

(1989) 07 CAL CK 0066
In the Calcutta High Court
Case No : Matter No. 4458 of 1988

Bharat Petroleum Corpn. Ltd.

APPELLANT

Vs

The Presiding Officer and Others

RESPONDENT

Date of Decision : 07-07-1989

Acts Referred:

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

Citation : (1990) 2 CALLT 149 : (1989) 59 FLR 804 : (1990) 2 LLJ 326

Hon'ble Judges : Manoranjan Mallick, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Manoranjan Mallick, J.—The petitioner, namely, Bharat Petroleum Corporation Ltd., has filed the writ petition praying for a writ of Mandamus calling upon the respondents and each one of them to forthwith recall, rescind and/or to withdraw the order dated September 9, 1988 passed by the Respondent No. 1 the Presiding Officer, Central Government Industrial Tribunal, Calcutta and to forbear from giving any effect and/or further effect to the said impugned order and/or taking any steps in pursuance of the said impugned order and also for a writ of prohibition calling upon the respondent and each one of them not to give any effect and/or further effect to the impugned order dated 9th September, 1988 and to forbear from taking any steps to the impugned orders and some consequential relief.

2. At the time of admitting of the application, the interim order has been passed staying operation of the order dated September 9, 1988 till the disposal of the writ petition.

3. The facts which are necessary for disposal of the writ petition may be briefly stated as follows:

The Government of India, Ministry of Labour, by an order of reference dated February 24/26, 1988 referred a purported industrial dispute before the Presiding

Officer, Central Industrial Tribunal, Calcutta for adjudication of the issue as mentioned in paragraph 18 of the writ petition. After receipt of the said order of reference the Respondent No. 2 being the workmen represented by Petroleum Employees Union, Eastern Branch, entered appearance and filed a written statement. The petitioner appeared before the Respondent No. 1 through its association, namely, The Employers Association of India of which petitioner is a member and the said Association has authorised two of its Executive Committee members, namely, Dr. Monotosh Mukherjee and Sri M.N.Kar of the said Association to represent the petitioner before the Tribunal in accordance with the provision of Section 36 of the Industrial Disputes Act. On August 25, 1988 petitioner appeared before the learned Tribunal through two of its Executive Committee members of the said Association of which the petitioner is a member and the said two Executive Committee members engaged by the company had also filed a Power of Attorney before the Tribunal on August 25, 1988. The said Executive Committee members filed a written statement-cum-rejoinder and another petition on behalf of the company and served copies of the same on the representative of the Union. Thereafter the Repondent No. 2, namely Union filed an objection petition on August 25, 1988, infer alia, alleging that the Corporation has now again tried to bring in the lawyers in the name of the Employers" Association and/or Federation and/or under different garbs which is colourable, motivated, bad and illegal and submitted before the Learned Tribunal that the petitioner company be directed not to bring in any lawyer to represent itself before the Hon"ble Tribunal either as a practising lawyer or in any other colourable manner as attempted and the same is being objected by the Union.

4. The petitioner on September 9, 1988 duly filed its objection in the said petition. The petitioner, inter alia, stated that the petitioner is a member of the Employers" Association of India having its office at No. 42/22, C.N. Roy Road, Calcutta-39 who has engaged two of its Executive Committee members, to represent the petitioner in the above mentioned case before the learned Tribunal in accordance with the provision of Section 36(2) of the Industrial Disputes Act and as such the Union has no right whatsoever to object to the appearance of the two Executive Committee members of the Employers" Association of India before this Tribunal. The petitioner has also referred in the objection petition to the decision of the Supreme Court in Paradip Port Trust, Paradip Vs. Their Workmen, and has urged that the Union is not entitled to raise any objection to the appearance of the company through the Executive Committee members of the Employers" Association of India of which the petitioner is a member.

5. At the time of hearing the learned Tribunal directed the petitioner to produce the documentary evidence from the Employers" Association of India to show that the petitioner Corporation is a member of the said Association and the date from which the Executive Committee members appearing on behalf of the Corporation became such members. Pursuant to the said direction the petitioner by a petition dated September 9, 1988 submitted before the learned Tribunal that the Corporation was enrolled as a member of the Employers" Association of India

with effect from June 17, 1988 as per the letter dated June 22, 1988 issued by the Secretary of the said Association and that two Executive Committee members Dr. Monotosh Mukherjee and Shri M.N. Kar were taken as Executive Committee members of the Employers' Association on and with effect from March 8, 1977, a copy of the said petition along with the annexure has been annexed to the writ petition with the letter "D".

