

(2001) 09 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 2379 of 2000

Associated Cement Companies Ltd.

APPELLANT

Vs

Associated Cement Staff Union and Another

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 36(2), 36(3), 36(4)

Citation : (2002) 92 FLR 148 : (2002) 3 MhLj 677

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : A.A. Joshi, for the Appellant; P.M. Patel, for the Respondent

Final Decision : Partly Allowed

Judgement

F.I. Rebello, J.—In spite of the law laid down by the Apex Court in a Paradip Port Trust, Paradip Vs. Their Workmen, , the controversy over the interpretation of Section 36(2) of the Industrial Disputes Act. 1947, still seems to be in issue. Tribunals, Courts including High Courts are being called upon to decide objections raised as to who can represent the Employers in proceedings under the Act. Instead of resolving and deciding Industrial Disputes, much time is being wasted in trying to resolve the controversy, which to my mind considering the ratio decidendi in Paradip's case and for reasons given in this Judgment is no longer open. The issues in controversy may now be set out:

(a) Whether a lawyer who is an office bearer of an Employers Association can represent the Employer and what is the meaning of the expression "Officer" u/s 36(2) of the Industrial Disputes Act;

(b) Whether the persons other than lawyers who are not office bearers of Trade Unions or Officers of an employers Association, if they comply with the requirements of Section 36(4) of the Industrial Disputes Act can be permitted to appear before Industrial Tribunal Labour Court and what is the meaning of the expression "Legal Practitioner".

2. The company in the instant case was sought to be represented by Shri C.V. Pavaskar and Shri S.V. Mokashi. The respondent Union raised objection by their application dated 19-9-2000. The objection was both to the appearance of Shri C.V. Pavaskar and Shri. S.V. Mokashi on the ground that they are legal Practitioners and consequently are not entitled to represent the petitioner company. In the Vekalatnama given to Shri C.V. Pavaskar he is described as Central Executive Committee Member of the Employers Federation of India of which the Company is a member. Shri S.V. Mokashi is described as labour Advisor of the company. The company filed their reply to the objection by their application dated 25-9-2000. In the said application, it was set out that Shri. C.V. Pavaskar being Member of the Executive Committee of the Association of which petitioner company is member is competent to represent the company. It was pointed out that the similar objection to their appearance were taken in another matter against both Shri C.V. Pavaskar and Shri. S.V. Mokashi. The objection against Shri S.V. Mokashi, it is contended is wholly unwarranted as he is not advocate or legal practitioner. Considering that, it is contended that the objection should be rejected. The orders passed in Application No. NTB 95-96 and Application No. NTB/17/96 wherein both C.V. Pavaskar and S.V. Mokashi were allowed to appear was in issue before this Court in Anil R. Joshi v. Air India Ltd. in Writ Petition No. 1479 of 1999. On facts and on contentions raised therein, this court did not interfere with the order permitting them to appear by Judgment dated 26th July, 2001. The Industrial Tribunal in this case by its order dated 28-9-2000 upheld the objection of the Union for appearance of C.V. Pavaskar as legal practitioner. Shri Mokashi was allowed to appear and participate in the Reference on behalf of the first party. In paragraph 14 of its order, the learned Industrial Tribunal insofar as Shri Mokashi is concerned, has observed that the learned representative of the respondent Union has accepted the clarity of law insofar as the position of Shri Mokashi in the federation is concerned. In these circumstances, it is observed that the matter was not been elaborated.

3. Aggrieved by the order, rejecting the appearance by Shri C.V. Pavaskar, the petitioner has preferred this petition. At the hearing on behalf of the respondent No. 1 it is pointed out that Shri Mokashi was not an Office Bearer of an Employer's Association. The petitioners were called upon to clarify the position. An affidavit has been filed on 4th September, 2001. by Shri Suryaprakash Mathur, the Vice President (H.R. & A.) of the petitioners. In Paragraph three, it is set out that Shri S.V. Mokashi is not enrolled as an Advocate and he can appear before Industrial Tribunal being a non-legal practitioner on authorization by respective companies. In paragraph three it is set out that Shri S.V. Mokashi was a former Labour Advisor of Bombay Chamber of Commerce and Industries. After retirement from Bombay Chamber of Commerce and Industries, he is working as Labour Advisor and advising the company in Labour matters before the Industrial Tribunals, Labour Courts etc. It is also pointed out that Shri Mokashi is also appearing independently in labour matters for several companies. In paragraph

