
(1993) 04 CAL CK 0021

In the Calcutta High Court

Case No : A.F. Original Order No. 461 of 1989 (Arising out of Matter No. 4458 of 1988)

Bharat Petroleum Corpn. Ltd.

APPELLANT

Vs

C.G. Industrial Tribunal and Others

RESPONDENT

Date of Decision : 20-04-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 36(1), 36(2), 36(4)

Citation : (1993) 2 ILR (Cal) 93 : (1993) 2 ILR (Cal) 287 : (1993) 2 LLJ 608

Hon'ble Judges : Bhagabati Prasad Banerjee, J; Amal Kanti Bhattacharjee, J

Bench : Division Bench

Advocate : Moni Bhusan Sarkar, Amaresh Chakraborty and D. Bhattacharya, for the Appellant; Partha Sarathi Sengupta, Arunava Ghosh and Ors., for the Respondent

Final Decision : Dismissed

Judgement

Bhagabati Prasad Banerjee, J

1. This is an appeal against the judgment and order dated July 7, 1989 passed by the learned Trial Judge in Matter No. 4458 of 1988 dismissing the writ application filed by the appellant-petitioner. The only question involved in this appeal is with regard to the interpretation of the provisions of Section 36(2) of the Industrial Disputes Act, 1947. The facts are not in dispute. The Government of India, Ministry of Labour, referred an industrial dispute before the Presiding Officer, Central Government Industrial Tribunal, Calcutta for adjudication of an industrial dispute. After receipt of the said order of reference the workmen represented by Petroleum Employees' Union, Eastern Branch, entered appearance and filed their written statement. The appellant also appeared through its Association, namely, Employers' Association of India of which the appellant was a member and the said Association had authorised two of its Executive Committee members, namely, Dr. Manotosh Mukherjee and Shri M.N. Kar of the said Association to represent the appellant- petitioner before the

Tribunal in accordance with the provisions of Section 36 of the Industrial Disputes Act. The said representation of the said two Executive Committee members was objected to by the Union and as a result of which the Tribunal had to decide the question whether the said two members fell within the category of persons who might represent the employers under the provisions of Section 36(2) of the Industrial Disputes Act. The provisions of Section 36(2) of Industrial Disputes Act reads as follows:

"36 (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 or association 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."

2. Before the Tribunal a document was produced by the appellant which is a letter dated August 26, 1988 written by the Secretary, Employers' Association of India, addressed to Dr. Manotosh Mukherjee wherein it appears that-

"Pursuant to your telephonic conversation I am to inform you that you have taken as Executive Committee member of Employers' Association of India on and from Sunday the March 8, 1987 in the meeting held on the said date along with others."

3. Another letter dated September 1, 1988 from the Employers Association of India addressed to Mr. M.N. Kar shows that Mr. Kar has also been a member of the Executive Committee of the Employers' Association of India from March 8, 1987. On the basis of the communication made by the said letters, it was contended before the Tribunal that the said two members of the Executive Committee of the Employers' Association of India come within the scope of the expression "officer of an Association of Employers". The Tribunal examined the case and this question in the light of the decision of the Supreme Court of India in the case of Paradip Port Trust, Paradip Vs. Their Workmen, and relying on the principles laid down in the said judgment and considering the facts and circumstances of the case the Tribunal by the order dated September 9, 1988 held that Dr. Mukherjee and Mr. Kar as Executive Committee Members of the Employers' Association were not officers of the Employer's Association and the appellant, therefore, could not be permitted to be represented by them. Accordingly, the Tribunal upheld the objection taken by the Employees' Union regarding the representation of Dr. Mukherjee and Mr. Kar.

4. The appellant being aggrieved and dissatisfied with the order of the Tribunal dated September 9, 1989 filed a writ application. The said writ application in

Matter No. 4458 of 1988 was rejected by the learned Trial Judge by the order dated July 7, 1989, and the rule was discharged holding, inter alia, that the Tribunal did not commit any illegality in refusing the writ petitioner to be represented by the two Executive Committee members of the said Association who did not come within the meaning of the word "officer" as specifically mentioned u/s 36(2) of the Industrial Disputes Act.

