

(2006) 11 BOM CK 0093
In the Bombay High Court
Case No : Writ Petition No. 964 of 1996

A.S. Krishnamurthy and Others

APPELLANT

Vs

Central India Spinning, Weaving and Manufacturing Co. Ltd.
and Others

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Bar Councils Act, 1926 — Section 14, 14(1), 8
Bombay Industrial Relations Act, 1946 — Section 11, 12, 12(31), 13, 2
Bombay Industrial Relations Rules, 1947 — Rule 10, 11, 37, 40
Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 3 Rule 1
Constitution of India, 1950 — Article 14, 19(1)
Legal Practitioners Act, 1879 — Section 4

Citation : (2007) 1 ALLMR 601 : (2007) 2 BomCR 147

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : R.B. Pendharkar and Sambhare, for the Appellant; R.B. Puranik, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—Petitioners before this Court have challenged the order passed by Member, Industrial Court dated 16th Oct. 1995 below exhibit 28 in Reference (ICN) 4/1978, holding that the Petitioners have no legal right or locus standi to appear & prosecute said Reference. Said reference has been made by appropriate government i.e. state government at the instance of respondent No. 4, a representative trade union under provisions of Bombay Industrial Relations Act, hereinafter referred to as B.I.R. Act. Respondent No. 2 before this Court is the Employer (successor of earlier employer company) while respondent No. 1 was its earlier holding company. Member, Industrial Court has been joined by name as respondent No. 3 because of some allegations made against him in the matter.

2. It is not in dispute that the present Petitioners were working in Empress Mills

Retail Sales Division since when it was managed by respondent No. 1 and after its nationalization, came under present respondent No. 2. It appears that there were differences in service conditions of employees working in Sales Division and working on production side. Hence certain demands for equal treatment to employees in Sales Division along with other demands were made by respondent No. 4 Union u/s 42(2) of B.I.R. Act. As conciliation failed, Conciliator issued certificate on 23/9/1977 and thereafter respondent No. 4 filed a Reference before respondent No. 3 u/s 73A and latter on it also filed a Statement of Claim. Respondent No. 1 filed in written statement and opposed said claim and contended that Sales Division was not covered by B.I.R. Act but by Bombay Shops Establishment Act and respondent No. 4 union lacked locus to make any demand on behalf of workers in Sales Division. Industrial Court upheld said objection on 31/1/1984. Petitioners then approached this Court in Writ Petition 2262 of 1984 and it was allowed by this Court on 13/3/1992. It is stated that during pendency of Writ Petition respondent No. 2 Empress Mills through Maharashtra State Textile Corporation was added as party respondent. The parties had already adduced evidence before Industrial Court. This Court allowed writ Petition and directed Industrial Court to decide reference on merits and liabilities should be apportioned between respondent No. 1 and 2. It is here to be noted that in the meanwhile respondent No. 1 had declared lockout or closure and because of wide spread unrest, State government promulgated ordinance which latter on became an Act in 1986 and entire establishment of respondent No. 1 stood transferred to and vested in respondent No. 2.

3. Before respondent No. 3 Petitioners appeared and filed application for issuing notice to respondent No. 2. The Petitioners appeared on 25/9/1992 and thereafter on 3/2/1993 and respondent No. 3 wanted to know their locus standi and hence Petitioners filed their submissions in this respect on 16/12/1994. Petitioners state that their status was not objected to either by employer or by Union. Petitioners also state that after High Court decision on 13/3/1992, membership subscription was forwarded by Petitioners for one-year by money order but respondent No. 4 refused it. They filed application before respondent No. 4 requesting it to represent them in proceedings before respondent No 3 on 25/9/1992. Respondent No. 4 was informed that if no reply was given to said representation, it would be presumed that respondent No. 4 was refusing to act for an on behalf of workers. Respondent No. 4 never replied and also did not remain present before respondent No. 3. Respondent No. 3 had issued notice to Union but still it did not appear. They did not file any reply to the submission dated 16/12/1994 and Petitioners through their advocate addressed Respondent No. 3 about their legal rights. Employer took time and ultimately on 20/9/1995 moved application for debarring Petitioners from appearing in the matter. The advocate representing respondent No. 2 was then heard on 6/10/1995 and Industrial Court passed Impugned order on 16/10/1995. After this order respondent No. 3 again issued notice to respondent No. 4 union for appearing on date 14/11/1995. It is at this stage when said Reference was fixed on 7/3/1996

that the Petitioners approached this Court.

4. I have heard Senior Advocate Shri R.B. Pendharkar with Advocate Sambhare for Petitioners and Advocate Shri R.B. Puranik for respondent No. 2. Nobody has appeared for other respondents though they are served. Learned Senior Advocate has after mentioning the facts invited attention to judgment dated 13/3/1992 in W. P. 2262 of 1984 to argue that This court has already found that Petitioners have locus in the matter and objection of respondent No. 2 in this respect already stands overruled because of this judgment. It is argued that the argument of respondent No. 2 that demand could have been made only by Representative Union is also held to be erroneous & it was observed that employees in Retail Sales Division were entitled to approach for same under B.I.R. Act. It is argued that while allowing the Petition, this Court directed respondent No. 3 to try reference on merit and to decide question of apportionment of liability between respondent No. 1 and respondent No. 2 in accordance with law. He has also invited attention to various judgments which according to him clinch the controversy. It is also argued that respondent No. 3 himself has raised unnecessary objection about locus of Petitioners and violated the direction of this Court to adjudicate on merits. It is contended that in any case appearance of Petitioners was accepted by respondent No. 3 and provisions of B.I.R. Act permit Petitioners to appear & act with permission of respondent No. 3. It is also argued that when respondent No. 4 was expressly called upon to appear & act, and it failed to do so, the aggrieved individuals i.e. Petitioners ought to have been permitted by respondent No. 3 and impugned order is contrary to scheme of B.I.R. Act. In any case, when orders were passed on application moved by Petitioners and notice was issued to present respondent No. 2 by Industrial Court, the permission to appear was obviously granted and hence, in impugned order, respondent No. 3 could not have gone back on it. Roll played by respondent No. 3 has been criticised and it is pointed out that though respondent No. 3 is served, he has not chosen to file any reply or to appear. It is argued that undue importance has been given to procedural part and substantive rights of Petitioners are thereby defeated.

Adv. Puranik on the other hand has contended that impugned order is nothing but adjudication of controversy on merits. According to him, finding of this Court in judgment dated 13/3/1992 is only about entitlement of employees to maintain writ Petition 2262 of 1984 and said finding does not in any way foreclose the scrutiny into locus of Petitioners to prosecute B.I.R. reference. He states that from various attempts made by Petitioners it is apparent that respondent No. 4 Union is not interested in prosecuting the reference and has withdrawn from it. As such, nobody else can further continue to prosecute such reference and there is no provision in B.I.R. Act for such continuation. He argues that passing of some orders on innocuous application by itself does not mean that respondent No. 3 has permitted Petitioners to prosecute the reference. He states that because of this order only that Industrial Court insisted that Petitioners should first establish their entitlement to further prosecute the reference. He has also

relied upon various cases.