four, it is pointed out, that respondent's have consented to the appearance of Mokashi and leave of the Court has been granted. The respondent, it is contended are estopped now from raising an objection. At this stage itself, clarification was sought from the petitioners, as no application was moved on behalf of Shri Mokashi u/s 36(4) of the Industrial Disputes Act nor is the representation sought u/s 36(2) of the Industrial Disputes Act. Consequently the question of respondent No. 1 giving no objection and the Industrial Tribunal giving its consent did not arise. The Industrial Tribunal was deciding whether Shri Pavaskar and Shri Mokashi could appear before it as representative of the Employer u/s 36(2) of the Industrial Disputes Act. It is true that respondent No. 1 has not challenged the said order insofar as Shri Mokashi is concerned. That is an independent issue which can be considered while disposing of the petition.

4. With the above background, we may now proceed to decide the controversy in issue. Section 36 of the Industrial Disputes Act, 1947 as originally enacted read as under :

"36. Representation of parties. (1) A workman who is a party to dispute shall be entitled to be represented in any proceeding under this Act by :

(a) an officer of a registered trade union of which he is member;

(b) an officer of a federation of trade unions to which the trade union referred to in Clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by an officer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceedings under this Act by :

(a) an officer of an association of employees of which is a member;

(b) an officer of a federation of associations of employers to which the association referred to in Clause (a) affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers, connected with, or by any other employer engaged in the industry in which the employer is engaged and authorized in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding before a labour court, tribunal or national tribunal a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceedings and with the leave of the labour Court, tribunal

or national tribunal, as the case may be."

Section 36(i)(a)(b)(c) of the Industrial Disputes Act, 1947 came to be amended by Act 45 of 1971. By virtue of Section 6 of the amended Act, the word "Officer" was substituted by "any member of the Executive Committee or other Office bearer".

Earlier definition under 2(b) of the Trade Unions Act, 1926 came to be amended by Act 38 of 1964 dated 10th December, 1964. By the said amendment the Word "Office Bearer" was substituted for the word "Officer" as was existing. The statement of objections and reasons to the Bill introduced at the time of amending Section 36 of the Industrial Disputes Act states as under :

"3. Word "Officer" is not considered appropriate in the case of trade unions and has therefore, sought to be substituted by the word "Office Bearer".

Thus as can be seen u/s 36 as originally enacted, the expression used was "Officer". Subsequent to the amendment to the cognate legislation namely "Trade Unions Act" which substituted the word "Officer" by "Office Bearer" as the expression officer was found to be inappropriate for Trade Unions. Section 36 of the Industrial Disputes Act was also amended. This avoided inconsistency as to who were the office bearers of the Managing Committee or Executive Committee of the Trade Unions.

5. Both the parties sought to place reliance on judgments of various High Courts apart from placing reliance on the judgment of the Apex Court in Paradip (supra) in respect of their respective submissions. I will first advert to the judgment of the High Courts and thereafter referred to the judgment of the Apex Court in Paradip (supra). A Division Bench of the Calcutta High Court in INFAR (India) Ltd. Vs. Madan Mohan Ghosh and Others, was considering the expression "Officer" and "Office Bearer" and whether two mean two different things. The Division Bench of the Calcutta High Court referred to concise Oxford Dictionary for the meaning of the word "Officer" wherein expression was set out as under :

"Holder of public, civil or ecclesiastical office, sovereign's servant or minister appointed or elected functionary".

From the above definitions, any person who is holding office in any Society or Organization or authority can be included in the expression "Officer". The Division Bench then observed as under :

"Any Officer" of the Employer's Association can represent like any "Office Bearer" of the Trade Union representing workmen. A distinction was sought to be made between "Officer" and an "Office Bearer". The expression "Officer" u/s 36 has been used in the context of the Employer and "Office Bearer" in the context of Trade Union. The expression "Officer" will have to be read in the context where it has been used. But the same meaning will have to be given to the expression "Officer" in the context of the Trade Union or in the context of the employer's association. The expression "Officer" cannot be given two different meanings in

same Section. When the "Officer" appears in the context of the employer, it means a person who is office holder of the Association and when the officer appears in terms of the Trade union it is office bearer of any trade union be it a President or Secretary....."

