

(1995) 05 OHC CK 0018
In the Orissa High Court
Case No : O.J.C. No. 8607 of 1994

Birla Tyres (Kesoram Industries) Ltd.	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 03-05-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 36(2)

Citation : (1998) 3 LLJ 623

Hon'ble Judges : G.B. Patnaik, Acting C.J.; D.M. Patnaik, J

Bench : Division Bench

Advocate : B.B. Ratho and Biswanath Rath, for the Appellant; Sankarshan Rath, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, Actg. C. J.

1. The short question that arises for consideration is as to whether an office-bearer of an association of employers can be held to be an officer within the meaning of Section 36(2)(a) of the Industrial Disputes Act, 1947.

2. In the case at hand, the so-called officebearer was the chairman and he was a lawyer. His right to represent the employer was rejected by the Tribunal on a finding that he is in fact an officer of the association of employers within the ambit of Section 36(2)(a) of the Act. In coming to the aforesaid conclusion, the learned Tribunal has relied upon the decision of this Court in the case of Kalinga Studios Ltd. Vs. Presiding Officer, Industrial Tribunal and Others, as well as the decision of the Supreme Court in the case of Paradip Port Trust, Paradip Vs. Their Workmen, .We have carefully read the decisions referred to by the learned Tribunal. The Supreme Court decision is quite clear on the subject inasmuch as in paragraph 16 of the judgment, their Lordships have held at page 414 :

"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."

3. The expression "officer", as per Section 36(2)(a) of the Act, means, an officer of an association of employers of which he is a member, and it does not mean that only a paid officer or an employee would come within the ambit of Section 36(2)(a) of the Act. In that view of the matter, and in view of the decision of the Supreme Court referred to above, a lawyer when he is selected as an office-bearer of an association of employers of which he himself is a member would have the right to represent the employer before the Tribunal within the meaning of Section 36(2)(a) of the Act.

4. In the Bench decision of this Court in Kalinga Studios (supra) on which the learned Tribunal has relied upon, a lawyer had been appointed as a legal adviser to represent the employer and this Court said that a practising lawyer may conceivably be an officer, but the description of "legal adviser", without reference to the terms of his appointment and the duties of the office would not be enough for a finding that he is an officer of the company. In the facts of that case, their Lordships came to hold that a lawyer who has been appointed as a legal adviser would not be ineligible to represent the employer within the ambit of Section 36(2)(a) of the Act, but nothing has been stated therein which would mean that the expression "officer" in Section 36(2)(a) of the Act would not include an office bearer.

5. In the aforesaid premises, the impugned order of the Tribunal is not sustainable and, we accordingly, quash the same with a direction that the Chairman of the association of employers would be entitled to represent the employer before the proceedings in the Industrial Tribunal, Orissa.

6. The writ application is allowed accordingly.