

(2015) 03 CAL CK 0076
In the Calcutta High Court
Case No : WP 107 of 2015

Air India Limited

APPELLANT

Vs

The Presiding Officer and Others

RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 36, 36(3), 36(4)

Citation : (2015) 147 FLR 186 : (2015) 2 LLN 640

Hon'ble Judges : Tapash Mookherjee, J.

Bench : Single Bench

Advocate : R.N. Majumdar and Shyamali Ganguly, for the Appellant; Roshan George, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tapash Mookherjee, J.—The present writ petition is against the order passed on 27th January, 2015 by the Industrial Tribunal cum Labour Court in industrial dispute reference case No. 18 of 2008.

2. Application of section 36(4) of the Industrial Disputes Act, 1947 is the main dispute in this writ petition.

3. There was an Industrial Dispute between the Air India Limited the petitioner in this case and some of its casual workers posted at Port Blair, regarding the regularisation of their service, and the said dispute was referred to the Central Government Industrial Tribunal at Kolkata for adjudication. The said reference was registered as the reference No. 18 of 2008. Since the workers/respondents were all posted at Port Blair, the said reference was ultimately transferred to the Industrial Tribunal cum Labour Court at Port Blair on prayer of the workers/respondents. The reference is pending there.

4. After the case was registered in Central Government Industrial Tribunal at Kolkata notices were issued to all the parties and in response to that notice learned advocate Mr. R.N. Majumdar with learned advocate Ms. Rupa Mukherjee

appeared in the reference case to represent the present petitioner Air India Limited. Thereafter, the case was adjourned from time to time on several dates. Mr. Majumdar and Ms. Mukherjee and sometimes another learned advocate Mr. Sourav Chakraborty continued representing the present petitioner all along. Several notices were issued to the workmen and their Union but they did not appear in the case directly. Instead, they sent applications praying for adjournment on some dates thus fixed. Meanwhile two writ petitions were filed in connection with the reference. One such writ petition was filed by the present petitioner challenging the legality of the order of the reference. The other writ petition was filed for the transfer of the reference from the Central Government Industrial Tribunal Kolkata to the Industrial Tribunal cum Labour Court at Port Blair. Ultimately by an order of the Central Government dated 18th March, 2014 the reference was transferred to the Industrial Tribunal cum Labour Court at Port Blair.

5. After such transfer, both the parties appeared in the Industrial Tribunal cum Labour Court at Port Blair on 9th June, 2014. A "Vakalatnama" was also filed on that day for representation of Air India Limited in the Tribunal by a legal practitioner.

6. On 25.09.2014 the workmen filed an application before the tribunal and thereby raised their objection against the representation of their employer Air India Limited through legal practitioners. After hearing both the parties at length, the Tribunal passed an order on 27th January, 2015 and thereby debarred Air India Limited from their representation through any legal practitioner. Being aggrieved by such order of the Tribunal, Air India Limited has filed the present writ application, praying for setting aside of the aforesaid order of the Tribunal and other related reliefs.

7. It has been argued by Mr. Majumdar that section 36(4) of the Industrial Disputes Act has not prescribed any specific mode or manner of giving consent or leave of the court for representation by a legal practitioner mentioned in the said sub-clause. His further argument was that such a "consent" and "leave" may be implied and inferred from facts and circumstances of the case. Mr. Majumdar further argued that before the Tribunal at Kolkata, the employer Air India Limited was allowed by the Tribunal to be represented through legal practitioners on each and every date fixed and the workmen had not appeared before the Tribunal at Kolkata during the long pendency of the reference there, to oppose the representation of the employer AIR India Limited by legal practitioner. Such deliberate inaction itself amounts to giving consent for such representation, and similarly Tribunal's permitting such representation amounts to leave for such representation. So, the workmen cannot now oppose the representation of the employer Air India Limited by learned advocates who are on record since the year 2009. Mr. Majumdar has cited two decisions of Bombay High Court, one reported in MSCO (P) Limited Vs. S.D. Rane and others, and the other reported in Engineering Mazdoor Sabha, Bombay Vs. Meher (M.R.)