5. Mr. Mani Bhusan Sarkar, learned Counsel appearing on behalf of the appellant, contended in the first place that the documents showing that Dr. Mukherjee and Mr. Kar were the Executive Committee members of the Employers' Association of India, and as Executive Committee members of the Employers' Association the said two Executive Committee members should be treated as the officers of the said Association. Mr. Sarkar submitted that the Industrial Disputes Act did not define the expression "officer" and that the meaning of the expression "Officer" should not be given such a narrow meaning. It was further submitted that the Tribunal ought to have given the appellant an opportunity to adduce better and further evidence before upholding the petition filed by the Union regarding the representation by Dr. Mukherjee and Mr. Kar before the Tribunal and submitted that it was a fit and proper case where this Court remand the case back before the Tribunal for a fresh determination of the question on the basis of further evidence which would be adduced by the appellant and it was further submitted that before rejecting the claim of the appellant the Tribunal ought to have given them further opportunity in this regard. According to Mr. Sarkar, the appellant has discharged the onus before the Tribunal by producing the said two letters.

6. Mr. Partha Sarathi Sengupta, learned Counsel appearing on behalf of the respondent-Union, submitted that in case of representation of the workmen the legislature has clearly used the expression "members of the Executive or other office-bearer of a registered Union or any member of the Executive or other office bearer of a federation of trade-unions to which the trade-union is affiliated". But in case of employer the legislature only intended that "officer" of the Association of employers of which such "employer" was a member or officer of Federation or Association of employers to which the Association was affiliated. Such a distinction in case of representation by the Union and in case of representation by the employers is explicit and when the legislature intended that in case of workmen any Executive Member can appear in such a proceeding, but in so far as the employer is concerned there was no specific mentioning of any member of the Executive Committee of the Association of employers and further submitted that mentioning of a particular class of persons who can represent specifically in case of workmen when not specifically mentioned in case of employer, normal rules of interpretation would be in case of employer such of the categories of persons who may represent all workmen was specifically excluded in the same section. In two different sub-sections two different types of persons are mentioned and that under such circumstances by any rules of interpretation the Executive Officer used in Section 36(2) of the said Act can be interpreted to mean any Executive Member as specifically provided in case of

representation by the workmen.

7. Our attention was also drawn to a decision of the Supreme Court in the case of Paradip Port Trust, Paradip Vs. Their Workmen, . The Supreme Court specifically observed as follows (P 414):

"If, however, a legal practitioner is appointed as an officer of a Company or Corporation 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 association, 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."

8. Our attention was also drawn to another decision by U.C. Banerjee, J. in the case of Globe Theatre Pvt. Ltd. v. The Second Labour Court, W.B. reported in 1987 (II), Calcutta High Court Notes, p. 55 wherein it was held that in terms of Section 36 of the Industrial Disputes Act an employer who is a party to a dispute shall be entitled to be represented by an officer of an association of employers of which he is a member. There is no dispute in regard to the factum of membership of the petitioner with the Employers' Association of India. It was further held when the legal practitioner appears in the capacity of the officer of the association in the case of an employer and in the capacity of office bearer of the Union in the case of workmen and not in the capacity of legal practitioner, the fact that the person is a legal practitioner will not affect the position if the qualifications specified in Section 36(1) and (2) are fulfilled. The decision of U.C. Banerjee, J. in Globe Theatre case (supra) has no application in the facts and circumstances of this case inasmuch as in order to represent the employer or employee before the Tribunal the categories of persons are specifically mentioned and if the category of persons has fulfilled the condition laid down in the section, in that event whether he was a legal practitioner or not was wholly irrelevant. In that case the position of law as emerged from Sections 36(1) and (2) has been correctly explained but has no manner of application in the facts and circumstances of the case.

9. After hearing the respective submissions of the parties and considering the facts and circumstances of the case, we are of the view that when objection was taken by the Union regarding the representation by Dr. Mukherjee and Mr. Kar it was incumbent on the part of the appellant to show to the satisfaction of the