The learned Senior Advocate for Petitioners and Advocate Puranik for respondent No. 2 have also made certain arguments about the scheme of representation or appearance on behalf of employees as contained in B.I.R. Act, in the light of case law cited by them respectively. I find it more convenient to refer to them while considering said scheme.

5. It is apparent that the proceedings before respondent No. 3 were reference proceedings u/s 73A of B.I.R. Act. Said section reads:

73A. Reference to arbitration by unions: --Notwithstanding anything contained in this Act an employer or a registered union which is a representative of employees and which is also an approved union may refer any industrial dispute for arbitration to the Industrial Court: Provided that no such dispute shall be referred to the Industrial Court:

(i) after two months from the date of completion of proceedings before the Conciliator,

(ii) where the registered union or the employer, as the case maybe, has offered in writing before the Conciliator to submit the dispute to arbitration under this Act and the employer or the union, as the case maybe, has not agreed to do so;

(iii) unless the dispute is first submitted to the Conciliator and the conciliation proceedings are completed or the Conciliator certifies that dispute is not capable of being settled by conciliation; Provided further that no such dispute shall be referred to the Industrial Court where under any provision of this Act it is required to be referred to the Labour Court for its decision.

Hence, reference contemplated by this provision can be made only by a registered union which is representative of employees and also an approved union. Section 3(30) defines "registered union" as union registered under B.I.R. Act. Section 3(2) defines "approved union" to mean a union on approved list and Sub-section (1) defines "approved list" to mean list of approved unions maintained by the Registrar u/s 12. Sub-section (31) defines "Registrar" to mean a person for the time being appointed to be the Registrar of unions under B.I.R. Act. Section 3(32) defines "representative of employees" to mean a representative of employees entitled to appear or act as such u/s 30. Section 12 is placed in chapter III which deals with registration of unions. It reads:

12. Maintenance of registers and approved list: --It shall be the duty of the Registrar to maintain such forms as may be prescribed --

(a) registers of unions registered by him under the provisions of this Act, and

(b) a list of approved unions.

Section 30 which defines representative of employees reads as under:" 30. Representative of employees: -- Subject to the provisions of Section 33A, the

following shall be entitled to appear or act in the order of preference specified as the representative of employees in an industry in any local area -

- (I) a representative union for such industry;
- (II) a qualified or primary union of which the majority of employees directly affected by the change concerned are members;
- (III) any qualified or primary union in respect of such industry authorised in the prescribed manner in that behalf by the employees concerned;
- (IV) the Labour officer if authorised by the employees concerned;
- (V) the persons elected by the employees in accordance with the provisions of Section 28 or where the proviso to Sub-section (1) thereof applies, the employees themselves;
- (VI) the Labour officer:

Provided --firstly, that the persons entitled to appear or act under Clause (V) may authorise any qualified or primary union in respect of such industry to appear or act instead of them:

secondly, that where the Labour officer is representative of the employees, he shall not enter in to any agreement u/s 44 or settlement u/s 58 unless the terms of such agreement or settlement, as the case may be, are accepted by them in the prescribed manner:

thirdly, where in any proceedings the person entitled to appear or act under Clause (V) are more than 5, the prescribed number elected from amongst them in the prescribed manner shall be entitled to appear or act instead.

This section nowhere uses the phrase "approved union". Section 13 shows that it deals with application for registration to be moved by union. Section 13(1) permits a union with membership of not less than 25 percent of total number of employees employed in any industry in any local area for whole period of three calendar months immediately preceding the calendar month in which application is submitted, to be recognised as a "Representative Union" for such industry in such local area. Its Sub-section (2) permits any union which has during such period a membership of not less than 5 percent to apply for and to be registered as a "Qualified Union" for such industry in such local area in the absence of a Representative Union. When there is neither a Representative Union nor a Qualified Union, a union with not less than 15 percent membership of total number of employees employed in any undertaking in such industry in said area and complying with conditions specified in Section 23 can be registered as "Primary Union" for such industry in such local area. Section 23 is in chapter IV and the heading of chapter is "Approved Unions". It permits Registrar to hold appropriate inquiry and to accept a union for being entered into the approved list, if he is satisfied that such union has made rules and provisions of said rules are being duly observed by union. The Rules of such union are required to

provide for membership subscription of not less than 50 Paise per month, its executive committee to meet at intervals of not more than three months, recording of resolutions of executive or general body in minute book, audit by government appointed auditor once in each financial year, submission of industrial dispute not settled in conciliation to arbitration and not to refuse arbitration under Chapter XI, not to sanction, resort to or support any strike without exhausting all methods for settlement of such industrial dispute or unless circumstances mentioned in Section 79(1)(h) proviso exist and majority members by ballot vote in favour of strike, not to sanction, resort to or support illegal stoppage or any go slow. Registrar has been given discretion to refuse to enter union in approved list if satisfied that it is not being conducted bonafide in the interest of its members but to their prejudice.

Thus, it is apparent that only particular category of "Representative of employees" is permitted to take recourse to Section 73A of B.I.R. Act. It therefore follows that basically it is only "Union" satisfying certain standards & establishing its wide base amongst employees that has been given this privilege. Individual has not been given this right and the present controversy therefore needs to be viewed from this point of view.

6. Section 30 above uses the word "to appear or act". Said provision is subject to Section 33A of B.I.R. Act which again uses both these words. Some provisions only use the word "to appear". All these provisions occur in chapter V which deals with Representative of Employers and Employees and Appearance on their behalf. Senior Advocate Shri R.B. Pendharkar with Advocate Sambhare for Petitioners and Advocate Shri R.B. Puranik for respondent No. 2 have also relied upon these provisions and their judicial interpretation. The relevant Sections in order to understand the scheme are as under:

27A. Appearance on behalf of employees: --Save as provided in Section 32, 33 and 33A no employee shall be allowed to appear or act in any proceedings under this Act except through the representative of employees.

32. The persons who may appear in proceedings --

A conciliatory, a board, an arbitrator, a wage board, a Labour Court and industrial Court may, if he or it considers it expedient for the ends of justice, permit an individual, whether an employee or not, to appear in any proceedings before him or it:

Provided that subject to the provisions of Section 33A, no such individual shall be permitted to appear in any proceedings not being a proceedings before the Labour Court or the Industrial Court in which the legality of propriety of an order of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee is under consideration, in which the representative union has appeared as the representative of employees.

