party to represent him/it, the same cannot be considered enough for such representation. We regret, we are not persuaded to share the view expressed in those decisions where inference of grant of leave by the adjudicating authority was drawn from the fact that the legal practitioner was allowed to file vakalatnama and to appear for advancing arguments and, therefore, it amounted to deemed leave or leave by implication. We hold, for the reasons following, that implied consent must simultaneously be followed by an express leave granted by the adjudicator, and leave cannot be inferred by reason of any remissness of such adjudicator.

63. The word "leave" in section 36(4) of the ID Act is referable to a permission being granted by the adjudicating authority. In the sense the word "leave" has been used in sub-section (4) of section 36, it is clear that although one of the parties may have obtained consent of the other to be represented by a legal practitioner, the other condition also being imperative, has to be fulfilled. Despite consent being obtained, the adjudicating authority has the discretion to refuse permission. Grant of leave is not an empty formality. There could be attempts of circumventing section 36(4) and that is more reason as to why, in our view, a positive and definite act of the Labour Court, Tribunal or National Tribunal, as the case may be, is required permitting a party to be represented by a legal practitioner upon obtainment of consent from the other party, and such grant of leave must be traceable in the order passed in the proceedings and not to be inferred from attending circumstances where the Presiding Officer may allow a party to be represented by a legal practitioner either in ignorance of the statutory mandate in sub-section (4) of section 36 or being of the mistaken

impression that leave has been granted earlier. In our view, when the reference reaches the relevant Tribunal or Court for adjudication, it is the duty of the Presiding Officer to insist for compliance of the two conditions mentioned in sub-section (4) of section 36 if either party or both parties are desirous of being represented by legal practitioner(s).

64. Section 36(4) is an enabling provision but hedged with conditions. As has been noticed above, the object of the ID Act is to encourage collective bargaining in course of conciliation proceedings as well as in proceedings before the Tribunals keeping legal practitioners at a distance by specific language. Although in terms of the provisions of section 30 of the Advocates Act, an advocate shall be entitled as of right to practise throughout the territories to which such Act extends, *inter alia*, before any tribunal or person legally authorised to take evidence, and an industrial workman in terms of section 12(f) of the Legal Services Authorities Act, 1987 could also as of right claim assistance of an advocate in legal proceedings, it has to be remembered that the ID Act is a special enactment [as held in *Paradip Port Trust (supra)*] and a self-contained code for industrial adjudication to resolve existing or apprehended disputes and the rights of advocates to practise before Tribunals created by it and even the right of an industrial workman to have the assistance of an advocate must yield to sub-section (4) of section 36. While interpreting a provision in the ID Act, the construction furthering the aims and objects thereof has to be preferred in comparison to that which would frustrate it and endanger its underlying principles. While an enabling provision in the statute, which is unconditional, could attract expansive interpretation, such an interpretation without the conditions therein being fulfilled would militate against the object underlying the statute. It is necessary to strictly interpret section 36(4) having regard to the object it seeks to achieve and so as not to erode the sphere of having an industrial dispute decided without the intervention of legal practitioners. Representation of a party by a legal practitioner in industrial dispute proceedings, so long section 36(4) is in the statute book, should be by way of an exception, and not as a rule. Deemed leave or leave by implication are alien to section 36(4), as rightly held in *Suraj Pal Sharma (supra)* and *Indrasan Parsad (supra)* and we share the view expressed therein.

65. The Supreme Court in its decision reported in *The State of Maharashtra Vs. Labour Law Practitioners' Association and Others*, (1998) 2 AD 20 : AIR 1998 SC 1233 : (1999) 82 FLR 380 : (1998) 1 JT 604 : (1998) 1 LLJ 868 : (1998) 1 SCALE 565 : (1998) 2 SCC 688 : (1998) SCC(L&S) 657 : (1998) 1 SCR 793 : (1998) AIRSCW 1072 : (1998) 2 Supreme 73 upheld the decision of the Bombay High Court setting aside appointments of Assistant Labour Commissioners as Presiding Officers of Labour Courts by the Government of Maharashtra and proceeded to hold that the Labour Courts are courts and discharge judicial duties. On the authority of such decision, the adjudicatory authorities referred to in section 36(4) have to be regarded as courts discharging judicial duties. Grant or non-grant of leave, in a given case, thus ought to ensue following an exercise

of judicial discretion. In the absence of any provision in the ID Act even remotely suggestive of deemed leave, the conclusion is irresistible that exercise of judicial discretion has to be demonstrable when a question arises in proceedings before such adjudicator.

66. We, therefore, answer the first two questions by holding that there could be circumstances wherefrom inference of consent by conduct or implied consent may be drawn but leave granted by the adjudicator has to be express or specific on exercise of judicial discretion and that such exercise must find reflection in the order-sheet maintained by the adjudicatory authority referred to in sub-section (4) of section 36 of the ID Act. The concept of deemed leave is alien to the aim that the relevant provision seeks to achieve and to this extent the decision in Dipak Puri (supra) lays down the law correctly.

67. The third question, in our view, has to be answered keeping in mind rule 36 together with Form "F" appended to the Central Rules and the importance that a vakalatnama commands in judicial proceedings.