The Division Bench of the Calcutta High Court then noted its earlier judgment in *Bharat Petroleum Corporation Ltd. v. C. G. Industrial Tribunal and Ors.*, 1993(2) LLJ 608. wherein another Division Bench had taken a view that the expression "Officer" does not come within Section 36(2) of the Act. The Division Bench noted that the earlier Division Bench of the said Court had not taken note of Section 2(111) where the expression "Office Bearer" in relation to the Trade Union includes any member of the Executive thereof but does not include an Auditor. The issue before the Court was whether a member of the Executive Committee was an officer or office bearer. A Single Judge of the Karnataka High Court in *Hotel Ashoka v. Presiding Officer, Additional Labour Court and Anr.*, 1984(4) FLR 1984 after exhaustively considering the various definitions, amendments to the Industrial Disputes Act, Trade Unions Act and the meaning given to the word "Officer" in various dictionaries held that the word "Officer" used in Section 36(2) of the Industrial Disputes Act includes both categories of persons, namely an employee who hold a responsible post under the employer's Association as also legal practitioners who are office bearers of such Association or Federation. A learned Single Judge of the Delhi High Court in *Management of Association Cement Cos. Ltd. v. Workman Saroj Arora*, 2001 (1) CLR 739 has taken a view that the legal practitioner if he represents workmen as "Office Bearer" of a registered Trade Union or Officer of the Association of Employers is neither barred nor required to obtain consent of the other side. My attention was also invited to the Judgment of this Court in *Nandial More Vs. Ramchandiram Mirchandani and Others*, which is a Judgment given on the expression "Officer" in the Companies Act amongst other, I will not advert to this Judgment as in my opinion the Apex Court has noted the definition under the Companies Act in the case of *Paradip Port Trust*.

6. On behalf of the respondents, it was contended that unless the Act so provides for representation no party can appear and this is what the Court must bear in mind while construing Section 36(2) of the Act. Reliance was placed in the Judgment of *Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi*, 1992 FJR 213. That was a case wherein issue was the right of representation to a workman in a domestic enquiry. The Apex Court observed that unless the standing orders provided for representation of the person, who sought to represent the delinquent workman, there was no right of representation. We may now address ourselves to the judgment of the High Courts which have taken a contrary view of the expression "Officer". A Division Bench of the Calcutta High Court in *Bharat Petroleum* (supra) which was not followed by the subsequent Division Bench in *Infar (India) Ltd.* (supra) had taken a view that the word "Officer" and "Office Bearer" were two different expressions. There some additional factors were noted by the subsequent Division Bench. On facts the Court noted the issue was

whether a member of the Executive Committee was an Officer. The latter Division Bench noted that the earlier Division Bench had not considered definition of 2(111) of the Industrial Disputes Act. A Division Bench of the Orissa High Court in *Kalinga Studios Ltd. Vs. Presiding Officer, Industrial Tribunal and Others*, after considering the dictionary meaning of the word officer and other factors held that a person can be said to be officer if he is in service as a regular officer of the Association or the company. In that case, the Division Bench on the facts held that the concerned person does not satisfy the conditions as he had been merely co-opted to the Executive Committee and nominated as an Officer to give legal advise to conduct cases on behalf of the Members of the Association. The Division Bench noted that such person is not Officer of the Association. We then come to the Full Bench Judgment of the Andhra Pradesh High Court in the case of *Andhra Pradesh Power Diploma Engineer's Association Vs. Andhra Pradesh State Electricity Board and Another*, . One of the issues before the Full Bench was whether an advocate is eligible to appear before the Industrial Tribunal on behalf of the party in the Industrial Dispute in his capacity as Joint Hon. Secretary of the Federation of the Andhra Pradesh Chamber of Commerce and Industry. While answering the issue, the Full Bench of the Andhra Pradesh High Court after an exhaustive discussion, noted that the Court while interpreting the section must take note of the legislative intendment which is paramount and has to interpret it in that sense alone. The Full Bench also noted that there is no canon of interpretation of statutes that the provision of one special statute is to be interpreted with reference to another. It was in the context of considering the provisions of the Trade Unions Act and the Societies Registration Act. The Court noted that an Office Bearer of a Trade Unions can represent the Union u/s 36(i) even if he be a lawyer but lawyers are barred as "Officer" of an Association and that the word "officer" and "office bearer" have to be read differently. The Judgment of this Court in *Nandlal (supra)* for the purpose of who is an officer under the Companies Act was noted. Another Single Judge of the Andhra Pradesh in *General Manager, National Bank for Agricultural and Rural Development, Musheerabad, Hyd Vs. Presiding Officer, Industrial Tribunal-I, Hyd. and another*, after referring to the Full Bench Judgment of the Andhra Pradesh High Court also took a view that a legal practitioner although Office Bearer or Member of the Managing Committee or Management of Union cannot be said to be officer of such Union and as such cannot represent the Management in Industrial Dispute before the Industrial Tribunal.