33. Appearance for employees --Notwithstanding anything contained in any other

provision of this Act an employee or representative union shall be entitled to appear through any person,

(a) in all proceedings before the Industrial Court;

(aa) in all proceedings before the wage board;

(b.) in proceedings before Labour Court for deciding whether strike, lock out, closure or stoppage or change or an order passed by employer under the Standing Orders is illegal

(c) in such other proceedings as the Industrial Court may, on application made in them in that behalf, permit: Provided that legal practitioner shall not be permitted under Clause (c) to appear in any proceedings under this Act except before Labour Court as provided in Section 83A or the Industrial Court:

Provided further that subject to the provisions of Section 33A, no employee shall be entitled to appear through any person in any proceedings under this Act not being a proceedings before the Labour Court or the Industrial Court in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of services or suspension of an employee is under consideration, in which a representative union has appeared as the representative of employees.

Provided also that save as aforesaid, any person other than the representative union or legal practitioner shall not be permitted to appear on behalf of an employee in any proceedings before any Court under this Act, save with the permission of the Court.

33A. The persons who may appear in proceedings in which they raise disputes between employees and employees:

(1) in any dispute between the employees and employees refer to arbitration of Labour Court or Industrial Court u/s 72, all persons who were parties to the dispute shall be entitled to appear & act in the proceedings before such Court:

Provided that, where the number of employees on either side exceeds 5, then such employees shall elect, in the manner prescribed, 2 persons from amongst themselves to appear & act for them.

(2) If a representative union desires to be heard in respect of such dispute, it may on application made to the Court also be heard by such Court.

Thus, it is apparent that the distinction between "to appear" and "to act" has been maintained in all the sections. Section 27A expressly prohibits employee from both appearing and acting except through representative of employees. Section 30 gives the order of preference amongst such representative of employees who are entitled to both appear & act. Section 32 however permits Adjudicating Authority or Tribunal or Conciliator to permit any individual to appear if such appearance is expedient for ends of justice and such individual need not be an employee. Thus, very wide powers have been given to hear such

individual if Authority/Tribunal finds it necessary. However, again proviso thereto curtails this power in proceedings (except in disputes of personal nature) if Representative Union has appeared in it. Section 33A contemplates dispute between two groups of employees and hence, all persons (and not only employees) who were parties to the dispute have been permitted both to appear & to act. Again importance of Representative Union has been recognised by giving it opportunity of hearing even in disputes of this nature. Section 33 speaks of Appearance for employees. This section does not envisage any "act" and does not confer any new or additional right of appearance on any employee but only regulates the procedure for appearance on behalf of employee who or union which has been already permitted by B.I.R. Act or by Court/Tribunal to appear. It is to be noted that it treats such employee on same footing as a representative union. It cannot be argued that right to appear has been given to representative union or employee/person by this section. Hence, once employee or representative union is entitled to appear, it has been permitted to appear through any person. This also becomes clear from second proviso of this Section 33 which does not permit employee to appear through any person in proceedings in which Representative Union has appeared as representative of employees. This second proviso to Section 33 is in fact an extension of proviso to Section 32. Proviso to Section 32 does not permit Conciliator or Tribunal to permit any individual to appear in any proceedings in which Representative Union has appeared as representative of employees. Thus, legislature has given primacy to Representative Union in the matter of both appearance and action in all proceedings (except Section 33A proceedings) before Industrial Court and only in limited circumstances an individual or employee can appear in such proceedings with the leave of Industrial Court. But even in these limited contingencies, individual or employee has not been given right "to act". First proviso to Section 33 also states that legal practitioner is entitled to appear before Labour Court as provided in Section 83A or before Industrial Court. Last proviso there to debars any person other than representative union or legal practitioner to appear on behalf of an employee except with permission of Court. Thus Section 33 only stipulates the persons who can represent employee or representative union in matters in which such employee or representative union can appear. Employee or individual can be permitted to appear by Court or Authority but then the permission must be apparent and in view of the scheme of Sections above must also demonstrate application of mind to relevant factors by such Authority or Court before granting such permission.

7. This brings me to find out what is difference between "to appear" and "to act".

In *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, question before Hon"ble Apex Court was as disclosed in para 48:

48. The question for our consideration really is, what exactly is the position of a Supreme Court Advocate who wants to avail himself of the right of practicing in any High Court in India in terms of Section 2, Supreme Court Advocates Act ? Is

he to exercise the right only as a Supreme Court Advocate and in accordance with the rules which the Supreme Court itself had laid down in this respect, or is his position, when he appears before a High Court, the same as that of an advocate enrolled in the said Court and he has the same rights and disabilities which attach to such persons under its rules ? The only other alternative that is or can be suggested and has been put forward on behalf of the petitioner is that he is not fettered by any rules either of the Supreme Court or of the particular High Court in which he appears; and as the extent of his right depends upon the language of the section itself, the legislature by using the word "practice" has conferred upon him the right of both pleading and acting in any High Court he chooses, irrespective of the rules of practice which obtain in such Court.

Here we are really not concerned with this issue but following observations in para 72 show the position then prevailing.

72.--It is well known that each of the High Courts actually framed rules for the admission of advocates, vakils and attorneys. The High Courts of Calcutta, Madras and Bombay divided their jurisdiction into two broad categories, namely, original jurisdiction and appellate jurisdiction, and by their Rules made an internal classification of the advocates, vakils and attorneys. Thus the advocates or vakils enrolled on the Appellate Side were empowered "to appear, act and plead" but the advocates enrolled on the Original side were permitted only "to appear and plead", the "acting" on the Original Side being reserved for the attorneys for whom a separate roll was maintained. The Madras High Court has, however, done away with this internal classification and advocates of that the High Court may now appear, act and plead on the Original Side as well as the Appellate side. The Calcutta and Bombay High Courts, however, maintained the distinction. Chapter I, Rule 37 of the Rules of the Original Side of the Calcutta High Court provide that persons to whom the rules contained in that chapter are applicable may not appear unless instructed by an attorney. Chapter I, Rule 40 of the Rules of the Original Side of the Bombay High Court is on the same lines. Although the remaining Letter Patent High Courts in India have extraordinary Original Jurisdiction, both civil and criminal, they did not make any distinction between Original and Appellate jurisdiction as in Calcutta and Bombay and the advocates enrolled in those High Court were and are permitted "to appear, act and plead" in all their jurisdictions. Apart from the several Letters Patent High Court . other High Courts e. g. the High Courts of Assam and Orissa and the High Court of Part B States also have framed rules of their own for admission of advocates and according to those rules the advocates of all these High Courts can "appear, act and plead".The position, therefore, was that, at the date of the Act, all advocates of all High Courts including those of the Appellate Side of Calcutta and Bombay High Courts but excluding only the Original Side advocates of Calcutta and Bombay could "appear, act and plead" in their own High Courts in all jurisdictions but the advocates of the Original Side of those two High Court could only " appear and plead" on the Original Side.