(Industrial Tribunal, Bombay) and Others, to support his contention of implied "consent" and "leave". The petitioner cited another decision before the Tribunal Punjabi Ghasitaram Halwai Karachiwala Vs. Sahadeo Shivram Pawar and Others, but the said decision was not banked upon during the hearing of this writ petition.

8. On the other hand Mr. Roshan George appearing for the workmen submitted that all the poor workmen were posted at Port Blair and hence it was not possible for them to appear in the Tribunal at Kolkata, especially when the legality of the reference itself was under challenge in the writ petition in the Hon"ble High Court at Calcutta. He further argued that the advocates appearing before the Tribunal at Kolkata had not filed any "Vakalatnama" for their appearance and they appeared on the strength of a letter of authorisation only, which caused the impression that the advocates appearing were the officers or the representative of the company or any association, and immediately after the filing of the Vakalatnama in the Tribunal at Port Blair for the representation of the employer Air India Limited, the workmen have raised their objection against such representation. So, there was no undue or intentional delay or laches on the part of the workmen to raise their protest. Mr. George argued that "consent" and "leave" mentioned in section 36(4) of the Industrial Disputes Act have to be always expressed "consent" and "leave" which is found wanting in the present case. Mr. George, relied on the decision of the Hon"ble Apex Court in Paradip Port Trust, Paradip Vs. Their Workmen, and the case reported in Dipak Puri Vs. 5th Industrial Tribunal and Others, and judgement of Gujarat High Court in Manager-Gujarat -vs- Rajubhai on 28th March, 2011, a computer generated copy of which has been filed by the petitioner in the Tribunal.

9. Section 36 of the Industrial Disputes Act 1947 provides special provisions regarding the representation of parties in any industrial dispute. Sub-section (1) of Section 36 says how the workmen may be represented in a case involving industrial dispute and Sub-section (2) of Section 36 says as to how an employer may be represented in any proceeding under the Act.

10. Sub-section (3) of Section 36 says;

(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. And

Sub-section (4) of Section 36 says;

(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. 11. Thus, Sub-section (3) of Section 36 imposes a total ban on representation of a party to dispute by legal practitioner in any conciliation proceeding under the Act or in any proceeding before a court. On the other hand Sub-section (4) of Section 36 allows the representation of the parties in any proceedings before the Labour Court,

Tribunal or National Tribunal involving industrial dispute, by legal practitioners, subject to satisfying two conditions. One such condition is the consent of the opposite party and the other condition is the leave of the court. Admittedly no specific form or manner is prescribed for expressing such consent or leave. According to Mr. Majumdar such a consent or leave need not be expressed one, but may be implied also inferred from the facts and circumstances of a case. Mr. Majumdar relied on two decisions on the point, one reported in *MSCO (P) Limited Vs. S.D. Rane and others*, and other reported in *Engineering Mazdoor Sabha, Bombay Vs. Meher (M.R.) (Industrial Tribunal, Bombay) and Others*, .

12. The present reference case has a chequered history. It was at first referred to the Central Industrial Tribunal at Kolkata where it was pending from 2009 to 2014 and thereafter by an order dated 18th March, 2014 by the Ministry of Labour and Employment, Government of India, the reference case was transferred to Industrial Tribunal cum Labour Court at Port Blair. In between two writ petitions were filed, one challenging the legality of the reference, and the other for the transfer of the reference from Kolkata to Port Blair. The writ petition challenging the legality of the reference was disposed of giving the employer a liberty to raise the issue of the legality of the reference before the Tribunal, and the writ petition for the transfer of the case to Port Blair was disposed of with a direction upon Union of India to take the decision within a specific period on the workmen's prayer for transfer of the case from the Tribunal at Kolkata to Tribunal at Port Blair.

13. In the Tribunal at Kolkata the case had been fixed on several dates and adjourned due to the non appearance of the workmen. But on all those dates the employer i.e. Air India Limited was represented by different legal practitioners on the strength of letter of authorisation. During that long period of pendency the workmen never appeared in the Tribunal to oppose such representation of the employer through legal practitioner, and they had only prayed for adjournments by sending applications on three occasions. The Tribunal had not also taken note of the fact that legal practitioners were appearing for the employer Air India in violation of the provision in Sub-section (4) of Section 36 of the Industrial Disputes Act.