7. It is therefore clear that even after the Judgment in *Paradip Port Trust (supra)* there seems to be conflict of opinion amongst High Courts as to whether the expression "Office Bearer" and "Officer" do have the same meaning. Before addressing myself to the Judgment in *Paradip Port Trust*, the provisions of the Industrial Disputes Act itself must be noted to find out whether there is internal evidence in the Act itself, which indicates that the expression "Office Bearer" and "Officer" are one and the same or not. In the first instance, as already noted, in Section 36 as initially enacted the expression used both for Trade Unions and

Employers Association was "Officer". It is only subsequent to the amendment to the Trade Unions Act, where the word Officer as was existing, was substituted by the word "Office Bearer" that Parliament proceeded to amend the Industrial Disputes Act and substituted the word Officer by the words "by a member of the Executive Committee or other office bearer under Industrial Disputes Act of 1947. Once the same language was used in the Section, it is a normal canon of interpretation that it must be construed similarly unless there are strong reasons to the contrary. Therefore, the word "Officer" under the Industrial Disputes Act before its amendment had to be read in the like manner both in respect of Trade Unions and Association of Employers or Federation of Associations of Employers. Similar was the position under the Trade Unions Act before its amendment when the word "Officer" was supplanted by the expression "Office Bearer". It may also be noted that the Trade Unions Act does not provide only for registration of Trade Unions of workmen; it also provides for registration of Trade Unions of Employers. Section 2(h) of the Trade Unions Act defines a Trade Union. Apart from workman, a Trade Union can also be any combination whether temporary or permanent formed primarily for the purpose of regulating relation of workman and employers or between employers and employers or for imposing restrictive conditions on the conduct of trade or business and includes Federation of the Trade Unions. Therefore, if the employers formed a trade union, the office bearers of both were "Officers" in terms of Section 36 as first enacted. What happens after the amendment, can for instance the "office bearers" of a Trade Union of workers constitute a class with distinct characteristics from office bearers of a Trade Union of Employers. Apparently they will not. Then will not exclusion of office bearer of a Trade Union of Employers from representing the employer be arbitrary, as Section 36(2) was not amended to include office bearers of Employers Trade Unions. Section 36, provides the modes of representation to both workers and employers. The classification of office bearers of Trade Unions as between workers and Employers will be unreasonable because there would be no nexus with the object which is representation before Industrial Tribunal and Labour Courts. In such a situation, courts will have to read down the language, if required to bring the Section outside the purview of challenge on the ground of arbitrariness. The Amending Act when it substituted word "Officer" for Office Bearers, including any member of the executive perhaps did not take into consideration a Trade Union of Employers. Shri Pavaskar in fact is a member of executive of the Employer Federation of India which is a registered Trade Union. The only purpose seems to have been to distinguish between members of Executive Committee of Trade Union of workers and of Association of Employers which can also be registered under the Societies Registration Act. Therefore, considering the position before the amendment and after the amendment of the definition in the Trade Union Act and Industrial Disputes Act what can be said is that both the expressions have the same meaning. They merely identify the members of the Executive Committee and its Officers, both of Trade Union as also Officers Association. The expression "Officers" of Employers Association was not meant to mean those in their employment and control. Officers can

independently represent either the Trade Union or Employer's Association. In relation to a trade union, Office bearers means the body by whatever name called in whom the management of the affairs of the trade union is entrusted. "Officers" in relation to an Employers Association also mean the body by whatever name called in whom the management of the affairs of the Association is entrusted.