The meaning of phrase "to act" can be seen from following passages therein.

"46. In the Patna case, *Laurentius Ekka v. Dhuki*, 4 Pat. 766, the question arose as to whether an Advocate or Vakil whose name appeared on the roll of any High Court could "act" on behalf of his client by presenting and application for review of a judgment in a case which was tried by a Court subordinate to the High Court. The question was answered in the affirmative and reliance was placed upon Section 4, Legal Practitioners' Act, which lays down that "an Advocate or Vakil enrolled on any High Court shall be entitled to practice in all Courts subordinate to the Court on the roll of which he is entered." This case, it is to be noted, deals with advocates right to practice in subordinate Courts where no distinction at all exists between pleading and acting. Consequently, the word "practice" in this context does include both pleading and acting.

47. In the Madras case *In re the Powers of the Advocates*, 52 Mad 92, the point for consideration was, whether an advocate enrolled in the High Court of Madras under the Indian Bar Councils Act was entitled not only to appear and plead but also to "act" in the insolvency jurisdiction of the Court, in spite of the provision in Rule 128 of the Insolvency Rules of the High Court, which gave such right only to the attorneys. It was held that the advocate had the right to "act" by reason of the provision contained in Section 14(1), Bar Councils Act, which entitled an advocate to practice as of right in the High Court in which he is an advocate; and because so far as the Madras High Court was concerned the Bar Councils Act made no distinction between different jurisdiction of the Court and did not save the powers of the Court to frame rules in respect of the original and insolvency jurisdictions. In these circumstances, a rule which cut down the right conferred by Sections 8 and 14, Bar Councils Act, would be deemed to be repealed u/s 19(2) of the Act as being repugnant to its provisions. It was expressly stated in the judgment that the position was different in regard to the Bombay and Calcutta High Courts and so far as these Courts were concerned, their powers were expressly saved by the Bar Councils Act. This decision clearly shows that the expression "practice" would not include "acting" if with regard to particular jurisdiction of a High Court there are valid rules to the contrary.

In *Jaymal Thakore Vs. Charity Commissioner, Gujarat State and Others*, , Division Bench there observed that in said case, when the petitioner as a Chartered Accountant and a holder of power of attorney conferring on him all rights to act, appear and plead on behalf of his client sought such permission, the Charity Commissioner allowed him to act as a "recognised agent", but refused to allow him to plead and practice as a pleader or an advocate. It was held that he cannot cross-examine the witnesses or argue the matter on behalf of his client which are acts in the nature of pleading or practicing law within the exclusive monopoly of only enrolled advocates. Such exclusive monopoly to practice law and to plead in a Court had been conferred on an enrolled advocate under the Advocates Act with an important social object to maintain the proper Court culture by subjecting such an advocate to the disciplinary action whenever required through the disciplinary committees constituted thereunder for the

purpose. The Charity Commissioner was right in restricting the role of the petitioner in proceedings before him u/s 50A to "recognised agent" of the party and refusing to allow him to act as "pleader" or an "advocate" as contemplated by the provisions of the Advocates Act. For the purpose of this case reference to Aswin Shambhuprasad Patel and Others Vs. National Rayon Corporation Ltd., would be profitable. Construing the provisions of Order III Rule 1, it was held that the expression "appearance, application or act" in or to any Court in Order III Rule of C.P.C. does not include pleadings. This case i.e. Aswin Shambhuprasad Patel v. National Rayon Corporation Ltd (supra) is considered & distinguished in Sanjay R. Kothari and Another Vs. South Mumbai Consumer Disputes Redressal Forum and Another, . While considering Consumer Protection Act (68 of 1986), Section 30 & Expression "to appear" in Rule 4(7) and 8(7) of 2000 Rules permitting appearance by opposite party or its authorised agent, it has been held that said expression must be given wider meaning & "The right to appear", therefore, has been interpreted to include right of addressing court, examining, cross-examining witnesses, oral submissions etc. It is found that right of audience inheres in favour of authorised agents of parties to proceedings before Consumer Forum and it is not inconsistent or in conflict with provisions of Advocates Act. This judgment shows that these words need to be understood in the context in which they are used. Full Bench decision of Andhra Pradesh High Court in Nadella Satvanarayana v. Tamanoon Venkata Subbiah, AIR 1957 A P 172 holds that to take either in Court or in its office required steps to prosecute the matter further is "to act" on behalf of client.

In Jamilabai Abdul Kadar Vs. Shankarlal Gulabchand and Others, , Hon"ble Apex Court while holding that a pleader (which includes all legal practitioners as indicated in Section 2(15). civil P. C.) has the actual. though implied authority of a pleader to act by way of compromising a case in which he is engaged even without specific consent from his client subject undoubtedly to two over-riding considerations, in para 15 observes:

15. A little reflection will unfold the compelling necessity of giving a comprehensive meaning to the expression "act" and for the inclusion of all categories of legal practitioners as repositories of this ample agency, bound yet broadened by obligatory traditions, professional control and public confidence in the Bar as a massive social instrumentality of democracy. To act for the suitor involves myriad intricate actions often so legal that the client may not even understand the implication, sometimes so sudden that time for taking instructions is absent. Representation in Court may be so demanding and so transforms forensic obligation that a lawyer may have ethical difficulties in mechanically obey all the directions of his principal. The legal skill that is hired by the client may, for its very effective exercise, need an area of autonomy and quickness of decision that to restrict the agency to express authorisation is to ask for an unpredictable and endless enumeration of powers such as what to ask a witness and what not to, what submissions to make and what points to give up and so on. To circumscribe the power to act is to defeat the purpose of the

engagement. Those who know how Courts and counsel function will need no education on the jurisprudence of lawyer's position and powers. Of course, we hasten to enter a caveat. It is perfectly open to a party, like any other principal to mark out in the vakalat or by particular instructions forbidden areas or expressly withhold the right to act in sensitive matters the choice being his as the master. If the lawyer regards these fetters as inconsistent with his position. he may refuse or return the brief. But absent speaking instructions to the contrary the power to act takes in its wings the right and duty to save a client by settling the suit if and only if he does so bona fide in the interests and for the advantage of his client. This amplitude of the power to act springs from the built-in dynamism challenge and flux of the very operation of legal representation as felicitously expressed, if we may say so with great respect, in the noble words of Lord Atkin AIR 1930 158 (Privy Council) . We may supplement the grounds for giving this wider construction by the fact that the legal profession is a para public institution which deserves the special confidence of and owes greater responsibility to the community at large than the ordinary run of agency.

In AIR 1926 Mad 971--T. Kaliappa Mudaliar v. Kumarsami Mudali, the Division Bench has considered provisions of Order 17 Rule 2 of C.P. C. to hold that mere physical presence of party or its pleader is not appearance and it has to be an appearance with intention of leading in the suit under Order 3 Rule 1. The said ruling cited by learned Senior Advocate is not of any assistance to Petitioners here because of the use of words "to appear" and "to act" separately in B.I.R. act.

