

(1991) 01 CAL CK 0013
In the Calcutta High Court
Case No : C.O. No. 1001 (W) of 1991

Durgapur Cinema and Another	Vs	APPELLANT
9th Industrial Tribunal and Others		RESPONDENT

Date of Decision : 30-01-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 36(4)

Citation : (1991) 2 CALLT 151 : (1991) 63 FLR 635 : (1992) 1 LLJ 701

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : S.C. Bose, S.K. Ghosh, for the Appellant; Jayati Dhar, for Respondent No. 11 and R.M. Chatterjee, for the Respondent

Judgement

Paritosh Kumar Mukherjee, J.—An interpretation of Sub-section (4) of Section 36 of the Industrial Disputes Act, 1947 has come up for consideration in the instant writ petition filed on behalf of M/s. Durgapur Cinema and Others.

2. By enacting Sub-section (4) it has been provided as follows:

"In a proceeding before 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."

3. In a dispute referred to the 9th Industrial Tribunal, West Bengal, Durgapur-16, in Case No.X-25/90 Durgapur Cinema Ltd. v. Their Workmen, Shri M.K. Basu, Judge, Ninth industrial Tribunal, West Bengal, Durgapur-16 passed an order on November 27, 1990 which has been impugned in the instant writ petition.

4. By the said order the learned Tribunal Judge in accepting the objection of the workmen in the matter of representation by the company Sri S.C. Bose disallowed him to appear as admittedly the said Mr. S.C. Bose learned Advocate did not receive any consent from the workmen side or being represented by a

representative of the Union.

5. Mr. Bose learned Advocate also filed an objection before the learned Tribunal regarding representation of the Union representative and to that the Tribunal came to the conclusion that there is no ambiguity in any of the said provisions of Section 36(4) of the Industrial Disputes Act, 1947 and it goes without saying that if any dispute before the Tribunal to be represented by an Advocate, any party must have to take prior consent as well as leave of the Tribunal.

6. The Tribunal further observed that it was needful to mention that other party, namely : Union, had not given any such consent and that was applicable from the petition filed by the Union dated September 12, 1990 itself and accordingly disallowed the company's lawyer to be represented by any legal practitioner.

7. It is curious enough to note that although similar objection has been raised on behalf of the learned Advocate for the company, the Tribunal was not impressed in the argument just like treating that the objection is a fundamental right of the workmen and as a sort of one way traffic.

8. In this connection this Court is not unmindful of the decision of the Supreme Court in the matter of representation by lawyers in departmental proceedings of cases in particular, wherein the Supreme Court in interpreting Rule 15(5) of the Central Services (Classification, Control and Appeal) Rules 1967 had interpreted that if the Government has appointed a trained practitioner to present the case against the government servant, refusal to permit Government servant to engage a legal practitioner vitiates the inquiry.

9. The said view had also been followed in a recent Supreme Court decision in the case of Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, . In this connection this Court cannot overlook the provisions of Sub-section (4) of Section 36 of the Act which enables the legal practitioner and not an Advocate to appear with the consent of other party and with the leave of the Labour Court/ Tribunal or National Tribunal, as the case may. In the facts of the present case it appears before me that the learned member of the Tribunal has not approached problems on application of equitable principles namely engagement of legal practitioner from either side but has approached the problem from one sided view and as such the said reasons of the Tribunal cannot be supported by this Court in a proceeding under Article 226 of the Constitution of India.

10. Before parting, this Court is of the opinion that since ultimately the matter will be coming for judicial review either in a petition under Article 226 of the Constitution of India or in a SLP under Article 134 of the Constitution before the Hon"ble Supreme Court and representation by legal practitioner is not being prohibited in terms of the provision itself the learned Judge of the Industrial Disputes Tribunal should be slow in applying the principle of Section 36(4) of the Industrial Disputes Act in the matter of refusal of assistance either by a legal practitioner or by an Advocate. Further I am of the view that fitness of thing

demands that the case should be represented before the Tribunal as far as practicable in accordance with the provisions of the Industrial Disputes Act and the Rules, and for that some sort of elementary legal training is required and appearance of lawyer cannot and should not be shut out on any flimsy ground as it was sought to be done in the facts of the present case and one sided view has been taken by the learned Tribunal.

11. Mr. S.K. Ghosh learned Advocate appearing for the State submits that no formal : application on behalf of the employer relating to representation of legal practitioner on behalf of the workmen which has however been disputed.

12. In the result, the impugned order is set aside. The matter is sent back to the learned Tribunal for fresh adjudication of the preliminary objection of either party and in case the tribunal allows representation of the legal representative of the workmen, the tribunal shall also consider the question of allowing legal practitioner and/or Advocate on behalf of the company.

13. The matter is remanded back to the Tribunal. The Tribunal further directed not to enter into the merits for determining first after giving opportunity to both parties.

14. This Court does not express any opinion on the propriety or otherwise and the matter is left open for adjudication by the learned Tribunal.

15. The writ petition is thus disposed of.

16. There will be no order as to costs.