8. The most important aspect however, is the Industrial Disputes Act. The word workmen has been defined u/s 2(s) on the one hand and employer u/s 2(g) on the other. A person to be an Employer must satisfy the tests as set out in Section 2(g) of the Industrial Disputes Act. Similarly the workmen u/s 2(s) includes all persons. However, for the purpose of the Industrial Disputes Act certain categories or classes are excluded as set out therein. Reference need not be made to the Special categories, but to those holding supervisory posts and drawing salary above the minimum laid down under the Act or those employed mainly in a managerial or administrative capacity. The word "Officer" has not been used under the Industrial Disputes Act. Therefore, it would be clear from this that the word "Officer" in Section 36 would have to be read differently in construing the relationship of Employer and of workmen u/s 2(s) of the Industrial Disputes Act. A workman in its widest amplitude includes all persons including supervisory but excludes those employed mainly in managerial or administrative capacity who are denied the protection of the Industrial Disputes Act. This to my mind is internal evidence in the Act itself, to show that the expression "officer" is distinct from the expression workman or those employed in supervisory, managerial or administrative capacity. The expression Officer has not been used in the Act. The only place where the expression is used, is in Section 32 of the Industrial Dispute Act in the matter of offences committed by companies. The word Officer there is used along with Director, Manager amongst others as defined under the Companies Act so as to specifically hold them liable for offences committed by the company.

The expression "Officer" under the Trade Unions before its amendment meant those holding office in the Trade Union. Those holding office in the Trade Union would be the office bearers. The same meaning will have to be assigned to "Officer" of Association to mean that those holding office in the Association, Trade Union or an Association of employers by themselves can be Employers if the activities that they carry on fall under the expression "Industry". Therefore, they can also have persons, who will include supervisors, and persons working in Managerial or administrative capacity. Therefore, the expression "Officers" in Section 36 of the Industrial Disputes Act, cannot be identified with those in employment of the Employer whether Union or Association. They must connote something different or distinct. That would be satisfied if it is held that the expression "Officer" means those who constitute the executive of Association or in other words its office bearers. This to my mind makes it abundantly clear that what Parliament meant when the Act was enacted and even after its amendment vide amendment of 1971 that the word "office bearer", and "Officer" has been

used differently from those in employment of the employer. All those in employment are workmen, except those engaged in supervisory, managerial or administrative work who also are workmen but are denied the protection of the Industrial Disputes Act. The definition of workman has not included the expression "Officer" unlike the Companies Act. I have therefore, no hesitation to hold that the expression Officer in Section 36(2) would mean those holding Office in the Association namely controlling affairs of the Association and that would including the Executive Committee of the Association or its office bearers.

9. Apart from what I have said earlier. It will also be clear from the judgment in Paradip that this issue is no longer in issue if the Judgment in Paradip is carefully analysed and understood. I may reproduce Paragraph 16 of the Judgment which reads as under :

"16. If, however, a legal practitioner is appointed as an officer of a company or corporation and is in their pay and under their control and is not a practicing advocate the fact that he was earlier a legal practitioner or has a legal degree will not stand in the way of the company or the corporation being represented by him. Similarly if a legal practitioner is an officer of an association of employers or of a federation of such associations, there is nothing in Section 36(4) to prevent him from appearing before the tribunal under the provisions of Section 36(2) of the Act. Again, an office bearer of a trade union or a member of its executive, even though he is a legal practitioner, will be entitled to represent the workmen before the tribunal u/s 36(1) in the former capacity. The legal practitioner in the above two cases will appear in the capacity of an officer of the association in the case of an employer and in the capacity of an office bearer of the union in the case of workmen and not in the capacity of a legal practitioner. The fact that a person is a legal practitioner will not affect the position if the qualifications specified in Section 36(1) and Section 36(2) are fulfilled by him."