8. The B.I.R. Act does not compel party to engage an advocate. Hence use of these two words i.e. " to appear" & " to act" will include all steps or operations comprehended by " to appear, to act & to plead". Santuram Khudai Vs. Kimatrai Printers and Processors Pvt. Ltd. and Others, , deals with the issue of right of individual to appear in proceedings under B.I.R. Act. Following observations in paragraph 12 onwards squarely meet the situation at hand.

12. Now a combined reading of Sections 80, 27A, 30, 32 and 33 of the Act leaves no room for doubt that consistent with its avowed policy of preventing the exploitation of the workers and augmenting their bargaining power, the Legislature has clothed the representative union with plenary power of appear or act on behalf of the employees in any proceedings under the Act and has deprived the individual employees or workmen of the right to appear or act in any proceeding under the Act where the representative union enters appearance or acts as representative of employees. We are fortified in this view by a decision of this Court in Girja Shanker Kashi Ram v. The Gujarat Spinning and Weaving Co. Ltd. (1962) 2 Supp SCR 890 : (1962) 2 Lab LJ 369 where Wanchoo, J. (as he then was) speaking for the Court observed as follows:

It will be seen that Section 27A provides that no employee shall be allowed to appear or act in any proceeding under the Act, except through the representative of employees, the only exception to this being the provisions of Sections 32 and 33. Therefore, this section completely bans the appearance of an employee or of

any one on his behalf in any proceeding after it has once commenced except through the representative of employees. The only exceptions to this complete ban are to be found in Sections 32 and 33.

13. The first contention advanced by Mr. Dutta is, therefore, overruled.

14. The second contention raised by Mr. Dutta is also devoid of substance. Sections 32 and 33 of the Act no doubt engraft exceptions on the aforesaid general rules embodied in Section 27A of the Act but they are not helpful to the appellant as the provisos appended thereto specifically preclude individual employees from appearing or acting in any proceeding under the Act where the representative union enters appearance or acts as the representative of employees. It will be advantageous in this connection to refer to the following passage occurring in a decision of this Court *Girja Shankar Kashi Ram v. The Gujarat Spinning and Weaving Co. Ltd.* (1962) 2 Supp SCR 890 (supra) where Wanchoo, J. (as he then was) summarising the position observed as follows:

The result therefore of taking Sections 27A, 32 and 33 together is that Section 27A first places a complete ban on the appearance of an employee in proceedings under the Act once it has commenced except through the representative of employees. But there are two exceptions to this ban contained in Sections 32 and 33. Section 32 is concerned with all proceedings before the authorities and gives power to the authorities under the Act to permit an employee himself to appear even though a representative of employees may have appeared but this permission cannot be granted where the representative union has appeared as a representative of employees. Section 33 which is the other exception allows an employee through any person in certain proceedings only even though a representative of employees might have appeared; but here again it is subject to this that no one else, not even the employee who might have made the application, will have the right to appear if a Representative Union has put in appearance as the representative of employees. It is quite clear therefore that the scheme of the Act is that where a Representative Union appears in any proceeding under the Act, no one else can be allowed to appear not even the employee at whose instant the proceedings might have begun u/s 42(4). But where the appearance is by any representative of employees other than a Representative Union authorities u/s 32 can permit the employee to appear himself in all proceedings before them and further the employee is entitled to appear by any person in certain proceedings specified in Section 33. But whenever the Representative Union has made an appearance, even the employee cannot appear in any proceeding under the Act and the representation must be confined only to the Representative Union. The complete ban therefore laid by Section 27A on representation otherwise than through a representative of employees remains complete where the representative of employees is the Representative Union that has appeared; but if the representative of employees that has appeared is other than the Representative Union then Sections 32 and 33 provide for exceptions with which we have already dealt. There can therefore

be no escape from the conclusion that the Act plainly intends that where the Representative Union appears in any proceeding under the Act even though that proceeding might have commenced by an employee u/s 42(4) of the Act, the Representative Union alone can represent the employee and the employee cannot appear or act in such proceeding.

15. The following observation made by Hidayatullah, C. J. in *Textile Labour Association, Bhadra Ahmedabad Vs. Ahmedabad Mill Owners Association, Ahmedabad*, is also pertinent:

Reading these two sections (Sections 32 and 33 of the Act), we find that it is quite clearly stated in the provisos to the two sections that no individual is allowed to appear in any proceeding in which the representative Union has appeared as the representative of the employees.

16. The second contention raised by Mr. Dutta is also, therefore, repelled.

17. The last contention of Mr. Dutta that in view of the fact that while appearing as the representative union in respondent No. 1's aforesaid application No. 1455 of 1976, respondent No. 2 was not acting for and on behalf of the employees but was acting mala fide and against their interests, the appellant and his five other co-employees should have been allowed to be added as parties to the application and permitted to appear and act therein has also no force. It has to be remembered that mala fide or bona fides of a representative union has no relevance while considering the provisions of Section 27A and Sections 32 and 33 of the Act which taken together impose an absolute ban on the appearance of any individual employee in any proceeding under the Act where the representative union chooses to appear or act as representative of the employees. In case, the employees find that the representative union is acting in a manner which is prejudicial to their interests, their remedy lies in invoking the aid of the Registrar under Chapter III of the Act and asking him to cancel the registration of the union. The following observations made in *Girja Shankar Kashi Ram v. The Gujarat Spinning and Weaving Co. Ltd.* (1962) 2 Supp SCR 890 (supra) are apposite in this connection: "But it is clear that bonafides or malafides of the representative of employees can have nothing to do with the ban placed by Section 27A on the appearance of any one else except the representative of employees as defined in Section 30 and that if anyone else can appear in any proceeding we must find a provision in that behalf in either Section 32 or Section 33, which are the only exceptions to Section 27A. It may be noticed that there is no exception in Section 27A in favour of the employee, who might have made an application u/s 42(4), to appear on his own behalf and the ban which is placed by Section 27A will apply equally to such an employee. In order however to soften the rigor of the provisions of Section 27A, for it may well be that the representative of employees may not choose to appear in many proceedings started by an employee u/s 42(4), exceptions are provided in Sections 32 and 33. The scheme of these three provisions clearly is that if the Representative Union appears, no one else can appear and carry on a

proceeding, even if it be begun on an application u/s 42(4) but where the Representative Union does not choose to appear there are provisions in Sections 32 and 33 which permit others to appear in proceedings under the Act."

18. In view of the above quoted categoric and unequivocal observations, the contrary observations made in *N. M. Naik v. Colaba Land Mills* (1960) I L LJ 448 on which strong reliance has been placed by Mr. Dutta must be treated as overruled.

