

(1998) 11 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 282 of 1993

Francis Gomez and Another

APPELLANT

Vs

President, Thiruvananthapuram Shops and Commercial
Employees" Union and Others

RESPONDENT

Date of Decision : 09-11-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 36

Citation : (1999) 81 FLR 219 : (1999) 3 LLJ 1250

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : S. Gopakumaran Nair, for the Appellant; P.K. Santhamma, for the Respondent

Judgement

J.B. Koshy, J.—Two main questions are raised in this original petition : (1) Whether consent as envisaged u/s 36(4) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), to legal practitioners to appear in a proceeding before the Labour Court can be implied on the facts and circumstances of the case; and (2) Whether consent once given can be revoked at a later stage.

2. An industrial dispute was raised by an employees union regarding termination of services of certain employees of the canteen run by the Kerala Financial Corporation Employees" Cooperative Society Ltd. In the array of parties, the petitioners are made parties as representing the management. The industrial dispute was numbered as I. D. No.27 of 1992. The first posting of the case was on March 6, 1992. On that day itself advocate, Sri. M. S. Vijayachandra Babu, filed vakalath for the management. The union was represented by the President of the union who also happened to be a practising advocate. The case was adjourned to April 10, 1992, and there were several subsequent postings. On the sixth posting an oral objection was raised by the union regarding representation of the management by a lawyer. Section 36(4) of the Industrial Disputes Act,

1947, reads as follows:

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

3. Therefore, for being represented by a legal practitioner or by an advocate before an adjudicating authority, there should be consent of other party and also leave of the Court. The Labour Court based on the oral objection of the party, by exhibit P-3 order held that the management cannot be represented by the advocate who already filed vakalath. Challenging exhibit P-3 order this original petition was filed contending that when vakalath was accepted by the Court on the first posting date there was implied consent of the opposite party and leave of the Court and once the consent is given it cannot be revoked later. Neither the Section nor the rules made under the Act prescribe any form for consent or statute does not prescribe a particular manner in which consent should be given or separate petition should be filed every time for grant of leave by the Court. In *Reckitt and Colman of India Ltd. and Others Vs. Jitendra Nath Maitra and Others*, in *Engineering Mazdoor Sabha v. M. R. Meher* 1966 1 LLJ 580 (Bom) and in *Mscop (P) Limited Vs. S.D. Rane and others*, it was held that if vakalath is filed by a lawyer without any objection raised by the workman and it is accepted by the Court then it was inferred that the union has given consent for appearance by a lawyer and leave of the Court was also given. Here, an advocate himself filed vakalath. No objection was raised by the union on knowing that an advocate filed vakalath for the management. The Court has also accepted and taken the vakalath in file. On these facts and circumstances, it can be inferred that the consent was given. Therefore, I am of the view that in the absence of prescribed procedure for giving consent, from the facts and circumstances it can be inferred that consent was given by the opposite party.

4. There is no provision u/s 36(4) to withdraw the consent once given. Once the consent is given, it cannot subsequently be withdrawn. I am fortified in this view by the decision of this Court in *Calicut Co-operative Milk Supply Union Vs. Calicut Co-operative Milk Supply Workers Union*, wherein it was held that:

"This section does not prescribe that the consent must be given in a particular manner or in a particular form. If that be so, the consent of a party which is the basis for the grant of leave to the other party for being represented by a lawyer in a proceeding under the Industrial Disputes Act, can be inferred from the surrounding circumstances as also the conduct of the consenting party. Consent can be implied. The Section does not insist upon a written consent. Consent once given cannot be revoked at a later stage because there is no provision in the Industrial Disputes Act enabling such withdrawal or revocation. To put it pithily, the consent once given by a party, entitling the other party to be represented in the proceeding, by a lawyer would enure to his benefit till the proceeding is finally disposed of."

5. In this case, vakalath filed by the advocate on behalf of the management was accepted by the Labour Court without any objection from the union, on the first day itself. Therefore, oral objection raised on the sixth posting date is not maintainable as implied consent once given cannot be subsequently taken away. If there was any objection on the union side regarding appearance of an advocate on behalf of the management, it should have raised during the first posting day itself. The averments in the original petition are not disputed by filing counter-affidavit.

6. In these circumstances, I quash exhibit P-3 order and direct the Labour Court, Kollam, to proceed with the dispute. Since the dispute was referred in 1992, I direct the Labour Court, Kollam, to complete the proceedings and pass an award in the above dispute within six months from the date of receipt of a copy of this judgment.

7. The original petition is disposed of accordingly.

A copy of this judgment may be forwarded to the Labour Court at the expense of the petitioners.