10. It will be clear from the above that the Apex Court itself noted that the Office Bearers would be qua Trade Unions and Officer would be qua Employers Association. The Judgment has also dealt with those holding a legal degree and in employment of the company or the Corporation. Such a person as an officer of the company and in its employment could appear for the company. However, in the case of a legal practitioner who is an officer of an Association, the Apex Court has not said that such a person must be in the pay and control of the Association. There is a clear distinction between the two categories of "Officers" noted by the Apex Court. If they appear either for the Trade Unions or Employer in their capacity as Office Bearer or Officer, then they can do so u/s 36(1) or 36(2) respectively. We may now also advert to another part of the judgment which to my mind is also important.

"..... So far as trade unions are concerned, there is no difficulty in ascertaining a member of the executive or other office bearer and Section 36(1) will create no difficulty in practical application. But the word "Officer" in Section 36(2) is not defined in the Act and may well have been as done, u/s 2(3) of the Companies

Act. This is bound to give rise to controversy when a particular persons claims to be an officer of the association of employers. No single test nor an exhaustive test can be laid down for determining as to who is an officer in absence of a definition in the Act. When such a question arises the tribunal, in each individual case, will have to determine on the materials produced before it whether the claim is justified. We should also observe that the officer u/s 36(2) is of the association or of the federation of Association of employers and not of the company or corporation."

It is true that this paragraph can cause some confusion whether "Officers" of the Association has to be read in a like manner as an "Officer" as defined under the Companies Act. To my mind it is clear that what the Apex Court meant was how to identify the Officers or Office Bearers of the Association. In paragraph sixteen the Apex Court has noted the test to distinguish the other Officers as those in the pay and control of the company. It is clear therefore, the expression "Officer" in Section 36 in the context it is used is different from "an Officer" who is in the pay and control of the company as an employee or workman.

With the above discussion, the first question must be answered as under : Any Officer or Member of the Executive Committee of the Office Bearers Association, if legal practitioner will be entitled to represent the employer in all cases where the employer can be represented by the Association of Employers or Federation of Employers as contemplated by Section 36(2) of the Act. The Labour Court or Tribunal in such an enquiry will only examine the regulations, bye-laws, memorandum of Association or the like to find out whether the Office held exists, either as a member of the Executive or as an officer in the Executive Committee. If a person holds such an office and that is certified by producing a letter from the President or the Secretary or a person authorized by the Association, that to my mind would be sufficient proof that such person would be entitled to appear and represent the employer. The matter then can be disposed off on that basis. The Association must be legally recognized in that it must be registered under some law in force which provides for registration or recognition of such an Association.

11. Before parting with this issue, it may be noted that Paradip Port Trust has also considered the right of the Employer to be represented in person and that is not excluded by Section 36 of the Act. The observation and discussion to that effect can be found in paragraphs 13 and 16. One observation which can be gainfully reproduced is as under :

"It is not contended under the Act that companies and corporations are confined to representation of their cases only through the officers specified in Section 36(2) of the Act. They can be represented by their directors or their own officers authorized to act in that behalf in a lawful manner provided it is not contrary to any provision of the Act, This would not however, mean that the companies and corporations, and for the matter of that any party, are free to engage legal practitioners by means of a special power to attorney to represent their interests

before the tribunals without consent of the opposite party and leave of the tribunal."

12. It is therefore clear that as long as there is relationship of Employee and Employer, such Employee on being authorised by a resolution of the company could appear on behalf of the Employer. The test is in employment. -In other words they are being paid and under the control of the company. Though this was not directly in issue in this case, it is being commented upon as the next issue requires its consideration and hopefully further litigation on the issue will not arise and the Tribunals and Courts are left to decide the reference or other disputes which they have been constituted, to redress as expeditiously as possible.

