

(2001) 11 BOM CK 0021

In the Bombay High Court

Case No : Appeal No. 1027 of 2001 in Writ Petition No. 2379 of 2000

Associated Cement Staff Union

APPELLANT

Vs

Associated Cement Companies Limited

RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:

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

Citation : (2002) 2 ALLMR 705 : (2002) 3 BomCR 108 : (2002) 94 FLR 244 :
(2002) 2 MhLj 205

Hon'ble Judges : S.A. Bobde, J;A.P. Shah, J

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

1. This appeal is preferred against the judgment and order of a learned single Judge of this Court upholding the respondent No. 1's right to be represented by one C.V. Pavaskar, in References No. 3 of 1999 and 10 of 1999 between appellant and respondent No. 1 company before the Industrial Tribunal. The learned single Judge has rejected the appellant's contention that the said Pavaskar is not entitled to represent the respondent Company because he is a legal practitioner, prohibited from appearing in the dispute by virtue of Section 36 of the Industrial Disputes Act, 1947.

2. The appellant, which is a registered trade union of employees objected to the appearance of C.V. Pavaskar, admittedly a qualified Advocate and S, V. Mokashi on the ground that they are legal practitioners and consequently not entitled to represent the respondent company. The right of Mokashi to represent the respondent company is no more in dispute and the objection to his appearance has been given up before the Industrial Tribunal itself. The Industrial Tribunal held by its order dated 28th September, 2000 that Pavaskar was not entitled to represent the respondent company. The learned Member of the Tribunal proceeded on the undisputed position that Pavaskar is a member of a Federation

i.e. the Employers' Federation of India and that he intends to represent the respondent company in that capacity. However, observing that Pavaskar is not on the pay roll of any of the member establishments and not an employee of the respondent company either, he was held disentitled to appear in his capacity as a member of the Federation.

3. Pavaskar has been authorised by the respondent company in his capacity as a member of Central Executive Committee of the Employers Federation of India of which the respondent company is a member, vide Exhibit "A", Rule 22 of the Rules and Regulations of the Federation provides that the Federation shall be under the control and management of the Executive Committee. A certificate issued by the Secretary General of the Employers Federation of India certifies that Pavaskar is an office bearer of the Employers Federation of India by virtue of being a member of the Central Executive Committee of the Federation. The certificate further certifies that the respondent company is a member of the Federation since 1958; and the Federation is registered under the Indian Trade Unions Act, 1926. Pavaskar's entitlement must therefore be considered on these facts. One thing is clear, Pavaskar's appearance in the matter is not that of a legal practitioner qua legal practitioner.

4. Section 36 of the Industrial Disputes Act, 1947 which provides for representation of parties reads as follows :--

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

(a) any member of the executive or other office bearer of a registered trade union of which he is a member :

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in Clause (a) is affiliated :

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

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

(a) an officer of an association of employers of which he is a member :

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

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

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

(4) In any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be." Applying Sub-section 2(a) to Pavaskar it appears that Pavaskar would be entitled to represent the respondent company before the Tribunal since that Sub-section enables the officer of an association of employers of which the employer is a member to represent the employer. It is obvious that the word "he" in Sub-section 2(a) refers to the employer.

5. The learned Counsel for the respondents, however, urged before us that Pavaskar cannot be said to be an officer of any of the categories mentioned in (a), (b) or (c) of Sub-section (2) of Section 36 in view of the fact that he is basically a legal practitioner and therefore not entitled to represent the employer. We find no merit in this contention. There is no doubt that a legal practitioner is prohibited from representing a party to a dispute under the Industrial Disputes Act in conciliation proceedings or any proceeding before a Court. That, however, does not mean that any person who has obtained a LL.B. Degree or has practiced as an advocate is debarred from representing an employer, even though, he is gainfully employed and has become an officer of an association of employers. We find that the object of Section 36 of the Industrial Disputes Act is to enable an employee or an employer to be represented by persons who can effectively espouse their cause; barring legal practitioners in conciliation proceedings or proceedings before a Court. The purpose is not to disable representative who have knowledge of law or who have practiced law. The purpose, is to enable employee and employer to appoint representatives who understands the position of those whom he represents.

6. The learned single Judge has rightly arrived at the conclusion that though the word officer was substituted in Sub-section (1) of Section 36 with the phrase "any member of the executive or other office bearer" and the word "officer" was not so substituted in Sub-section (2), they must be taken to carry the same meaning for the purpose of representation. An office bearer of the trade union of workers cannot be said to constitute a class that bears distinct characteristics from office bearers of a trade union of employers.

7. In fact the Supreme Court in the case of Paradip Port Trust (supra) has observed in relation to the representation of parties before a Tribunal as follows :--

"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 practising 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 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."

In Paradip Port Trust's case (supra) the Supreme Court further observed as follows:--

"We may note here the difference in language adopted in Section 36(1) and Section 36(2). While Section 36(1) refers to "any member of the executive "or" other "office-bearer", Section 36(2) instead mentions only "an officer". Now "executive" in relation to a trade union means the body by whatever name called to which the management of the affairs of the trade union is entrusted u/s 2(gg) "Office-bearer" in relation to a trade union includes any member of the executive thereof but does not include an auditor Section 2(III). 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(30) of the Companies Act. This is bound to give rise to controversy when a particular person 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 associations of employers and not of the company or corporation."

In the case of Infar (India) Ltd. v. Madan Mohan Ghosh and others, 2001 (1) LLJ 453 the Calcutta High Court upheld the right of the employer to be represented by one Amar Roy, an advocate, who was the President of the Employers Association who represented the employer company before the tribunal. After relying on the judgment of the Supreme Court in the case of Paradip Port Trust (supra) the Calcutta High Court observed, after referring to the several meanings of the term officer from the dictionary : "Therefore, what is required is that one has to find out whether the incumbent representative is member of an association or not." We are in agreement with the view of the division bench of the Calcutta High Court.

8. In any case as far as present case is concerned, we have no doubt that

Pavaskar being a member of the executive committee of the Employers' Federation of India must be taken to be an officer within the meaning of Section 36(2) having regard to the ordinary meaning of the word as found in the dictionary. For instance the Oxford dictionary sets out the meaning as follows :--

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

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

"3. Word "officer" is not considered appropriate in the case of trade unions and has therefore sought to be substituted by the word "office bearer". The learned Single Judge relied on, and in our opinion rightly, on the decision of the Division Bench of the Calcutta High Court in *Infar (India) Ltd.* (supra) where that Court has held that the word "officer" has been used in the context of an employer and the word "office bearer" has been used in the context of the trade unions. The Calcutta High Court has noted that earlier it had not taken note of the definition of the term "office bearer. Section 2(III) of the Industrial Disputes Act, 1947 which defines that term as follows :--

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

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

11. In the circumstances, we approve the view of the learned single Judge who

has also relied on a judgment of the single Judge of the Karnataka High Court in the case of Hotel Ashoka vs. Presiding Officer, Addl. labour Court and another, 1984 (4) F.L.R. 297 and a judgment of the single Judge of the Delhi High Court in Management of the Associated Cement Cos. Ltd. vs. Workman, Saroj Arora, 2001(1) C.L.R. 739 .

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

13. In the result, we find no merit in the appeal which is dismissed. No order as to costs.

All Authorities concerned to act on the ordinary copy of this order duly authenticated by Associate of this court.

P. A. to give ordinary copy of this order to the parties concerned.