

(2002) 08 CAL CK 0042

In the Calcutta High Court

Case No : C.O. No. 5800 (W) of 1991, 5801 (W) of 1991 and 14674 (W) of 1990

Britannia Engineering Products and Services Ltd.

APPELLANT

Vs

Second Labour Court and Others

RESPONDENT

Date of Decision : 28-08-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 36(4)

Citation : (2002) 4 CHN 704 : (2003) 97 FLR 981 : (2002) 2 ILR (Cal) 246 : (2003) 2 LLJ 1024

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Dipak Kumar Ghosh and Ranjay De, for the Appellant;

Judgement

Subhro Kamal Mukherjee, J.—These three writ petitions are taken up together inasmuch as identical questions are involved. In these three writ applications the orders passed by the learned Judge, Second Labour Court, West Bengal, refusing to permit the company to represent through its learned advocate, are under challenge.

2. The brief facts leading to filing of the writ applications are summarised as under:

(a) The workmen concerned made applications u/s 33-C(2) of the Industrial Disputes Act, 1947 for computation of their alleged mandatory benefits before the Second Labour Court.

(b) The company appeared in the said proceedings and submitted letters of authority authorising Shri G.S. Sengupta, Learned advocate, to represent the company before the, said Court.

(c) In spite of service of notice, none appeared before the Labour Court to object to such representation by learned advocate and as such the said learned advocate was representing the company before the said Court.

(d) The workmen concerned, also, appeared through their learned advocates and at no point of time any objection was raised challenging the authority of the said learned advocate to represent the company before the said Court.

(e) The company decided to change their erstwhile learned advocate and filed new authorisation in favour of Shri D.K. Ghosh, learned advocate, after obtaining no objection from the erstwhile learned advocate.

(f) On a subsequent date, however, the workmen raised objections regarding representation through Shri D.K. Ghosh, learned advocate and, ultimately, written statements were filed by the workmen contending that the workmen had objection regarding appearance of the legal practitioner on behalf of the company.

(g) The company also, filed a written objection contending that there was no provision under the Industrial Disputes Act, 1947 by which consent or leave to represent through learned advocate once given could be retracted or revoked. It is, further, contended by the company that there is no provision under Sub-section (4) of Section 36 of the Industrial Disputes Act, 1947 that in case of change of the lawyer, where consent has already been given, it was necessary to obtain a fresh consent.

(h) However, by the orders impugned the learned Judge refused to accept the authorities of representation by the present learned advocate of the company.

3. Being aggrieved the company has come up with these writ applications.

4. Section 36(4) of the Industrial Disputes Act, 1947 runs as under:

"(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."

5. In the cases in hand the company after receiving the notices of the proceedings appeared before the Court and filed letters of authority authorising Shri G.S. Sengupta, advocate along with Shri A. Dasgupta, Manager (Personnel and Administration) of the company to represent the company. At no stage of the proceedings the workmen raised any objection disputing such representation by the company through the said learned advocate. It is settled law that filing of a letter of authorisation in favour of the learned advocate is sufficient to enable the said learned advocate to represent a party before the Labour Court. Subsequently, however, the company obtained no objections from their erstwhile learned advocate and filed fresh authorisation in favour of Shri D.K. Ghosh. Only at that stage the workmen raised objection and refused to give consent for representation of the company through its learned advocate.

6. In *Reckitt and Colman of India Ltd. and Others Vs. Jitendra Nath Maitra and Others*, : 1957-I-LLJ-63, it has been observed by a learned Judge of this Court that where at the outset the employer informed the Tribunal of its desire to be

represented by a lawyer and no objection was then raised by the workmen and the case for the company was opened by their lawyer, the workmen could not at a subsequent stage of the proceedings withdraw their consent impliedly given by them. There is no provision in the Industrial Disputes Act, 1947 by which the consent or leave once given could be retracted or revoked. There was nothing in Sub-section (4) of Section 36 of the Industrial Disputes Act, 1947, which provided that consent should be in any particular form. It could thus be implied from the circumstances and conduct of the parties.

7. In *Calicut Co-operative Milk Supply Union v. Calicut Co-operative Milk Supply Workers' Union and Anr.*, reported in 1996 Lab. I. C. 1681, a learned Judge of the Kerala High Court relied upon the observations of the learned Judge of this Court in *Reckitt and Colman of India Limited (supra)*. It was observed in the said case that Section 36(4) did not prescribe that the consent must be given in a particular manner or in a particular form. The consent of a party, which was the basis for the grant of leave to the other party for being represented by a lawyer in a proceeding under the Industrial Disputes Act, 1947 could be inferred from the surrounding circumstances as also the conduct of the consenting party. Consent could be implied. The Section did not insist upon a written consent. Consent once given could not be revoked at a later stage because there has been no provision in the Industrial Disputes Act, 1947 enabling such withdrawal or revocation. To put it pithily the consent once given by a party entitling the other party to be represented in the proceeding by a Lawyer would ensure to his benefit till the proceeding has been finally disposed of.

8. A Division Bench of this Court in *Shiraz Golden Restaurant Vs. State of West Bengal and Others*, : 2000-II-LLJ-1101, held that Section 36(4) of the Industrial Disputes Act, thus, laid down two conditions, that is, (a) consent of the other party to the proceeding; (b) leave of the Court or Tribunal, as the case may be, before a party could be allowed to be represented by a legal practitioner. Reliance has been placed on the observations made in the case of *Reckitt and Colman (supra)* and it was observed that although consent of a party to the dispute was one of the necessary ingredients, but it was, also, well settled that such consent need not be in a particular form. Once a leave had been granted, there has been no provision in the Industrial Disputes Act, 1947 to recall or review the same.

9. In the cases in hand, as has been noted hereinabove, at the inception the company filed authorisations in favour of Shri G.S. Sengupta, learned advocate, expressing its desire to be represented in the proceedings through the said learned advocate. The written statement was filed by the company. The workmen, also, appeared through their learned advocates and at no point of time authority of the said learned advocate to represent the company was ever challenged.

10. In my view, therefore, impliedly consent was given for representation of the company through its learned advocate. Only when the company obtained no

objection from its erstwhile learned advocate and wanted to engage another learned advocate instead and place of the erstwhile learned advocate, objection was raised by the workmen. In my view, once consent is given, it is not open to the workmen to withdraw such consent nor the Court or Tribunal can recall the leave granted to a party. Neither, similarly, at the time of change of the lawyer a party need to obtain fresh leave nor any consent is required to be obtained from the other party. The choice of the legal practitioner lies with the party concerned and it is not open to the other side to object to change of lawyer.

11. Accordingly, the orders impugned in these writ applications are set aside. The learned Judge in the Second Labour Court is directed to permit Shri D.K. Ghosh, the present learned advocate of the company, to appear and represent the said company before the said Court.

12. The writ applications are, thus, allowed without, however, any order as to costs.

13. Xerox certified copy of this order, if applied for, is to be given within seven days from the date of making requisition for the same.