19. We have, therefore, no hesitation in agreeing with the view expressed by the Labour Court and the High Court and holding that neither the appellant nor his other co-employees had any locus standi to appear or act as individual employees in the aforesaid proceedings initiated by respondent No. 1 in which respondent No. 2 which is the representative union in the industry in the local area had the right to appear and act as the representative of the employees in the industry and did appear or act as such. We may observe here in passing that even the new union to which the appellant and some of his co-employees belonged would have no right to appear or act on behalf of the appellant or his co-employees in the aforesaid proceedings initiated by respondent No. 1 as it had not been registered and recognised as the representative union of employees under the Act". Again in *Shramik Uttarsh Sabha Vs. Raymond Woolen Mills Ltd. and others*, this law has been reiterated & in paragraph 15 Hon"ble Apex Court observed:

15. It is true that an order of the industrial Court in the concerned proceedings would bind all employees of the first respondent even though there may be some among them who owe allegiance not to the representative union but to the appellant. The objective of the provisions of the B.I.R. Act and the M.R.T.U. and P.U.L.P. Act, read together, and the embargo placed upon representation by any one other than the representative of the employees, who, for the most part, is the representative union, except in matters pertaining to an individual dispute between an employee and the employer, is to facilitate collective bargaining. The rationale is that it is in the interest of industrial peace and in the public and national interest that the employer should have to deal, in matters which concern all or most of its employees, only with a union which is representative of them. It may be that a union which was representative of the employees may have in the course of time lost that representative character; it is then open under the provision of the B.I.R. Act, for a rival union to seek to replace it.

Senior Advocate relied on *S.K. Verma Vs. Mahesh Chandra and Another*, to press for need to adopt liberal view & these observations in paragraph 5:

It is trite to say that Industrial Disputes Act is a legislation intended to bring about peace and harmony between labour and management in an industry and for that purpose, it makes provision for the investigation and settlement of industrial disputes. It is, therefore, necessary to interpret the definitions of "industry", "workman", "industrial dispute" etc. so as not to whittle down, but to

advance the object of the Act. Disputes between the forces of labour and management are not to be excluded from the operation of the Act by giving narrow and restricted meanings to expressions in the Act. The Parliament could never be credited with the intention of keeping out of the purview of the legislation small bands of employees who, though not on the managerial side of the establishment, are yet to be denied the ordinary rights of the forces of labour for no apparent reason at all.

Though the principle to adopt such attitude or to give benefit of doubt in process of interpretation has to be accepted, the occasion therefore must first arise. In *H.R. Adyanthaya Vs. Sandoz (India) Ltd., etc. etc.*, Constitutional Bench of Hon'ble Apex Court has not accepted above quoted observations about interpretation of Section 2(s) to be correct position of law. Here, in any case when the provisions of B.I.R. Act are very clear & in view of above judgments directly on point, no such contingency arises & argument is liable to be rejected. In *Ananta Shripati Bhorade and Others Vs. Meher (M.R.) and Others*, learned Single Judge of this Court has, while dealing with B.I.R. Act, taken the view that howsoever liberally interpreted, said saving or exception cannot be read to mean that even when there is a representative union appearing as representative of the employees, the employees themselves can go before the Tribunal and say that they are entitled to appear in the proceeding on their own behalf. It is also observed that Section 27A and 30 must be read together and as a general rule, it is not open to individual employees to appear or act in any proceeding, but they must do so to the representative of the employees. The language of Section 27A is in terms express, explicit and mandatory and if the case falls to be determined u/s 27A read with Section 30, there is no scope for submission that Petitioners were entitled to appear & act before the Industrial Court. These observations are also relevant in present background. In *Usman Habib Vs. State of Bombay and Others*, where Hon Division Bench has again taken same view. The Division Bench holds that only right conferred upon aggrieved employee by B.I.R. Act is to submit to the representative union his grievance and it is ultimately for the representative union alone to decide whether the notice of change should be given and having so decided, it is for the representative union to give notice u/s 42(2). Thus when representative of employees exists and appear, the individual employee like petitioners get no right "to act.

8. After the parties were heard and matter was closed for judgment, I noticed that parties have not addressed about effect of Section 73A of B.I.R. Act on provisions of Section 27A or Section 32. Hence, matter was again directed to be listed for hearing and parties were heard on this point. Learned Advocate Shri Puranik beginning the arguments on point has invited the attention of Court to various Sub sections of Section 3 and also to provisions of Rule 10 and 11 of The Bombay Industrial Relation Rule is, 1947 to argue that registered approved union may be either representative union or qualified union or primary union. It is his contention that Section 73A itself requires "representative of employees" and hence incorporates reference to Section 30 of B.I.R. Act and hence, scheme

contemplated in chapter V thereof is also applicable to reference before lower Court which also is proceeding under B.I.R. Act. In order to drive home his point, he is also invited attention to forms A,B,C and form D with B.I.R. Rules and to entire chapter IV dealing with Approved Unions and also to Sections 71, 72 and 73A. His stand is non-obstante Clause appearing in Section 73A is necessitated because of earlier sections in very same chapter XI and it does not in any way dilute mandate of chapter V. Learned Senior Advocate Shri Pendharkar has however placed reliance on very same provisions to state that B.I.R. Act itself makes distinction between unions registered under Trade Union Act and registered under B.I.R. Act he further states that by Section 73A a special right is conferred upon Approved Union and said right and procedure prescribed for its exercise by Chapter XI would stand defeated if chapter V is permitted to eclipse it. He has relied upon certain judgments to which reference is being made little latter. It is his argument that such right is in fact an obligation upon respondent No. 4 union to get reference made and to prosecute it till its final disposal as per Section 76 of B.I.R. Act.

9. Section 73A appears in Chapter XI titled Arbitration. This said section is already reproduced above. There is no dispute here that the present reference to Industrial Court is u/s 73A. The reference therefore must be at the instance of a "registered union" and said registered union has to be "representative of employees" and also "an approved union". Section 3(1) defines "approved list" to mean list of approved unions maintained by the Registrar u/s 12. Section 3(2) defines "approved union" to mean a union on the approved list. Sub-section (30) defines "registered union" as union registered under this Act. Sub-section (38) defines "union" as Trade Union of employees which is registered under the Indian Trade Unions Act, 1926. Terms like "representative of employees", "Registrar", provisions of Section 12 are already mentioned above. Procedure to be followed by union for getting its name on list of approved unions is prescribed by Section 23. This section occurs in chapter IV with title Approved Unions. Section 23(1) contemplates that Registrar after holding inquiry enter a union on approved list. The terms and conditions to be satisfied by such aspirant union are also specified in this section and said terms and conditions or procedure is not relevant for present discussion. Only relevant aspect to be noticed is that it does not contemplate registration of applicant union as approved union and it no where uses the word "registration" or "register". Sub-section (1), first proviso thereto and Sub-clauses (a) to (c) of its second proviso, Sub-section (4); all use word "enter". Thus, a trade union as mentioned u/s 3(38) can get its name "entered" by following procedure prescribed u/s 23. However, this is not registration of union for the purposes of B.I.R. Act as contemplated by Section 3(30). This registration is prescribed for by chapter III which speaks of Registration of Unions. Section 12 reproduced above also strengthens this difference between registered union and approved union. Section 13 is relevant for present purposes and it is:

13. Application for registration.

(1) Any union which has for the whole of the period of three calendar months immediately preceding the calendar month in which it so applies under this section a membership of not less than 25 percent of total number of employees employed in any industry in any local area may apply in the prescribed form to the Registrar for registration as a Representative Union for such industry in such local area.