14. Now comes the question whether such conduct of the workmen and or the inaction on the part of the Tribunal may be considered as implied consent of the workmen and leave of the court.

15. So far as the leave of the court is concerned, it is to be noted that the employer never prayed for leave for their representation through legal practitioner, nor the Tribunal had ever granted such leave. It is true that the Tribunal should have looked into the matter on the first day of the appearance of the employer through legal practitioner or within a short period thereafter. But the same time it is also true that it was the responsibility of the legal practitioners also to pray for the leave from the Tribunal to represent the employer. In fact, the Tribunal never applied its mind in the matter and the

process followed was definitely wrong. A wrong once committed should not be perpetuated by the seal of the court on it. So the facts and circumstances discussed above do not lead to the conclusion that there was implied leave of the court for the representation of the employer by legal practitioner.

16. Next comes the question of consent of the workmen. As discussed earlier, the workmen never appeared before the Tribunal at Kolkata and during the long pendency of the case there, they only prayed for adjournments by sending applications. Mr. Roshan George submitted that since the legal practitioners appearing before the Tribunal at Kolkata on the strength of letter of authorisation only, they were confused regarding the legal capacity of those legal practitioner on the basis of which they were appearing and immediately after a Vakalatnama was filed by a legal practitioner for the employer in the Tribunal at Port Blair the workmen could raise the issue.

17. In the order sheets of the Tribunal it is found that notices had been issued upon the workmen on several occasions and the workmen had the knowledge of the reference case. So they had the opportunity to appear before the Tribunal and agitate their causes. However, the explanation of Mr. George on the point that because of financial limitations the workmen could not afford to appear in the Tribunal at Kolkata, cannot be ignored. It should be noted here that the workmen have raised the point in issue promptly after the transfer of the case in the Industrial Tribunal cum Labour Court at Port Blair. Since, the workmen did not appear at all in the Tribunal at Kolkata the question of their giving consent to their employer's representation by legal practitioner never arose at all. The non appearance of the workmen before the Tribunal at Kolkata could have invited adverse consequences for the workmen, like ex-parte hearing etc. But their failure to appear and raise the issue cannot be treated as their consent.

18. The fact of the case reported in MSCO (P) Limited Vs. S.D. Rane and others, cited by Mr. Majumdar was entirely different. In that case on the first date of hearing a legal practitioner appeared for the employer by filling a Vakalatnama and Workmen's Union also appeared and by an application prayed for time for filling their statement of claim and the Workmen's Union before moving that application obtained an endorsement of "no objection" on it by the legal practitioner, appearing for the employer. So, as the workmen accepted the appearance of their opponent through legal practitioner, they were not permitted to withdraw their acceptance at a later stage. Almost similar situation was in the other case reported in Engineering Mazdoor Sabha, Bombay Vs. Meher (M.R.) (Industrial Tribunal, Bombay) and Others, cited by Mr. Majumdar and no such situation is present in the present case. The aforesaid decisions are therefore distinguishable. Mr. George cited the decision of the Hon'ble Apex Court in Paradip Port Trust case and a few other cases based on that decision, but during the conclusion of his submission he admitted that issue decided in Paradip's case is quite different.

19. The provision in Section 36(3) and 36(4) of the Industrial Disputes Act have

been introduced in the statute with specific object, which is to protect the workmen in an unequal battle of law with their employer. So the provisions require serious consideration in every case.

20. In the present case, the workmen never expressed their consent to their employer's representation by legal practitioner. The Tribunal has also never granted leave for such representation. The valuable right of the workmen should not be taken away therefore just on the ground of their inaction which has some justifications also. So no such situation is there to suggest that the workmen have given their consent impliedly.

21. No major or minor issue involved in the dispute has yet been heard or decided other than the issue decided by the impugned order. The workmen therefore had the right to raise the issue before the Industrial Tribunal cum Labour Court at Port Blair. No illegality is therefore found in the order of the Industrial Tribunal cum Labour Court at Port Blair, dated 27.01.2015, impugned in this writ petition.

22. The writ petition is therefore dismissed without any order as to costs.