Tribunal that they are really officers. The term officer has not been explained. Even though the term "officer" has not been defined in this Act that does not create any difficulty in the instant case, inasmuch as, it is clear from Section 36(1) of the said Act that in case of workmen they can be represented before the Tribunal by any member of the Executive Committee or other office bearer of the registered Union of which he is a member. But in case of an employer, the employer can only be represented by an officer of the Association of the employers. Accordingly, on plain reading of Section 36(1) and (2) of the said Act it is clear to us that the legislature never intended to include the expression "any member of the executive committee" as in the case of workmen within the expression "officer of an Association". If such was intention, in that event the Legislature would have specifically included that in case of employer the employer could be represented by any member of the Executive Committee. The Tribunal on the basis of materials and evidence produced came to the conclusion that unless the Articles or Memorandum of Association enjoin that all the Executive Committee members or any member of the Executive Committee can work as a functionary and execute any policy decision then of course in accordance with Articles and Memorandum of Association, the members of the Executive Committee would also be the Officers of the Association. The Tribunal further held that President, Vice President, Secretary etc. who work as a functionary and execute policy decision of any Association can be regarded as an Officer but a member of an Executive Committee cannot be held to be an officer of such an Association. Reliance was placed on the dictionary meaning of the word "Officer" and the dictionary meaning of the word "officer" as per Concise Oxford Dictionary, Sixth Edition means, amongst others, (1) Holder of public, civil or ecclesiastical office, sovereigns servant or Minister, appointed or elected functionary. (2) President, Treasurer, Secretary etc. of the Society. On consideration of all the aspects of the matter the Tribunal came to the finding that Dr. Mukherjee and Mr. Kar do not come within the scope and ambit of expression "Officer of an Association of employers". It could not be established before us that such a finding on the question of fact is perverse. It is well-settled principle that finding of fact made by the Tribunal should not be interfered with by the Writ Court. We are of the view that the legislature in its wisdom took away the right of the employer to be represented by any member of the Executive Committee but reserved the right of the workmen to be represented by the Executive Committee members. In the facts and circumstances of the case and by no stretch of imagination it can be held even though the members of the Executive Committee were not specifically mentioned in Section 36(2) but the same should be read into for the purpose of holding that the said two executive members have a right to represent the employer before the Tribunal. When the Legislature specifically enacted such a provision and when the meaning is clear we are of the view that the Tribunal had not committed any error nor do we find any reason to interfere with the order passed by the learned Trial Judge. In this connection, our attention was drawn to a decision of a learned Single Judge of this Court in the case of Fouress Engineering (I) Pvt. Ltd. Vs. Delhi

Administration and Others, wherein the learned Single Judge observed that fitness of things demand that the case should be represented before the Tribunal as far as practicable in accordance with the provisions of Industrial Disputes Act and the rules framed thereunder, and that for that reason some sort of elementary legal training is required and appearance of lawyer cannot and should not be shut out on any flimsy ground and in that case the learned Judge sent the matter back to the Tribunal for fresh adjudication of the preliminary objection of either party and that it was held that in case the Tribunal allows representation for the legal representation of the workmen, the Tribunal also consider the question of allowing legal practitioner and/or advocate on behalf of the company.

10. We are of the view that when the legislative intent is clear and the legislature never intended that in case of an employer representation could be made by any member of Executive Committee, in that event, the view expressed in Durgapur Cement's case (supra) cannot be held to be correct. It is not in dispute and this proposition has not been disputed by the learned counsel appearing for the parties before us that an officer of an Association of employers or any member of the Executive Committee or office bearer in case of workmen may have legal training and that they might be legal practitioner but that would create any bar in case they fulfil the categories of person who may represent the Union and the employer before a Tribunal.

11. In the instant case, officer of an Association if he has legal training could not create any bar for his appearance as he represents as an officer of an Association of employers, but not as a legal practitioner or a lawyer for that purpose. When the legislative intent is clear, we are of the view that there is no scope for reading words into a Statute. Section 36(4) of the said Act provides representation by the lawyer with the consent of other party to the proceedings and with the leave of Labour Court, but when objections are taken, in that event it is a duty on the part of the Tribunal to adjudicate the question and in our view the Tribunal, in the instant case, has rightly adjudicated the issue which was affirmed by the learned Single Judge of this Court. We are clearly of the view that within the scope of Section 36(2) of the said Act a legal practitioner and an advocate cannot appear unless he is an officer of an Association of employers and in the facts and circumstances of the case we are unable to hold that the said two Executive Committee Members of the Association of employers do not come within the expression "officer" as provided u/s 36(2) of the said Act.

12. Accordingly, we do not find any merits in the appeal. The appeal is, accordingly, dismissed. There will be no order as to costs.

13. All parties concerned to act on a signed xerox copy of this Judgment and Order on the usual undertaking.

Amal Kanti Bhattacharji, J

14. I agree.