

(2008) 03 DEL CK 0130
In the Delhi High Court
Case No : WP (C) No. 9299 of 2006

Bhagat Brothers

APPELLANT

Vs

Paras Nath Upadhyay

RESPONDENT

Date of Decision : 12-03-2008

Acts Referred:

Citation : (2008) 149 DLT 381 : (2008) 117 FLR 1007 : (2008) 1 ILR Delhi 36 : (2009) 1 SLJ 432

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Apurb Lal, for the Appellant; Rakesh Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has impugned the order dated 30th November, 2005 of the Labor Court by which the application of the workman u/s 36 of the Industrial Disputes Act, 1947 was allowed holding that the petitioner management is not entitled to be represented by a legal practitioner without the consent of the workman and without the permission of the Court and in the circumstances the advocate appearing on behalf of petitioner was barred from representing the petitioner and the matter was adjourned to facilitate the petitioner to appoint a new authorized representative.

2. The petitioner contended that it is a partnership firm dealing in sale and purchase of yarns which was dissolved in 2000. The respondent was allegedly working with M/s. Suman Agencies for 16 years and he left the service after getting his dues after full and final settlement of his claims. However, on 18th September, 2003 a claim was filed through the trade union claiming that he was employed with the petitioner for a monthly salary of Rs. 5000/- for 20 years and on 7th August, 2001 when he demanded arrears of salary, the management/petitioner got angry and he was compelled to give his resignation and respondent was thrown out of service.

3. The reply to the claim filed by the petitioner was filed through Sh. J.K. Singhal, Advocate. Replication to the reply filed by the petitioner was filed and thereafter workman filed his evidence by way of affidavit. After filing the evidence on affidavit, the respondent workman filed an application u/s 36 seeking that the petitioner/management be not allowed to be represented by a counsel. On 30th November, 2005 by the impugned order the application was allowed and the petitioner was directed to appoint a new authorized representative, as an advocate could not be allowed to appear on behalf of petitioner/management.

4. The petitioner has impugned the order allowing the application dated 3rd July, 2005 disallowing petitioner's advocate to appear on his behalf and directing the petitioner to engage a new authorized representative, on the ground that the consent of the respondent for appearance of the counsel on behalf of the petitioner could be inferred on account of various facts including that the respondent did not object to appearance of petitioner's advocate till 5th July, 2005 when an application was filed on behalf of the respondent workman. The order has been impugned by the petitioner on the ground that the petition u/s 36 of the Industrial Disputes Act, 1947 could not be made by the respondent at any time. It is asserted that on account of the conduct of the respondent implied consent can be inferred in allowing the petitioner to be represented through an advocate. For implied consent it is contended on behalf of petitioner that before the application was filed on 5th July, 2005 the petitioner was represented by the counsel and no objection was taken by the respondent. The learned Counsel for the petitioner has relied on *Britannia Engineering Products and Services Ltd. v. Second Labour Court and Ors.* 2003 II LLJ 200 and *T.K. Varghese v. Nichimen Corporation* 2002 IV LLJ in support of the contention that there was implied consent on the part of the respondent and consequently the Labour Court could not allow the application of the petitioner and could not bar the advocate to appear on behalf of the petitioner. The petitioner has also contended relying on 2002 IV LLJ (Supp) 1018, *T.K. Verghese v. Nichmen Corporation and Britannia Engineering Products and Services Ltd. Vs. Second Labour Court and Others*, that implied consent given by the workman could not be allowed to be withdrawn and there was no need for fresh consent on the part of the workman.

5. Perusal of the judgments relied on by the petitioner reflect that they are apparently distinguishable. In *T.K. Verghese (supra)*, on February 28, 2000, the appearance was put on behalf of the management through the General Manager who had filed an application for adjournment and on the same date statement of claimant was filed by the workman. The workman was present and by consent the matter was adjourned. It appears from the facts of the case that till June 16, 2000, Shri Gole, the representative of the workman, who had a large experience of 40 to 50 years in the field had not made any objection to the appearance of the advocate of the management company. The management company was a foreign company and all the executives and management were not at all conversant with the labour laws of India and in the background of these

circumstances, the objection taken on behalf of the workman later on regarding appearance of an advocate on behalf of the respondent company was not entertained and the foreign company was allowed to continue to be represented by an advocate. Apparently, in the case of the respondent/workman on framing of issues, evidence was ordered to be filed on affidavits and the objection was taken on behalf of respondent/workman about the petitioner company being represented by an advocate.

