
(1967) 07 PAT CK 0026
In the Patna High Court
Case No : C.W.J.C. No. 40 of 1967

General Manager, Champaran Sugar Company Ltd.	APPELLANT
Vs	
Presiding Officer, Industrial Tribunal and Others	RESPONDENT

Date of Decision : 05-07-1967

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33, 36

Citation : (1968) 16 BLJR 525

Hon'ble Judges : R.L. Narasimham, C.J;K.B.N. Singh, J

Bench : Division Bench

Judgement

R.L. Narasimham, C.J.—In this application under Article 226 of the Constitution the sole question for consideration is whether the Presiding Officer,. Industrial Tribunal, Bihar, was justified in declining to permit the Labour Officer of the petitioner company (the employer) from representing the company in the industrial dispute that was pending before him in Miscellaneous case No. 55 of 1966.

2. On 5-11-1966 both the employer and the labourers filed objections to the representation of the rival parties. The employer claimed the right to be represented by its Labour Officer, namely, Sri A.R. Davids. The Union objected to his representation on the ground that the Labour Officer of the company did not come within the various classes of persons enumerated in Section 36(2) of the Industrial Disputes Act. The labourers were represented by one Sri S.N. Sinha and his representation was objected to by the employer on the ground that he was not an office bearer of the Union concerned. This objection was ever-ruled and it was held that Sri S.N. Sinha came within the class of persons enumerated in Section 36(1) of the Act. While rejecting the claim of the Labour Officer to represent the employer, the Tribunal passed the following order:

As regards the Labour Officer of the management, I think he can not act on behalf of it in this case. He is admittedly not covered by Section 36(2) of the

above act. But he claims that the Section is not exhaustive. On this point the High Courts and Tribunals are not unanimous. There is conflict in their views. In my view, the Section is exhaustive. Even if it be taken that it is not so, any person other than those mentioned in Section 36 can be allowed to represent a party in exceptional circumstances for instance, if it is shown satisfactorily that no person of the clauses mentioned in the subsection of the Section are available, so on and so forth. No such thing has been shown here. I, therefore, hold that the Labour Officer of the management cannot act for the management in this case. It will now arrange to have another qualified person to act for it.

3. The question whether the provisions of Section 36 of the Industrial Disputes Act regarding representation of employers and workmen in an industrial dispute is exhaustive or not is not free from difficulty. There has been a sharp cleavage of judicial opinion on the subject. Thus in *Kanpur Hosiery Workers' Union, Kanpur v. I.K. Hosiery Factory, Kanpur* L.A.C. 1952 1 it was held that the provisions of Sections 33 (1) and (2) (corresponding to present Section 36) were exhaustive of the persons who may represent the workmen or employer before the Appellate Tribunal. The same view was taken by the Rajasthan High Court in *Duduwalla and Co. and Others Vs. Industrial Tribunal and Another*, . But in *The Printers (Mysore) Private Ltd. v. The Presiding Officer, Labour Court* AIR 1960 Mys 44 a subtle distinction was made between representation of a party through another person on the one hand and the appearance of the party itself before the Industrial Court on the other. It was held that Section 36 was not exhaustive but only permissive and that it cannot take away the inherent right of any party to appear in person before any judicial or quasi judicial Tribunal. Where the party is an incorporated company, it cannot obviously appear in person and that human being who according to the Articles of Association of the Company was duly authorised to represent the company should be deemed to be the company itself appearing before the Industrial Court. In such a case, it was held that the provisions of Section 36(2) of the Industrial Disputes Act would not operate as a bar. This view appears to have found favour with a Division Bench of the Patna High Court. Thus in *Ram Udgar Singh Vs. Presiding Officer, Labour Court, C.N. Division and Others*, and in *The Behar Journals Ltd. Vs. H.K. Chaudhuri and Another*, it was held by Mahapatra and Tarkeshwar Nath, JJ. as follows:

A corporate body is physically unable to appear in person and it is to act, when it chooses to act itself, through a living person it will authorise for that purpose. This authority may flow from either legal provisions or from the rules made by the corporate body for transaction of its work. In the present case if the State Electricity Board passed a resolution giving such authority to particular persons, then those persons acquire the legal competence to act for and on behalf of the Board. That will not be representing the Board in the sense as envisaged in Clauses (a), (b) and (c) of Sub-section (2) of Section 36 of the Industrial Disputes Act. That will be equivalent to a person "appearing or acting in person" (See) *Ram Udgar Singh Vs. Presiding Officer, Labour Court, C.N. Division and Others*, .

