
(1957) 07 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ No"s. 131, 137 and 138 of 1956

Duduwala and Co. and Others

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision : 29-07-1957

Acts Referred:

Industrial Disputes Act, 1947 — Section 36, 36(1), 36(2), 36(4)

Citation : AIR 1958 Raj 20 : (1959) 1 LLJ 75 : (1957) RLW 494

Hon'ble Judges : K.N. Wanchoo, C.J.;D.S. Dave, J

Bench : Division Bench

Advocate : Kistoormal and Yaswantsingh, for the Appellant; Chandmal, for Opposite Party No. 2, for the Respondent

Final Decision : Partly Allowed

Judgement

Wanchoo, C.J.—These are three applications for issue of a writ of certiorari under Article 226 of the Constitution against the order of the Industrial Tribunal at Jaipur.

2. We propose to decide them by one judgment as the points raised to them are common. It seems that disputes are going on between Messrs. Duduwala and Company on the one hand and their employees on the other, represented by Khan Mazdoor Congress, Bhilwara, a registered union of workers.

In one of the cases the dispute was referred to the Tribunal on the 16th of June 1956, in the other on the 25th of August 1956 and in the third on the 4th of September 1956. Soon after the parties had appeared before the Industrial Tribunal, applications were made both on behalf of the employers and the Union for appearance through certain representatives.

The Union applied for appearance through Shri R. P. Ladha, a practising, advocate. The case of the Union was based on Section 36(1)(b) of the Industrial Disputes Act, 1947, and Shri R. P. Ladha was allowed to represent the Union in view of that provision. The employers, who are the applicants before us, prayed

that they might be represented through Shri Y. S. Nahar, also a practising, lawyer, and said that he was competent to represent them u/s 36(2)(a).

This was opposed by the Union and the Tribunal, while apparently holding that Shri Nahar was the Joint Honorary Secretary of the Association of Employers of which Messrs. Duduwala and Company were member and would, therefore, be qualified u/s 36(2)(a) to represent the employers, did not permit him to do so on the ground that as Shri Nahar was appointed in July 1956 and as the disputes, out of which these two cases arose, had either arisen or been referred to the Tribunal by that time, the appointment of Shri Nahar was to circumvent the law as contained in Section 36(3), and (4) of the Act.

Sub-section (3) prohibits a lawyer from appearing in any conciliation proceedings on before any industrial Court and Sub-section (4) prohibits a lawyer from appearing before a Tribunal unless the other side consents.

3. Besides this, the employers also wanted to be represented by two other persons, namely, Shri Baldwa and Shri Chandmal Surana, in whose favour they had executed special powers of attorney. The Industrial Tribunal did not allow them on the ground that Section 36(2) did not permit anyone to represent the employers before it on the basis of a special power of attorney. Aggrieved by this order of the Tribunal, Messrs. Duduwala and Company have, filed these three applications.

4. The application has been opposed by the workers union and learned counsel appearing on their behalf supports the grounds on which the Industrial Tribunal has found against the employers.

5. There are thus only two points of law in this case:--

(1) Whether Section 36 is exhaustive of the right to represent before an industrial Court or Tribunal and, therefore, no party can claim to be represented through a person to whom he has given a special power of attorney, and,

(2) Whether a practising lawyer, who holds one of the capacities in Clauses (a), (b) and (c) of Section 36(2) can be prohibited from appearing before an industrial tribunal on the ground that his appointment was a circumvention of the provisions of Sub-section (4).

6. So far as the first point is concerned, the answer to our mind is quite clear. The Industrial Disputes Act is a special law providing for certain special contingencies. It must therefore be treated as complete code in itself and when it provides for representation of employees and employers before industrial Courts or Tribunals, that must be held to be exhaustive.

There is no reason why we should import the provisions of the general law regarding representation before courts and tribunals pointed under the Industrial Disputes Act. We have, therefore, no hesitation in coming to the conclusion that Section 36 does not contemplate anyone representing employers or employees

on the basis of a special power of attorney and, therefore, Shri Baldwa and Shri Surana's right to represent Messrs. Duduwala and Company was rightly rejected.

It is enough to say that there is no question of circumvention through this method of appointment by special power of attorney. Section 36 mentions certain specific ways of representation, and appointment through a special power of attorney is not one of them. A person, therefore, be he a lawyer or any other person cannot claim to represent the employees or employees before an industrial Court or Tribunal on the basis of a special power of attorney.

7. Now, we come to the second point, namely, whether a practising lawyer, who is appointed to one of the offices mentioned in Clauses (a), (b) and (c) of Sub-section (2) of Section 36 can appear for the employers in spite of the fact that Sub-section (4) of Section 36 provides that no lawyer can appear without the consent of the other party before an industrial tribunal.

It is now well settled that a lawyer can appear before an Industrial Tribunal, if he holds one of the capacities mentioned in Sub-section (1) or Sub-section (2) of Section 36 and his being a practising lawyer will not be a disqualification for his so appearing. There are innumerable cases in support of this view and we need only refer to *Sarbeswar Bardoloi v. U. K. Gohain* AIR 1955 Ass 148 as an illustration.