(2) If in any local area no Representative Union has been registered in respect of an industry a union which has for the whole of the period of three calendar months immediately preceding the calendar month in which it so applies under this section a membership of not less than 5% of the total number of employees employed in such industry in the said area may apply in the prescribed form to the Registrar for registration as a Qualified Union for such industry in such local area.

(3) If in any local area, neither a Representative Union nor a Qualified Union has been registered in respect of an industry, a union having the membership of not less than 15 percent of the total number of employees employed in any undertaking in such industry in the said area and complying with the conditions specified in Section 23 as necessary for being placed on approved list may apply in prescribed form to the Registrar for registration as a Primary Union for such industry in such local area.

(4) Notwithstanding anything contained in this section, if a union makes a fresh application for registration as a Representative Union, Qualified Union, or as the case may be, Primary Union, before the previous application for such registration has been finally disposed of by the Registrar, the Registrar shall not entertain such application.

It is therefore clear that a trade union though not entered on list of approved unions u/s 23, can still apply for registration as Primary Union for an undertaking in industry u/s 13(3) but only when there is no Representative Union or Qualified Union. In other words, if a Representative Union or a Qualified Union is duly registered in relation to any industry, there is no question of Primary Union in relation to any undertaking in such industry. A registration as Representative Union or as Qualified Union is in relation to entire industry in any local area while registration as Primary Union is in relation to undertaking in such industry in said local area. The requirements of Section 13 mentioned above clearly show large following which a Representative Union or Qualified Union is required to demonstrate as compared to Primary Union. Similarly perusal of Section 11 shows that a concern in an industry can be recognised as "undertaking" by Registrar and any section of such an undertaking can be recognised as occupation. Therefore "undertaking" for which such "Primary Union" is registered represents only a small part of entire industry.

10. In this background, when Section 30 is looked in to; it becomes apparent that trade union whose name is entered in approved list, is not recognised as

"representative of employees". Section 73A requires a union recognised as Representative of employees and at the same time it has also to be an approved union. Thus such approved union has also to be a registered union to enable it to have reference made as contemplated by this section. In other words, it must be registered u/s 13 above for that purpose. By implication, it follows that it is recognised as such in relation to entire industry or an undertaking in such industry in local area. Union on Approved List fulfilling necessary requirements can therefore be registered as Representative Union or Qualified Union as the case may be, or as Primary Union, if there is no Representative Union or Qualified Union for such industry in said local area. Advocate Puranik for respondent number 2 has invited attention to Section 23B to state that respondent No. 4 union at whose instance reference has been made u/s 73A is "deemed approved union". Said section reads:

23B. Recognised union under C.P.& Berar XXIII of 1947 to be approved union for the purposes of this Act. Notwithstanding anything contained in Sub-section (1) of Section 23, any union registered as a recognised union in any local area in respect of any industry under the Central Provinces and Berar Industrial Disputes Settlement Act, 1947 (XXIII of 1947), shall, on the commencement of the Bombay Industrial Relations (Extension and Amendment) Act, 1964 (XXII of 1965), be deemed to be an union entered in the approved list as an approved union for that local area in respect of that industry.

In the facts of present case, it is not necessary to delve into more depths in this matter because respondent number 2 employer has not questioned the legality or otherwise of the reference made by State Government on the ground of lack of status of Union i.e. respondent No. 4 which got it made. On the contrary, Petitioners as also respondent number 2 accept it to be Representative Union on approved list.

11. The prosecution of arbitration by respondent No. 4 Union is therefore as Approved Union which happens to be also Representative Union. The entire scheme of Section 27A, 32 and 33 discussed above therefore clearly shows that when respondent No. 4 is in picture as Representative Union, absolute bar prescribed on appearance of any other person or employee including petitioners is attracted. With the leave of Industrial Court petitioners can be permitted only to appear in such arbitration reference only if the reference is at the instance of other registered union which happens to be also on approved list but is not Representative Union. The argument of learned Senior Advocate that Section 73A which begins with non-obstante clause overrides the provisions of Section 27A, 32 and 33 cannot be accepted because Section 73A itself uses the phrase "representative of employees" and thus expressly draws attention to Section 30 of B.I.R. Act. The order of preference prescribed therein to enable such representative of employees to appear or act is expressly saved by Section 73A and proceedings in arbitration before Industrial Court instituted because of reference thereunder are "proceedings under this Act" as contemplated by

Section 27A of B.I.R. Act. Detailed discussion in this respect is already undertaken above. There is nothing in chapter XI dealing with Arbitration which militates with the spirit and purpose of various provisions in chapter V or dilutes primacy given to registered unions in the matter of entitlement to appear or to act. Said angle in proceedings under chapter XI is regulated by scheme under Chapter V. Reliance by Shri Pendharkar upon ruling J.C. Mills v. Chairman, Industrial Court reported at AIR 1953 MB 231 to show that respondent No. 4 has incurred obligation u/s 73A to make reference is therefore not helpful in this situation. Support taken from Ahmedabad Mill Owners' Association Etc. Vs. The Textile Labour Association, to contend that reference u/s 73A is not regulated by Section 27, 30 or 32 is again misconceived because there the issue considered is in the light of provisions of Section 42 of B.I.R. Act which requires notice of change or approach notice to be given before filing the proceedings in court of law. The said analogy cannot be extended while interpreting nonobstante clause with which Section 73A begins in the light of riders placed by chapter V of B.I.R. Act. It was urged before Hon Apex Court that the power conferred on the State Government by Section 73 is the power to refer an industrial dispute to the arbitration of the Industrial Court, and there can be no industrial dispute unless a notice of change has been given either by the employer or the employee. An effort was to contend that unless a notice of change is given as required by Section 42, no industrial dispute can be said to arise between the employer and his employee, and Section 42 governs Section 7. While rejecting that argument, in paragraph 26, Hon Apex Court observes: --"It is true that the power conferred on the State Government to make a reference is not absolute or unqualified. It can be exercised only if one or the other of the conditions specified by Sub-section (1), (2) or (3) of Section 73 is satisfied. But once the State Government comes to the conclusion that one or the other of the said conditions is satisfied, its power to make a reference is not limited to cases where notice of change has been given by the parties as required by Section 42. It is an over-riding power which is intended to be exercised to avoid anomalies or other serious consequences which would flow in case the Government does not make an immediate reference. The requirements prescribed by Sub-sections (1), (2) and (3) of Section 73 indicate the types of cases which are intended to be referred without requiring the parties to take recourse to Section 42." Use of this ruling is unwarranted to decide the present issue and the argument is not valid here because of use of words "representative of employees" in Section 73A. In AIR 1954 S.C. 73 "Raja Kulkarni v. State of Bombay" relied on by learned Senior Advocate again entirely different issue has been examined and in paragraph 11, Hon. Apex Court observes that the right of the appellants to freedom of speech and expression and to form associations or Unions under Article 19(1) and (c), read with Article 14, conferring the right of equality before the law or the equal protection of the laws is not infringed by the Act, and it saw no merit in the contention that Act gives preference to a trade Union upon the artificial test of having the greater percentage of membership, namely not less than 15 per cent. Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, has been relied