6. The case of Britania Engineers Products and Services Ltd. (supra) is also clearly distinguishable. The workman in this case was represented by an advocate and the management was also represented by an advocate and no objections were taken. The objection was taken by the workman only when the respondent company decided to change their erstwhile advocate and filed a new authorization in favor of another advocate and in these circumstances the objections of the workman u/s 36(4) was not entertained.

7. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. Considering the present facts and circumstances the decisions relied on by the petitioner are clearly distinguishable. The Supreme Court in Bharat Petroleum Corporation Ltd. and Anr. v. N.R. Vairamani and Anr. AIR 2004 SC 778 had observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In Ambalal Manibhai Patel Vs. State of Gujarat, the Supreme Court had also observed:

The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.

8. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases and disposing of a case by blindly placing reliance on a decision is not proper. Apparently, these judgments relied on by the petitioner are distinguishable and on the basis of the ratio of these judgments, it cannot be held there can be implied consent and that in the case of

the respondent there was implied consent by him regarding appearance of the lawyer on behalf of the petitioner management.

9. The counsel for the respondent has contended that in the case of the respondent no implied consent can be inferred as after framing of issues the matter was listed for evidence and the evidence was filed by the respondent on affidavit and before his cross examination, the objection regarding the appearance of the advocate on behalf of the petitioner was taken. Learned Counsel for the respondent/workman has also relied on *Hindustan Motors Limited Vs. The Presiding Officer and Others*, to contend that mere fact that the workman has not objected earlier cannot be a ground to deny the workman benefit u/s 36 to object to appearance of the management company through lawyer at a later stage. The learned single Judge of this Court had relied on another judgment of a single Judge 1998 (81) FLR 953, *Prasar Bharti Broadcasting Corporation of India v. Suraj Sharma and Ors.* In *Prasar Bharti Broadcasting Corporation of India (supra)*, the objections taken by the workman was that an additional standing government counsel is a legal practitioner and is not entitled to appear on behalf of the management u/s 36 of the Industrial Disputes Act, 1947. The objection that a standing counsel cannot appear was, however, taken after many hearings and, in the circumstances, the plea on behalf of the management was that appearance of the counsel on earlier dated of the proceedings without any objection by the workman, amounted to implied consent and there was no provisions for revoking the consent once it was already given. The Court in *Prasar Bharti (supra)* had held that the law recognizes unequal strength of the parties in adjudication before a Tribunal and Section 36(4) permits representation of a party by a legal practitioner only with the consent of the other party to the proceedings and with the leave of the Tribunal. According to the learned single Judge, consent, in such circumstances, has to be clear and positive. It was held that there should be some positive act or conduct on the part of the party indicating his consent and to consider the failure or inaction of a party in raising the objection at the early stages of the proceedings as 'implied consent' and to deny him the right to object to the representation of the other party by a legal practitioner, will be against the spirit and content of the provision of Section 36 of the ID Act, 1947. In this case it was held that the consent of the other parties to the proceedings and the leave of the Tribunal are mandatory pre conditions for the representation of a party by a legal practitioner. In the circumstances, it was held that if a party to the proceedings intends to engage a legal practitioner it should specifically seek leave of the Tribunal and Tribunal after ascertaining and considering the stand of the other party, should render the decision.

10. Admittedly in the case of the petitioner, there was no application filed by the petitioner company to be represented by a counsel nor any leave was granted by the Tribunal to allow the counsel for the petitioner/management to appear and defend him. In any case, after the statement of the claim and reply to the claim were filed and issues were framed, after the first date of framing of issues, after

filing the statement of respondent/workman on affidavit, the objection was taken about the appearance of an advocate on behalf of the petitioner company. From the record of the Labor Court, it does not appear that any consent was given by the respondent for the appearance of an advocate on behalf of petitioner company. As already held after filing the deposition by the respondent workman on affidavit before the workman could be cross examined, the objection was taken about the representation of the petitioner company by an advocate. In Hindustan Motors Limited (supra) also, it was held that there may not be an implied consent in the facts and circumstances of that case relying on Prasar Bharati (supra).

11. Therefore, in the facts and circumstances, it cannot be inferred that there had been consent on the part of the workman for the petitioner company to be represented by an advocate and consequently the order of the Tribunal dated 30th November, 2005 sustaining the objection of the respondent workman against the appearance of an advocate on behalf of the management cannot be faulted. In the circumstances, it cannot be held that the petitioner company is entitled to be represented by an advocate. There is no manifest error or illegality in the order dated 30th November, 2005 so as to exercise jurisdiction by this Court under Article 226 of the Constitution of India.

12. The writ petition, Therefore, is without any merit and it is dismissed. Parties are however, left to bear their own costs.