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**(1983) 09 GUJ CK 0018**  
**In the Gujarat High Court**

C.R. Shah

APPELLANT

Vs

L.C. Joshi

RESPONDENT

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**Date of Decision :** 20-09-1983

**Acts Referred:**

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

**Citation :** (1984) GLH 392 : (1984) 1 GLR 394

**Hon'ble Judges :** R.C. Mankad, J;A.P. Ravani, J

**Bench :** Division Bench

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**Judgement**

A.P. Ravani, J.—The short question involved in this petition is, as to what meaning should be given to the term ""Legal Practitioner"" occurring

in Section 36(4) of the Industrial Disputes Act, 1947 (""the Act"", for short). The question has been directly covered by a decision rendered by us

today, i.e., September 20, 1983, in Special Civil Application No. 3706 of 1981 wherein we have held that the term ""Legal Practitioner"" occurring

in Section 36(4) of the Act cannot be given restricted meaning as defined in the Advocates Act, 1961. In the facts, and circumstances of that case,

we held that a person, though not qualified to hold Sanad as an advocate and who has admittedly not taken the Sanad of an advocate, but who

was in fact doing the practice of law, would fall within the term ""Legal Practitioner"" used in Section 36(4) of the Act. While taking this view we

have followed the decision of the Supreme Court in the case of A.K. Roy and Others Vs. Union of India (UOI) and Others, , wherein it has been

held that it is the substance which requires to be taken into consideration and not the form. The relevant portion from the decision rendered by us

today in Special Civil Application No. 3706 of 1981 may be reproduced:

...The Supreme Court observed that regard must be had to the substance and not the form, and whosoever assists or advises on facts or law must

be deemed to be in the position of a legal adviser. If the ratio of the decision of the Supreme Court is applied to the facts of the present case, in our

opinion, a person who, though not legally entitled to practise, practises profession of law, would be covered by the term "legal practitioner" used in

Section 36(4) and he cannot be allowed to represent the party before the Labour Court unless two conditions laid down in that provision are

satisfied. As observed by the Supreme Court regard must be had to the substance and not to the form and the party cannot be allowed to do

indirectly what it cannot do directly. Respondents cannot be allowed to take shelter behind the excuse that respondent No. 2 is not a legal

practitioner as defined under the provisions of the Advocates Act.

Applying the said principles to the facts and circumstances of this case "it becomes clear that the order by which respondent No. 1 was permitted

by the first Labour Court, Ahmedabad, to appear in the recovery application filed by the petitioner herein will have to be quashed and set aside.

2. Respondent No. 1 herein was admittedly the Assistant Commissioner of Labour of the then Government of Bombay up to 1951 and thereafter

he took up the assignment of Labour Adviser of Bombay Chamber of Commerce & Industry and continued in that capacity until 31st March

1972. During his tenure as Labour Adviser he used to give advice to the Members of the Chambers on labour matters and make representations

to Government on various important labour matters as may be required from time to time. He has admitted in his application filed before the

Labour Court that he has also served on various committees appointed by the Government such as Norms Committees, Committee on Unfair

Labour Practices, Committee for suggesting amendments to Bombay Shops & Establishments Act, etc. For about six years he worked as Labour

Adviser to Indian Merchants' Chamber. According to his own admission, he was working as Labour Adviser of the respondent-Society and was

required to give advice on labour matters and also represent them before the Labour Court, Industrial Tribunal whenever necessary. He has also

admitted that he occasionally represented employers who sought his assistance in this regard. His only contention was that he cannot be said to be

engaged in regular practice (as a professional advocate). This contention found favour with the Labour Court and the Labour Court came to the

conclusion that to fall within the definition of the phrase "'Legal Practitioner'" as occurring in Section 36(4) of the Act, one should be a legal

practitioner as defined in the Advocates Act, 1961. This view is not correct. Taking such a view would amount to adhering to the form and

disregarding the substance, which will be clearly against the principles laid down in the decision of the Supreme Court in A.K. Roy's case (supra).

In above view of the matter, we are of the view that respondent No. 1 herein is a "legal practitioner" and he cannot appear before the Labour

Court without the consent of the other side and without the permission of the Court. Hence the petition requires to be allowed.

2.1. In the result, the petition is allowed. The impugned order passed by the Labour Court produced at Annexure "I" dated July 25, 1979 is

hereby quashed and set aside. The application Exh. 12 submitted by the petitioner herein is ordered to be allowed. Respondent No. 1 cannot be

permitted to appear on behalf of Respondent No. 2 - Society unless the other side consents and the Labour Court gives permission. Rule made

absolute to the extent indicated hereinabove with cost.