upon by Senior Advocate to urge that a Code of procedure must be regarded as designed to facilitate justice and further not as a penal enactment for punishment and penalties; not a thing designed to trip people up. Hon Apex Court has also observed that too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it. In view discussion above, this dictum has no application here.

12. As already mentioned above B.I.R. Act recognises the difference between "to appear" and "to act" in proceedings under it. Thus, power to act in said proceedings is expressly given only to "representative of employees" while in certain contingencies individuals or employees or even unions which are not representative of employees, can only be permitted "to appear" with the leave of Industrial Court. Such leave "to appear" is not contemplated in matters of present nature, if Representative Union has appeared as the "representative of employees". Therefore, when Representative Union is not appearing as such in any proceedings, then only Industrial Court can permit individual "to appear". But, in no case can Industrial Court permit such individual "to act" in any proceedings whether Representative Union or any other Registered Union has appeared in proceedings before it. "To act" is the privilege expressly left only to representative of employees by legislature. Petitioners before this Court have not expressly applied for any such permission "to appear" and as is apparent, when Representative Union has already appeared Arbitration Reference in Section 73A proceedings, Industrial Court does not even possess jurisdiction to grant such permission. The contention of learned Senior Advocate Shri Pendharkar is that when Industrial Court issued notice to respondent number 2 on application moved by Petitioners, such permission must be deemed to have been granted. The fallacy in the argument is apparent because even on express application seeking such permission, Industrial Court could not have granted it for want of jurisdiction with it. In any case, permission (if presumed possible) could have been only "to appear" and not "to act". When Petitioners moved application and got notice issued to new party or successor of erstwhile employer, the step is not mere appearance and it falls within domain of activities covered by words "to act". Such "act" is totally prohibited by anybody else except "representative of employees". It is therefore clear that there is no scope for inferring any such permission. The order passed by Industrial Court granting such permission to appear has to show application of mind to the facts of case before it and also to the law on the point. No such speaking order has been pointed out and merely by obtaining order of issuing notice to respondent number 2 Company as successor of their employer, present Petitioners cannot be permitted to contend that such permission must be deemed to have been granted. On the contrary, from voluntary objection raised by Member Industrial Court in facts of present case, it appears that Industrial Court became aware of limitations on its power in the matter and therefore asked Petitioners to establish their locus. I do not find

any propriety in joining respondent No. 3 Industrial Court in its personal capacity as party respondent in present petition. Here, it cannot be forgotten that respondent number 4 Union actively participated in Arbitration proceedings and also lead evidence till 31/1/1984 when Industrial Court upheld preliminary objection of employer and rejected the reference. The Representative Union thereafter chose "not to act" and did not approach Hon High Court and it is Petitioners who filed W. P. 2262 of 1984.

13. Perusal of application dated 5/1/1993 moved by Petitioners before Industrial Court reveals that the grievance made therein by Petitioners/applicants was that their service conditions are being adversely affected and the further state that they were Petitioners in writ petition 2262 of 1984. They further state that Maharashtra State Textile Corporation Limited needed to be noticed because question of apportionment of liability between earlier employer and successor company was to be gone into. The Industrial Court appears to have mechanically issued notice without noticing bar provided against it in chapter V. However, it is apparent that the prayer made was not for seeking permission to appear & in fact, present Petitioners actually "acted" by getting notice issued to respondent No. 2 and also respondent No. 4. This is not at all contemplated and permitted by B.I.R. Act and Industrial Court can not be even dreamed of having given necessary permission to Petitioners in the matter. The Petitioners cannot seek to replace respondent No. 4 altogether in such mode and manner. The ban imposed by law upon Petitioners springs into existence moment it is shown that Representative Union has appeared in the matter. If Petitioners found that respondent No. 4 was not espousing their cause or was colluded with respondent No. 2, they have to take steps under B.I.R. Act for cancellation of registration of such Union or for its replacement by better Union with larger membership.

14. Writ Petition No. 2262 of 1984 earlier filed by Petitioners was challenging the order of Industrial Court upholding preliminary objection raised by Employer that Retail Sales Division was excluded from the operation of B.I.R. Act. When the matter was before this Court earlier in said writ petition, respondent No. 4 Representative Union did not appear & participate in hearing. Present respondent number 2 raised objection to the tenability of petition on the ground that no conciliation was held earlier and hence reference to arbitration u/s 73A was not legal. Said claim was negated and also objection about lack of locus in Petitioners to challenge order of Industrial Court was held to be without any merit. This Court has observed that argument that Reference was sought by Representative Union and as it was satisfied with the award, it did not approach High Court and hence Petitioners could not maintain said writ petition was liable to be rejected as illogical. It was noticed that Bombay Shops and Establishment Act did not regulate service conditions of Petitioners and did not provide any remedy or forum to them for redressal of their grievance. However, issue is considered only in the light of challenge to award of Industrial Court in writ jurisdiction and fetters placed upon powers of Industrial Court in the matter of granting permission "to appear" have not at all been considered as that was not the issue.

The contingencies requiring scrutiny of status of present Petitioners to appear in reference has arisen only thereafter before Industrial Court. The said judgment therefore cannot and does not save the situation for present Petitioners in this matter.

16. In the result, I find that in view of bar provided for u/s 32, Petitioners cannot seek any leave "to appear" from Industrial Court because in arbitration proceedings before said court, the Representative Union had already appeared and acted also. It is further apparent that Petitioners were also needing leave "to act" which could not have been granted by Industrial Court. In such circumstances, no exception can be taken to order passed blow exhibit 28 by it. There is no substance in present Writ Petition. Same is accordingly dismissed, however, without any order as to costs.