13. We then come to the second aspect, as to meaning of expression "legal representative". This is in the context of the finding given by the Industrial Tribunal that the respondent herein had made concession in law to the appearance of Shri Mokashi considering the position in law. No party can be estopped in contending that the concession insofar as a legal proposition is concerned is not binding upon it. They can still agitate and ventilate that issue before this Court. The rule of estoppel will only apply insofar as facts are concerned and or where "issue estoppel" or the like is pleaded. The law would be much poorer if courts were to interpret the law based upon so called concession of parties. On behalf of the petitioners, it is contended that the Legal Representative can only be a person who is not advocates, and not enrolled on the roll maintained by the Bar Council under the Advocates Act. Reliance was sought to be placed by the petitioners in the case of K. K. Khadilkar v. The Indian Hume Pipe Co. Ltd., 1967 Mh.LJ. 579 = 1967 (69) BLR 273, An examination of the ratio of that judgment would make it clear that the issue as to who is the legal representative u/s 36(4) was not directly in issue before the learned Division Bench. The issue for consideration was the category of persons who can represent the employer u/s 36(2) and whether it was exhaustive. The Division Bench noted that it was not so as now has been declared by the Apex Court in Paradip Port Trust. That Judgment to my mind will not be of much assistance. On the other hand, my attention was invited to the Judgment of a learned Single Judge of this Court in 1984(2) BCR 30 in Perfect Paper & Steel Converters Private Ltd. and Anr. v. The Bombay National General Workers Union and Ors.. It is no doubt true that it was a matter under the provisions of the M.R.T.U. & P.U.L.P. Act and regulations framed thereunder. The issue was the right of appearance. There also it was sought to be contended that the persons other than advocates can put in appearance. After examining the contention whether the category of Labour Advisors would come within the expression of legal Advisor u/s 33 of the M.R.T.U. & P.U.L.P. Act and Section 92 of the AIR Act, the learned single Judge observed as under :

"14. It is not possible for me to accept this contention also. Even if the said term is construed very liberally still it cannot take in its import a person who is

not authorized to practice the profession of law, It can at the most take in its import a person who is authorized in law to represent a party before a Court of law, But this engagement of a representative must be lawful and not prohibited by the law in the field."

Though Section 30 of the Advocate's Act has not yet been brought in force, Section 33 is in force. Section 33 sets out that except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practice in any court or before any authority or person unless he is enrolled as an advocate under this Act. Therefore, after the section was brought into force from 1-6-1969, it is only an Advocate whose name is found in the register of the State bar Council maintained under the Act and Rules framed, who can be said to be legal representative and who can appear before the Courts or other authorities. The expression other authority must bring in its ambit Tribunals also. Though it is pointed out that in Section 30, the word "Tribunal" is also used and must mean that u/s 33, there is no bar of appearance by persons who are not advocates. Tribunals and courts constituted under the Industrial Dispute Act have all the trappings of a court. They would therefore, be authorities, to which Section 33 of the Advocates Act would apply. Section 36(4) of the Industrial Disputes Act therefore, when it uses the expression Legal Practitioner can only mean a person who can legally represent and appear in the Court or the Tribunal. It is only an Advocate who can legally represent and appear in a Court or Tribunal. If that be the case, Section 36(4) will cover only advocates and none else. Considering that to my mind, other Practitioners even though they may be experts in the field, have no right of appearance considering the bar created u/s 36(3) of the Act and enabling provisions thereafter u/s 36(4) of the Act. Such legal representatives are subject to the supervisory jurisdiction of the Bar Council under whom they are registered unlike those who are not registered. The right to represent the petitioner can only be through a person in its employment and control, by an office bearer of an Association of which it is a member or with the consent of the respondent and with permission of the Tribunal, by a legal representative. Even if the respondent before the Labour Court has given a concession it cannot confer authority or right on a person who in law would otherwise be disentitled if he does not fall u/s 36(2) from appearing. Shri Mokashi admittedly is not an Office Bearer entitled to represent an Association u/s 36(2). Appearance u/s 36(4) will only be if petitioner had filed application for appearance and a No objection is taken from the other side and the Industrial Tribunal or Labour Court then grants such leave. There is nothing on record to show that such application was moved u/s 36(4) and leave was granted. Even otherwise as now pointed out, it is only an advocate to whom leave can be granted u/s 36(4). The Apex Court in Paradip's case, has pointed out that Power of Attorney Holders will have no such right to file appearance u/s 36(4) or appear in the guise of legal representative, which of they are not. It will therefore, be open for the Respondents to raise the issue before the Industrial Tribunal. That part of the order is not challenged

before this Court. The Court could still under its supervisory jurisdiction under Article 227 of the Constitution of India look into the matter. However, on facts, it is left open for consideration before the Tribunal.

14. In the light of the above, petition is partly allowed. Rule is partly made absolute, insofar as the appearance of Shri C.V. Pavaskar.

In the circumstances of the case, each party to bear their own costs.

P. A. to issue authenticated copy of the order.