6. The learned Tribunal by his order dated September 9, 1988 has held that Dr. Monotosh Mukherjee and Sri M.N. Kar as members of the Executive Committee of the Employers' Association are not the officers of the Employers' Association and as such the Union's petition objecting to the representation of the Employers' Association by Dr. Manotosh Mukherjee and Shri M.N. Kar as the officers of the employers' Association are allowed and the Employers' Association is not permitted to be represented by them. A copy of the said order received from the Secretary of the Respondent No. 1 is annexed hereto and marked with the letter "E" to this petition.

7. Being aggrieved the petitioner has moved this writ petition contending, inter alia, that the learned Tribunal was not at all justified in taking the stand that Dr. Monotosh Mukherjee and Shri M.N. Kar in order to be the officers of the Employers' Association have to be in the pay of the said Association, that the learned Tribunal has failed to consider that so far as an Association is concerned, whether it is registered under the Societies Registration Act or not, the definition given in the Societies Registration Act of "officer" should have been taken into consideration by the learned Tribunal, that the definition of the Officer given in the Societies Registration Act means a member of the governing body, the President, the Secretary or any other office bearer of a society and includes also an employee of the society whose work is not of a purely ministerial nature, that the learned Tribunal has made a very narrow interpretation of the expression "officer" and irrelevant to the Association like the Employers' Association, that person even if he is a legal practitioner, on fulfilling the conditions of Section 36(1) and Section 36(2) of the Industrial Disputes Act, 1947 is entitled to represent either the workmen or the employer before the learned Tribunal.

8. An affidavit-in-opposition has been filed by the Respondent No. 2 contending, inter alia, that the learned Tribunal was quite justified in refusing the writ petition being represented by Dr. Monotosh Mukherjee and Sri M.N. Kar, that the Respondent No. 2 also submits that he also challenges the genuineness of the documents filed on behalf of the writ petitioner and makes the grievance that the learned Tribunal was not at all justified in accepting those documents on their face value.

9. The only point for decision in this writ petition is whether the learned Tribunal was justified in refusing the writ petitioner being represented by Dr. Monotosh Mukherjee and Sri M.N. Kar as the officers, of the Employers' petitioner before the learned Tribunal in the capacity of the Executive Committee members of the Employers' Association of which the petitioner claims to be the member. In order

to appreciate the point which arises for decision, the provision of Section 36 of the Industrial Disputes Act is required to be considered. Section 36 reads as follows:

"36(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".

10. The relevant provision of Section 36 came up for interpretation before the Supreme Court in *Paradeep Port Trust v. Workmen* (supra). In the Supreme Court case an industrial dispute was raised by Paradeep Sramic Union with regard to the termination of service of a temporary teacher, when an industrial dispute was referred to the Tribunal the Union appeared before the Tribunal through the adviser and General Secretary whereas the Paradeep Port Trust sought to be represented before the Tribunal through Mr. T.Mishra the Legal Consultant of the Port Trust. The Union raised objection to such representation by the Legal Consultant and the Tribunal refused the permission to the representation by Mr. T. Mishra. The matter ultimately came up before the Supreme Court in appeal.

The Supreme Court in that decision made a detailed discussion of the scope of Sub-section (1) of Section 36 which deals with the representation of the workmen and subsection (2) of Section 36 which deals with the representation of the employer. Paragraphs 15 and 16 of the judgment are reproduced hereinbelow (p. 414):

"15. 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 the case of an employer and in the capacity of an officebearer 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.

16. It must be made clear that there is no scope for enquiry by the Tribunal into the motive for appointment of such legal practitioner as office-bearers of the trade unions or as officers of the employers' association. When law provides for a requisite qualification for exercising a right, fulfilment of the qualification in a given case will entitle the party to be represented before the Tribunal by such a person with that qualification. How and under what circumstances these qualifications have been obtained will not be relevant matters for consideration by the Tribunal in considering an application for representation u/s 36(1) and Section 36(2) of the Act. Once the qualifications u/s 36(1) and Section 36(2) are fulfilled prior to appearance before tribunals there is no need under the law to pursue the matter in order to find out whether the appointments are in circumvention of Section 36(4) of the Act. Motive of the appointment cannot be made an issue before the Tribunal"

11. The learned Tribunal in his judgment quoted the above relevant portions of the Supreme Court, namely paragraphs 15 and 16 as quoted above and has observed that in view of the above principle laid down by the Supreme Court there is no scope for enquiry by the Tribunal into the motive of the appointment of the legal practitioners as the officers of Employers' Association. The learned Tribunal in the circumstances accepted the documents filed by the employer that the petitioner employer is a member of the Employers Association and Dr. Monotosh Mukherjee and M.N. Kar are the members of the Executive Committee of the Employers Association of which the petitioner is a member. I do not find any fault with the above action of the learned Tribunal. The learned Tribunal has,

however, quoted thereafter the paragraph 17 of the Supreme Court judgment in Paradeep Port Trust case which is reproduced hereinbelow (pp.414-415):

"17. 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 officebearer" Sec 36(2) instead mentions only "an officer". Now "executive" in relation to trade union means the body, by whatever name called, to which the management of the affairs of the trade union is entrusted-Section 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(111). 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 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".

