

(1958) 11 KL CK 0001
In the High Court Of Kerala

Feroke Match Works and Another

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 25-11-1958

Acts Referred:

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

Citation : (1959) 3 KLJ 416 : (1959) 2 LLJ 505

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Judgement

C.A. Vaidialingam, J.—This is an application by the petitioners under Article 226 of the Constitution for quashing the order dated 30 August 1957 made by the Labour Court, Kozhikode, in I.D. Nos. 3 and 4 of 1957 and also for the issue of a writ of mandamus or other appropriate writ directing the respondent 1 to allow the petitioners to be represented by Messrs. S.K. Kadar and P.K. Ahamed in the disputes pending before the respondent 1.

2. It is not necessary to state very much the facts about the disputes pending in the labour court. It is seen from the affidavit filed in support of these applications that Messrs. S.K. Kadar and P.K. Ahamed appeared on behalf of the two petitioner concerns before the labour court and their appearance was objected to by the Secretary of the Match, Timber and Plywood Workers' Union, Feroke, on the ground that they are legal practitioners and that the permission of the opposite side as well as that of the labour court was required for their appearance. The union also intimated its objection to their appearance. The presiding officer, by his order dated 31 August 1957, has upheld the objection of the union and it is the said order that is sought to be quashed in these proceedings.

3. According to the petitioners, Sri S.K. Kadar is the Vice-President of the Kerala Match, Splints, Veneers and Woodworking Manufacturers' Association and Sri P.K. Ahamed is one of the secretaries of the abovementioned association. The

association is an association of employers interested in the industries specified in the title of the association. The two gentlemen are intimately connected with the industries as their permanent legal advisers also apart from being office-holders in the association. It is also further stated in the affidavit that the said association has been registered under a statute and that the labour court has no power under the Industrial Disputes Act to decide about the objects of the association, its formation and other allied matters. It is also further stated in the affidavit that the idea of forming the association was mooted as early as December 1956 as is clear from the advertisement in the paper " Chandrika " dated 27 December 1955 as also from a copy of the proceedings of the meeting dated 30 December 1956. The association itself was registered on 20 August 1957 and a copy of the memorandum of the rules of the association has also been filed.

4. From the order Ex. A it will be seen that objection was taken on behalf of the workers that Sri S.K. Kadar and Sri P.K. Ahamed, being legal practitioners, are not entitled to represent the employers without the consent of the workers and that the workers were not also willing to give consent. In considering this question, the tribunal has stated that if an officer of an association of employers happens to be a legal practitioner, that fact by itself would create no bar in the way of his representing the employer, if he is an officer of an association of employers as mentioned in Clause 2(a) of Section 36 of the Industrial Disputes Act, 1947. But the tribunal is of the view that the person should be a regular officer and not a sham one given the appellation of an officer merely to circumvent the provisions of Section 36(4). The tribunal then considered the events relating to the formation of the association known as the Kerala Match, Splints, Veneers and Woodworking Manufactures" Association. The disputes were referred to the tribunal on 12 June 1957 whereas the association was registered on 20 August 1957 under the Societies Registration Act, XXI of 1860. The tribunal considers that in view of the fact that the registration has been made after the disputes were referred for adjudication, this is only an attempt by the association to have themselves represented by legal practitioners. In the industrial dispute by giving them the appellation of being officers of an association of employers. The tribunal went into the objects of the association with reference to the provisions of the Societies Registration Act and then came to the conclusion that the objects of the association have nothing to do with the objects mentioned in the Societies Registration Act. On this reasoning the tribunal came to the conclusion that the association itself has been brought into existence long after these cases were referred for adjudication and that the attempt is patently to circumvent the provisions of Section 36(4) of the Act and it also held that Sri Kadar and Sri Ahamed who are legal practitioners are not entitled to represent the employers in those cases.

5. Mr. P. Govindan Nair, learned Counsel for the applicants, very strenuously contended that the tribunal has no jurisdiction what so ever to go into all the matters such as formation of the society and other allied matters and give

findings against the petitioners. The only question that the tribunal had to consider was whether the two gentlemen satisfied the requirement of Section 36(a)(2), (6) and (c) and if so, the association is entitled to be represented by those gentlemen. In the alternative, Mr. P. Govindan Nair also contended that the finding of the tribunal is perverse. Proceedings for the formation of the association have been taken from as early as December 1956 as will be seen from Exs. B and C. After going through all these formalities, the association itself was registered on 26 August 1957. The Registrar had no objection to register it under the Societies Registration Act. The finding of the tribunal that the association has been brought into existence with ulterior motives is not based upon the materials on record. In the face of the documentary evidence placed before the tribunal, the finding is nothing short of being perverse.

6. The union itself is not represented by anybody in these proceedings and the learned Government Pleader alone has appeared for the respondent 1. In view of the materials placed before the tribunal and before this Court, the learned Government Pleader found it very difficult to support the conclusions arrived at by the tribunal. The fact that there is an association of employers has not been challenged. The further fact that the two gentlemen are also office-bearers of the association, one being the vice-president and the other secretary, is not also challenged.

7. In view of the fact that the learned Government Pleader himself could not support the conclusions arrived at by the tribunal, I hold that the order of the tribunal, to say the least, is absolutely perverse. Just as a right is given to the workers to be represented by the persons mentioned in Clauses (a) to (c) of Section 36(1) of the Industrial Disputes Act, a similar right is given to an employer to be represented by the persons mentioned in Section 36(2)(a), (6) and (c). No doubt, there is a prohibition u/s 36, Clause 3, of a legal practitioner appearing in any conciliation proceedings or in any proceedings before a Court. Section 36(4) recognizes a qualified right to be represented by a legal practitioner with the consent of the other parties and with the leave of the Court. In this case, the tribunal itself has accepted the position that the fact that the two gentlemen concerned are legal practitioners will not debar them from appearing, if they satisfy any of the conditions mentioned in Clauses (a) to (c) of Section 36(2). The tribunal had negatived the right of these two gentlemen to appear on the ground that the association relied upon by the employers is not an association of employers because of the reasons given by the tribunal in the earlier portion of its order. That reasoning is fallacious and as that finding has not been supported by the learned Government Pleader, it is enough if I quash the proceedings in this case on the ground that the findings are perverse or, at any rate, not supported by the evidence on record. It is unnecessary for us in this case, to go into the larger question as to whether the tribunal functioning under the Industrial Disputes Act, has jurisdiction to go into the bona fides of the management in such cases.

8. In the result, the orders dated 30 August 1957 of the labour court, Kozhikode, and passed in I.D. Nos. 3 and 4 of 1957 are quashed and the rule nisi issued by this Court is made absolute. There will be no order as to costs.