
(2004) 10 BOM CK 0095

In the Bombay High Court

Case No : L.P.A. No. 87 of 2004 in Writ Petition No. 4174 of 2000

Chandrakant Deshkar and Others

APPELLANT

Vs

All India Reporter Ltd. and Another

RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 36(4)

Citation : (2005) 105 FLR 300 : (2005) 2 LLJ 290 : (2005) 1 MhLj 1027

Hon'ble Judges : V.C. Daga, J; S.U. Kamdar, J

Bench : Division Bench

Advocate : J.L. Bhoot and B.G. Chaudhari, for the Appellant;

Judgement

S.U. Kamdar, J.—The present appeal is challenging an order and judgment of the learned single Judge dated 5-1-2004 passed in Writ Petition No. 4174 of 2000. The present appeal raises a question of law pertaining to interpretation of Section 36(4) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said I.D. Act). Some of the material facts in the present case are as under :-

2. On 27-1-1989 an application was filed u/s 33-C(2) of the ID. Act by the appellant. By the said application the appellant claimed wages in accordance with Palekar Award and Bachawat Award. It is his case that he is entitled to the difference in wages as per the findings of the Wage Board.

3. On 8-1-1999 an application was filed to engage a lawyer by the respondent herein. The appellant however objected to the said application by filing his say on 7-2-1999. By an order and judgment dated 7-7-2000, the 3rd Labour Court rejected the said application because of refusal by the appellant to grant consent. The said order of the 3rd Labour Court was the subject-matter of challenge in the writ petition being Writ Petition No. 4174 of 2000. By an order and judgment dated 5-1-2004, the learned Single Judge has allowed the writ petition and permitted the respondent to engage the counsel in a pending IDA case No. 25 of 1989. Against the said order, the present appeal has been filed.

4. The learned counsel for the appellant has urged that the order passed by the learned Single Judge is contrary to the provisions of Section 36(4) of the I.D. Act inasmuch as for permitting the respondent to engage a lawyer consent* of the appellant is necessary and the appellant having refused to grant consent, it was not open for the 3rd respondent Labour Court to grant permission u/s 36(4) to the respondent to engage an advocate to represent their case. It has been further urged by the learned counsel for the appellant that reliance placed by the learned Single Judge on the judgment in the case of T.K. Varghese Vs. Nichimen Corporation, is erroneous inasmuch as the law laid down by the said judgment is contrary to the Supreme Court judgment. It has been contended by the learned counsel for the appellant that no permission can be granted to engage a lawyer once there is an objection by the other party in the proceeding in the Industrial Court.

5. On the other hand, the learned counsel for the respondent has urged that the power to grant permission is vested in the Labour Court and the Labour Court has necessary power to grant permission even in the absence of consent by the appellant herein. It has been alternatively contended that in any event, the appellant is not entitled to withhold the consent and the learned Single Judge has rightly decided the said issue by relying upon the judgment in the case of T. K. Varghese (supra) and permitted the respondent to be represented through an advocate.

6. Before dealing with the rival contentions of the parties, we would like to set out the provisions of Section 36(4) of the I.D. Act. The said provisions read as under:-

"36. Representation of parties.-

(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 proceedings and with the leave of the Labour Court, Tribunal or National Tribunal as the case may be."

7. Insofar as the issue of interpretation of the provisions of Section 36(4) of the I.D. Act is concerned, in our view firstly on a plain reading of the section itself it is necessary that a consent of the other party has to be obtained for the purpose of engaging a legal practitioner. On a plain and simple interpretation of Section 36(4) it is not possible to hold that the Labour Court has an inherent power and/or jurisdiction to grant permission for engaging the lawyer irrespective of the consent of the other party or not. In our view, the plain and simple reading of Sub-section (4) of Section 36 leaves no manner of doubt that consent of the other party is a condition precedent for the purpose of granting the said permission. Aforesaid issue had come up for consideration before the Apex Court in the case of Paradip Port Trust, Paradip Vs. Their Workmen, and while interpreting the provisions of Section 36(4) of the I.D. Act, the Supreme Court has held as under :-

"20. We have given anxious consideration to the above submission. It is true that "and" in a particular context and in view of the object and purpose of a particular legislation may be read as "or" to give effect to the intent of the Legislature. However, having regard to the history of the present legislation, recognition by law of the unequal strength of the parties in adjudication proceedings before a Tribunal. Intention of the law being to discourage representation by legal practitioners as such, and the need for expeditious disposal of cases, we are unable to hold that "and" in Section 36(4) can be read as "or".

"24. In the appeal before us we find that the Tribunal, after considering the materials produced before it, held that Shri T. Misra could not claim to be an officer of the Corporation simply because he was a legal consultant of the Trust. The Tribunal came to this conclusion after examining the terms and conditions governing the relationship of Shri Misra with the Trust. He was neither in pay of the company nor under its control and enjoyed freedom as any other legal practitioner to accept cases from other parties. It is significant to note that one of the conditions of Shri Misra's retainer is that "he will not appear in any suit or appeal against the Port until he has ascertained from the Chairman that his services on behalf of the Port will not be required". That is to say, although on a retainer and with fixed fees for appearance in case there is no absolute ban to appear even against the Port. This condition is not at all consistent with the position of an officer of the Trust. We agree with the opinion of the Tribunal that Shri Misra cannot be held to be an officer of the Trust.