12. The learned Tribunal has taken note of observation of the Supreme Court that in Section 36(1) the expression used is "office-bearer" whereas in the case of representative of the employer the expression used is "officer". The office-bearer in relation to a Trade Union includes a member of the Executive thereof but does not include an auditor. This is defined in Trade Unions Act, 1926. The Supreme Court in the above judgment has observed that so far as the trade unions are concerned there is no difficulty in deciding who shall be "office-bearer" of the Union and Section 36(1) will create no difficulty in practical application. But the word "officer" u/s 36(2) has been not defined in the Act. And this is bound to give rise to controversy when a particular person claims to be an officer of the Association of the Employers. The Supreme Court has observed that no simple test and/or exhaustive test can be laid down as to who shall be an officer in the absence of a definition in the Act. The Supreme Court has, therefore, opined that when such question arises the Tribunal has to decide this question in the light of the evidence produced before it.

13. In the light of the above observation, the learned Tribunal has considered the decision submitted before him on behalf of the writ petitioner, namely, judgment of Shri Umesh Chandra Banerjee, J. in Globe Theatre Pvt. Ltd. v. Second Labour Court, West Bengal and Ors. 1987 (55) F.L.R. 443. He has also considered the dictionary meaning of the word "officer" as given in the Concise Oxford Dictionary, 6th Edition and has held that in view of the said Dictionary meaning of "officer" the President, Treasurer, Secretary, etc., of the society may be an officer but ordinary member of the Executive Committee cannot be treated to be

an, officer of the Association. The learned Tribunal has distinguished the decision of Umesh Chandra Banerjee, J., because the learned Judge in the above decision has held the Vice-Chairman of the Employers' Association to be an Officer and competent to represent as an officer before the Tribunal. But he has expressed the view that ordinary member of the Executive Committee cannot be treated as an officer. He has pointed out that Umesh Chandra Banerjee, J. in the above decision did not take the view that the Executive Committee members of the Association would be officers of the Association. The learned Tribunal has expressed the view that the office-bearers, of the Association, namely President, Vice-President, Secretary etc. take a decision regarding the policy matter but ordinary members of the Executive Committee cannot take such decision as a functionary and the execution of any decision adopted by the executive committee is done through some determined functionary either elected or appointed which may be the President, Vice-President and Secretary etc., and this is the normal rule of the Association. The learned Tribunal has also pointed out that if under the Articles or Memorandum of Association any member of the Executive Committee can take any policy decision, then, of course, in view of the said Articles and Memorandum of Association, the members of Executive Committee would also be an officer of the said Association but he has pointed out that the petitioner could not show by production of the Articles or Memorandum of Association that the Executive Committee members of the Employers Association are authorised to act as such functionary. In the circumstances, the learned Tribunal has expressed the view that Dr. Mukherjee and Mr. Kar being the Executive Committee members of the Employers Association are not the officers of the Employers Association, and the writ petitioner cannot therefore be permitted to be represented by them. He has also observed that in case of any doubt regarding interpretation, regard being had to the Supreme Court decision in *The K.C.P. Employees' Association, Madras Vs. The Management of K.C.P. Ltd., Madras and Others*, , the interpretation has to be made in favour of the weaker section, namely, the labour.

14. Before me, Dr. Monotosh Mukherjee appearing for the petitioner has seriously challenged the above observation of the learned Tribunal. He has referred to me the definition of "officer" in the Societies Registration Act as well as in the West Bengal Societies Registration Act, 1961 which indicates that so far as an Association registered under the said Act is concerned any member of the governing body, the President and Secretary or any office-bearer of the society and an employee of the said society whose work is not ministerial in nature is an officer. He has also argued that in several decisions not only our High Court but also different High Courts have considered any Governing Body or the Association to be an officer for the purpose of Section 36(2) and consequently the learned Tribunal appears to have taken a narrow view by observing that the President, Secretary or Vice President or any other office-bearer may be an officer but not an ordinary member of the Executive Committee.