68. Rule 36 reads as follows:

"36. Form of authority under section 36. - The authority in favour of a person or persons to represent a workman or group of workmen or an employer in any proceeding under the Act shall be in Form F."

69. The terms that are normally found in a vakalatnama executed by a party in favour of a lawyer enable him to perform diverse acts on behalf of the executant in his interest and he is ordinarily bound by such acts, unless of course a case of fraud or acting against instructions provided is set up for which remedy of the executant lies elsewhere.

70. The Supreme Court in its decision reported in Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and Another, AIR 2006 SC 269 : (2006) 101 CLT 502 : (2005) 9 JT 454 : (2006) 142 PLR 673 : (2006) 1 SCC 75 : (2005) AIRSCW 5851 : (2005) 7 Supreme 754 while lamenting the growing trend of filing of defective vakalatnamas had the occasion to sound caution as follows:

"21. *** Vakalatnama, a species of power of attorney, is an important document, which enables and authorises the pleader appearing for a litigant to do several acts as an agent, which are binding on the litigant who is the principal. It is a document which creates the special relationship between the lawyer and the client. It regulates and governs the extent of delegation of authority to the pleader and the terms and conditions governing such delegation. It should, therefore, be properly filled/attested/accepted with care and caution. Obtaining the signature of the litigant on blank vakalatnamas and filling them subsequently should be avoided. ***"

71. Filing of vakalatnama by a lawyer, by whatever name he is called (vakil, pleader, advocate) is a practice that is continuing from yester years, irrespective of whether it is statutorily prescribed or not pertaining to proceedings before

courts and tribunals discharging judicial duties. In respect of matters where the Civil Procedure Code applies, provisions are to be found in Order 3 Rule 4 thereof. Although like provision in the ID Act and the Central Rules is absent, could an authorisation in Form "F" in favour of a legal practitioner be regarded sufficient for representation, or should a vakalatnama be insisted upon? Rule 36 refers to "a person or persons". Ordinarily, the same could be construed to embrace a legal practitioner, but having regard to the fact that Form "F" does not in any manner indicate the terms based whereon a legal practitioner would be entitled to perform the several acts which ought to be performed on behalf of the party signing such form and the continuing practice of a legal practitioner being under an obligation to file vakalatnama, duly executed in his favour by the party willing to avail his service, in legal proceedings, leaves no manner of doubt that "a person or persons" in rule 36 would not include a legal practitioner and that a legal practitioner would be duty bound to file a document given in writing whereby a party appoints such practitioner to act as the party's representative.

72. Having regard to the terms of rule 36 read with the contents of Form "F", we are of the clear view that Form "F" is meant for the purposes of representation as contemplated in sub-sections (2) and (3) of section 36. That the appellant also thought so is reflected from its conduct. On its behalf, a vakalatnama was filed by an advocate representing it before the Presiding Officer of the Labour Court on June 9, 2014 and not authorisation in Form "F".

73. We may also point out that our above view is fortified by rule 78A read with Form "R" and "R 1" of the West Bengal Industrial Disputes Rules, 1957.

74. Finally, the stage is reached for answering the fourth question based on the aforesaid discussion.

75. The contention of Mr. George that since no vakalatnama had been filed before the CGIT and that the Union being under the impression that the appellant was being represented by its officers had not raised objection to the representation of the appellant by its lawyers, appears to us to be acceptable on facts particularly when the appellant chose to file vakalatnama before the Labour Court. The question of implied consent or grant of leave by the CGIT to the appellant being represented by its lawyers does not arise.

76. Insofar as the proceeding before the Labour Court is concerned, slipping in of the vakalatnama by the appellant on June 9, 2014 can neither be viewed as implied consent of the Union nor amounts to deemed leave for reasons discussed above.

77. In view of our answers to the four questions that were formulated at the beginning of our discussion, we have no hesitation to hold that the judgment and order of the learned Judge dismissing the writ petition of the appellant does not suffer from any infirmity warranting interference. The appeal stands dismissed together with the connected application. Parties shall, however, bear their own costs.

78. A parting observation is warranted. Since the law has been in a nebulous state and to avoid unnecessary complications in respect of pending proceedings before the adjudicatory authorities under the ID Act, we consider it proper to issue certain practice directions to be followed henceforth in respect of future cases by all the adjudicatory authorities under the ID Act amenable to the superintendence of this Court. As soon as a reference is registered, the presiding officer shall endeavour to apprise the parties before it that they may engage any legal practitioner subject to consent being given by the other party. If only the presiding officer is satisfied that any of/both/all the parties are willing to be represented by legal practitioner(s) and have obtained consent of the other party, he shall exercise judicial discretion and decide the question of granting leave. In the event any of the parties despite being so apprised chooses to remain silent, the presiding officer shall thereafter proceed to consider the question of granting leave in the light of the observations contained in this judgment and order.

79. The judgment is delivered from the main Bench of the High Court at Calcutta through video conferencing and as such the judgment and order will be uploaded in the server of the main Bench of the High Court at Calcutta.

80. The Registrar General is directed to forward copies of this judgment and order to the CGIT, the industrial tribunals and the labour courts all over the State for future guidance.

R.K. Bag, J.

I agree.

Later:

A prayer for stay of operation of the order has been made by the learned advocate for the appellant.

Having considered the prayer, we find no reason to accept the same.

The prayer for stay stands refused.