"25. A lawyer, simpliciter, cannot appear before an Industrial Tribunal without the consent of the opposite party and leave of the Tribunal merely by virtue of a power of attorney executed by a party. A lawyer can appear before the Tribunal in the capacity of an office-bearer of a registered trade union or an officer of associations of employers and no consent of the other side and leave of the Tribunal will, then, be necessary."

8. The aforesaid views of the Supreme Court was followed by the Single Judge of this Court in the case of MSCO (P) Limited Vs. S.D. Rane and others, and in the case of Sandoz(India) Limited v. Association of Chemical Workers and Anr., reported in 1997(3) Mh.L.J. 684 = 1997 Lab.I.C. 3318. Both the aforesaid judgments take an unequivocal view that the provisions of Section 36(4) requiring permission from other party is a condition precedent for exercising power for permitting a party to engage a lawyer.

9. However, the learned Single Judge of this Court in the judgment in the case of T.K. Varghese (supra) while interpreting the provisions of Section 36(4) has held that the Labour Court has a power to grant permission to engage a lawyer u/s 36(4) of the I.D. Act even in absence of the consent being granted by the other party. It has been inter alia held in the said judgment that no party to the proceeding has an absolute right to refuse to give consent without any justification and/or arbitrarily for no rhyme or reason and it has been further held that in absence of consent the Labour Court has jurisdiction to decide the

question of refusal of consent by other party and can even overrule the refusal of consent on merits while deciding the application u/s 36(4) of the I.D. Act. The judgment of the learned Single Judge of this Court in the aforesaid case reads as under :-

"10. There is no absolute bar for the legal practitioner to appear before the Labour Court/Tribunal as it is u/s 36(3) in the Conciliation proceedings. No party can withhold appearance of a legal practitioner by denying "consent" without any justification and arbitrarily for no rhyme or reason. If a party is represented by an office bearer etc. of a Trade Union or an Association, it cannot refuse to grant consent to the other side without any reasonable cause and justification to engage a legal practitioner and the Labour Court/Tribunal can always consider the bona fides of such a party withholding consent and can always grant "leave" to the other parties to be represented by a legal practitioner in the interest of justice notwithstanding the refusal of consent by the other side. No party to the proceedings has an unbridled and absolute right to refuse to give consent to other party. No party can adopt unreasonable attitude to exploit the situation arising out of Section 36(4) of the Act to the deliberate disadvantage of the other side. This provision was enacted to help the budding Trade Union movement and it was never intended for them to take wrongful advantage of the same even after the Trade Unions have become capable of defending themselves and their workmen. The provision is always subject to the scrutiny of the Labour Court/Tribunal and it can always decide the question of refusal of consent by the other party and can overrule the refusal of the consent on merits independently while considering to grant or refuse the "leave" contemplated u/s 36(4) of the Act."

10. On a perusal of the said judgment in the case of T.K. Varghese (supra), we find that the said judgment was decided without taking into consideration the binding view of the Supreme Court of India in the case of Paradip Port Trust and Their workmen (supra) as well as the case of Sandoz (India) Limited v. Association of Chemical Workers and Anr. (supra) and another two decisions of the Division Bench of this Court. In that view of the matter, we find that the view taken by the learned Single Judge is directly contrary to the judgment of the Supreme Court in the case of Paradip Port Trust (supra).

11. We accordingly hold that the view of the learned Single Judge (Kochar, J.) in the case of T.K. Varghese (supra) is not a good law and hence we overrule the said judgment of the learned Single Judge.

12. Now turning to the impugned judgment of the learned single Judge, we find that the learned Single Judge has substantially allowed the present petition and permitted the respondent to engage the lawyer basically relying upon the judgment of the learned Single Judge in the case of T.K. Varghese (supra) which we have overruled. Even in the impugned judgment the learned Single Judge has not considered the binding judgment of the Supreme Court in the case of Paradip Port Trust (supra).

13. In view of the aforesaid position of law, we find that the impugned order and judgment of the learned Single Judge in the present writ petition is unsustainable in law. The view taken by the learned Single Judge that even in absence of consent the Labour Court has power and/or jurisdiction to grant permission to engage a lawyer by a party in litigation in the Labour Court is not a correct view both on plain and simple interpretation of Section 36(4) of the I.D. Act as well as in view of the abovementioned judgment of the Supreme Court in the case of Paradip Port Trust (supra).

14. In the aforesaid circumstances, the impugned order and judgment is unsustainable in law. We accordingly, quash and set aside the judgment and order dated 5-1-2004 and dismiss the said Writ Petition No. 4174 of 2000 preferred by the respondent herein and confirm the order passed by the 3rd Labour Court, Nagpur dated 7-7-2000 in IDA No. 25 of 1989. However, there shall be no order as to costs.