15. If the definition of officer given in the Societies Registration Act is accepted

for the purpose of interpreting the word "Officer" in Section 36(2) of the Industrial Disputes Act then a member of the Executive Committee can be treated as an officer. But the definition of officer given in the Societies Registration Act is for the purpose of that Act alone. Wide definition of officer given in the Societies Registration Act cannot be used for the purpose of interpreting similar expression used in the Industrial Disputes Act. Both the Acts work in different fields of legislation. If the definition of "Officer" in Societies Registration Act could have served the purpose of Section 36(2) of the Industrial Disputes Act, 1947, the Supreme Court in Paradeep Port Trust case (supra) would not have observed that the term "Officer" in Section 36(2) would pose difficulty for the Tribunal and would not have left the matter to be decided by the Tribunal on considering the facts and circumstances of each particular case.

16. Before me, one Division Bench Judgment of Andhra Pradesh High Court and the decision of Globe Theatre Pvt. Ltd., (supra) have been referred and it is submitted that the Division Bench of Andhra Pradesh High Court in P. Mallesha v. The Industrial Disputes Tribunal (Labour Court), Hyderabad and Ors. 1977 L.I.C. 248 has held that the objection of the workmen that the employer could not be represented by the Honorary Joint Secretary of the Federation of Chamber of Commerce and Industry of which the employer company was a member even though he was an Advocate when such Honorary Secretary was appearing not in his capacity as an Advocate but only in his capacity as Honorary Joint Secretary of the Federation of Chamber of Commerce and Industry, then the requirements of Section 36(2) (a) and (b) were satisfied and he was competent to appear before the Labour Court on behalf of the Company

17. In the Globe Theatre case (supra), Umesh Chandra Banerjee, J., has held that the Vice-president of the Employers' Association of which the petitioner employer is the member is competent to represent the employer u/s 36(2) of the Industrial Disputes Act. The learned Judge has observed that when the legal practitioner appears in the capacity as officer of the Association and not in the capacity as legal practitioner the fact that the person is a legal practitioner will not affect the position if the qualifications specified in Sections 36(1) and (2) are fulfilled. There the employer wanted to be represented by Mr. K.M. Sen who was the Vice-President of the Employers' Association of India who was an office-bearer of the said association. But he was not an ordinary member of the Executive Committee. The learned Tribunal has rightly distinguished this case on the ground that it was a case in which the learned Judge considered the representation in accordance with the Section 36(2) as Shri K.M. Sen being the Vice-President of the Employers Association was an office-bearer of the association.

18. I am of the view that in none of these decisions, the question which is raised in this writ petition came for decision. No question arose as to whether an ordinary member of the Executive Committee of the Employers' Association could be engaged by the employer u/s 36(2) of the Industrial Disputes Act to

represent the employer. The learned Tribunal has considered the dictionary meaning of the word "officer" as given in the Concise Dictionary, 6th Edition. When the expression "officer" in Section 36(2) has not been defined in the Act, the learned Tribunal did not commit any illegality in taking the dictionary meaning of the word "officer" for the purpose of considering as to whether ordinary member of the Executive Committee of the Employers' Association could represent the employer even though the employer was a member of such association. It was within the jurisdiction of the learned Tribunal in view of the decision of the Supreme Court in Paradeep Port Trust case (supra) to decide the question regard being had to the facts and circumstances of the case and the materials produced before him. Before the Tribunal the Memorandum or Articles of Association of Employers' Association were not produced. The learned Tribunal did not have any material before him as to whether the ordinary member of the Executive Committee had any power to take any policy decision on behalf of the Association which functionaries, namely, the President, Vice- President, Secretary, etc., could take. He entertained doubt as to whether an ordinary member of the employers' association could be treated as an officer and regard being had to the decision of the Supreme Court in K.C.P. Employers' Association v. Management of K.C. Pvt. Ltd. (supra), that in Industrial Law interpreted and applied in the perspective of Part IV of the Constitution the benefit of reasonable doubt of law and facts, if there be such doubt, must go to the weaker section, labour. He has, in my opinion, given the benefit of doubt of such interpretation of the expression "officer" in favour of the Labour. In my view the learned Tribunal did not commit any illegality in refusing to permit the petitioner to be represented by two Executive Committee members of the Association.

19. In the result, I am unable to interfere with this order dated September 9, 1988 passed by the learned Tribunal in refusing to accept the two members of the Executive Committee of the Employers' Association as officers of the said Association and such finding not being arbitrary or perverse cannot be interfered with by this Court under Article 226 of the Constitution of India.

20. The writ petition is, therefore, dismissed. There is no order for costs. All interim orders are vacated. All parties shall act on the signed copy of the operative portion of the judgment.