The question then arises whether the theory of circumvention of Sub-section (4) should be introduced to negative the effect of Sub-section (2). It is enough to point out that Sub-section (2) is not subject to Sub-section (4) and the two provisions stand separate.

In a Bombay case *Alembic Chemical Works Co. Ltd. v. P. D. Vyas*, 1954 2 LLJ 148, the view seems to have been taken that even, though a person may be qualified under Sub-section (1) and Sub-section (2) to represent an employer or an employee, the Tribunal may yet refuse to permit him to do so on the ground that the capacity mentioned in Sub-section (1) or Sub-section (2) was conferred on him for this specific purpose of circumventing Sub-section (3) or Sub-section (4) of Section 36.

With all respect, we find it difficult to see why Sub-section (3) or Sub-section (4) of Section 36 should be given precedence over Sub-section (1) or Sub-section (2). Sub-section (3) and Sub-section (4) prevent legal practitioners from appearing before Industrial Courts or Tribunals in certain circumstances. Sub-sections (1) and (2) allow for representation of employers and employees before such Courts and Tribunals. There is nothing in Sub-section (1) or Sub-section (2) which lays down that if the qualifications mentioned in these sub-sections are conferred with the idea of enabling a legal practitioner to appear before the Court or Tribunal, the Court or Tribunal will not recognise such appearance. It should not have been difficult if it was the intention that legal practitioners shall not be allowed to appear before a tribunal to provide that if the appointment of the officer mentioned in Sub-sections (1) and (2) was merely for the purpose of

enabling a legal practitioner to appear before the tribunal, the tribunal will not permit this. In the absence of any such provision, we do not see why we should add this to Sub-section (1) or (2) on the theory that such appointment at a time when an industrial dispute was pending or was expected to arise will be a circumvention of Sub-section (3) or Sub-section (4).

8. It cannot be said that there is moral turpitude attaching to a lawyer appearing before an industrial tribunal. Even Sub-section (4) recognises that lawyers can appear before industrial tribunals with the permission of the tribunal and the consent of the parties. There is nothing, therefore, inherently wrong in lawyers appearing before such tribunals. Further, there are authorities which lay down that if a lawyer fulfils the conditions laid down in Sub-sections (1) and (2), he has a right to represent the employer or the employee.

We cannot see why a distinction should be made on the theory of circumvention and a lawyer should be permitted to appear for the employer or the employee if he has been holding one of the offices mentioned in Sub-section (1) or Sub-section (2) before the dispute arose, but should not be so allowed to appear if he was elected or appointed to the office after the dispute.

In this very case, we know that Shri Ladha, a practising advocate has been permitted to appear and his is not to be treated a case of circumvention because he was appointed to the office, which gives him a right to represent the employees, in 1954, about two years before the dispute arose.

If one were to look at such appointment with a grain of suspicion, one may say that the appointment of Shri Ladha in 1954 to the office might have been with a view that his services might be available if and when a dispute arose. But that is not supposed to be circumvention of the provisions of Sub-section (3) or Sub-section (4).

But if a person is appointed, say a few days before the dispute was referred to the industrial authority, it is said that his appointment was with a view to circumvention. If this view is taken, it will all depend on the opinion of the industrial tribunal whether a particular person, who is qualified under Sub-section (1) or Sub-section (2) should or should not be allowed to appear.

As we see it, we can see no justification for allowing a lawyer to appear because he was elected or appointed to office a long time before the dispute arose and not allowed to appear because he was appointed to the office a few days before or a few days after the dispute arose. We are, therefore, of opinion that if the qualification prescribed in Sub-section (1) or Sub-section (2) of Section 36 is there, it is immaterial when the person holding that qualification acquired it.

All that the industrial Court has to see is that the qualification should have been acquired before the person applies to the industrial Court for appearance therein. If the qualification is there, the industrial tribunal need not go into the bona fides or the mala fides of the appointment.

We are of opinion that Sub-sections (1) and (2) of Section 36 do not contemplate this enquiry as to the bona fides or mala fides. If the appointment is there and is legally made, the person holding the appointment is, in our opinion, entitled to represent the employer or the employee under Sub-section (1) or Sub-section (2) of Section 36.

9. In this view of the matter, the industrial tribunal was wrong in going into the bona fides or otherwise of Shri Nahar's appointment and holding that his appointment was circumvention of the law as laid down in Sub-section (4) of Section 36. As apparently, Shri Nahar is qualified u/s 36(2)(a), he is entitled to appear before the industrial tribunal.

10. We, therefore, partly allow this application and set aside the order of the Industrial Tribunal with respect to Shri Nahar and direct that Shri Nahar be permitted to appear before the Tribunal on behalf of Messrs. Duduwala and Company so long as he holds the qualification mentioned in Sub-section (2) (a) of Section 36. The rest of the prayer is refused. In the circumstances of the case, we order parties to bear their own costs.