4. Mr. Basudeva Prasad for the petitioner contended that the present case was very similar on facts to the two Patna cases, that Sri Davids had been fully authorised to represent the employer company and that consequently following the 5aid decisions we must hold that the Viember, Industrial Tribunal, erred in disallowing Sri David"s appearance. It is true that, the order of the Industrial Court quoted above does not show that the petitioner furnished the necessary evidence before that Industrial Court with a view to establish that Sri Davids was duly authorised to represent the company, but in the writ petition filed before us, in paragraph 8 it was categorically asserted that Sri Davids was duly authorised for the purpose by the company and that "he being such a duly authorised Officer had a right to appear before the Tribunal in the matter in question". Copies of the letters of authority (Annexures B and B/1) were also filed before us from which it appears that the manager of the company on behalf of the company authorised Sri A.R. Davids to represent the company before the Industrial Tribunal. I also find that in Clause (III) of the reasons below paragraph 14 of the petition it was stated as follows:

Because the learned Tribunal committed error in failing to appreciate the only question involved that the management did not seek to be represented by any person not covered by Sub-section (2) of Section 36 of the Industrial Disputes Act, but wanted to act itself and that since its acting in person was not physically possible, it adopted the mode of authority contemplated by its Articles of Association, which was in keeping with the laws governing the Public Limited, Companies and their activities.

The counter affidavit to this petition filed on behalf of the respondents is on different matters. Thus so far as paragraph 8 is concerned, the challenge is as follows:

That the statements made in paragraph 8 of the writ petition are misleading. No written reply to objections was filed on behalf of the company. Annexures B and B/1 were neither proved before the Presiding Officer, Industrial Tribunal, Bihar, nor its authenticity was supported by any document.

Thus, though the genuineness of the letters of authority (Annexures B and B/1) was challenged, it was not further asserted that even if these documents were genuine, they would not amount to due authorisation of the Labour Officer to appear for the company. Then again as regards the reason given in Clause (III) quoted above, the challenge is as follows:

That the reasons given in different sub-paragraphs of paragraph 14 of the writ petition are all based on misconception of law and wrong appreciation of facts and are not germane to the facts and circumstances of this case.

This statement is not quite accurate. Clause (III) of the reasons (quoted above) consists of two parts. The first part is undoubtedly in the nature of an argument which need not be controverted by the opposite party. But the later part is a clear assertion to the effect that the authorisation of Shri Davids, as given in

Annexures B and B/I, was in the manner contemplated by the Articles of Association of the Company. This is a statement of fact. If the respondents wanted to challenge the correctness of this statement they should have said so in the counter-affidavit and thus compelled the petitioner to produce the relevant provisions of Articles of Association with a view to establish that Annexures B and B/1 were authorisations duly made in the manner provided in the Articles. A vague denial, as given by the respondents, will not be sufficient for the purpose of compelling the petitioner to prove all the necessary facts to establish due authorisation. I must, therefore, accept the statement of fact as given by the petitioner in paragraph 8 and Clause (III) of the reasons below paragraph 14 as correct, and on that basis the principle laid down in the two Patna decisions would apply. Sri A.R. Davids must be held to have been duly authorised in accordance with the Articles of Association of the company, and he represents the company in person before the Industrial court.

5. Mr. Ranen Roy, however, urged that the petitioner should have affirmatively established due representation by producing the Articles of Association and the resolution of the Board of Directors duly authorising the nomination of the Labour Officer to represent the company in the industrial dispute. The burden would undoubtedly have been on the petitioner to prove this fact if the due authorisation had been challenged properly. But in the absence of such a challenge the necessary averment in the affidavit should be taken as correct.

6. Mr. Roy also very fairly drew our attention to a recent judgment of the Bombay High Court, in K.K. Khadilkar Vs. Indian Hume Pipe Co. Ltd. and Another, where while holding that Section 36(2) of the Industrial Disputes Act was not exhaustive, the learned Judges differed from the view taken in the Mysore and Patna judgments referred to above and observed that where persons other than those described in Section 36(2) of the Act are appointed to represent the employer, the court has discretion to give them right of audience or to deny the same. I am, however, bound by the Division Bench judgments of the Patna High Court and I do not think this is a fit case to refer this matter to a larger Bench. The conflict can be resolved only when another case goes to the Supreme Court for final decision. So far as this Court is concerned, there is no special reason why the two Bench decisions of the Patna High Court should not be followed.

7. For these reasons, I would hold that the Presiding Officer, Industrial Tribunal, Bihar, erred in the exercise of his jurisdiction in rejecting the claim of the Labour Officer of the petitioner to represent the same in the Industrial reference pending before him. That portion of his order dated the 8th November, 1966, is, therefore, quashed. There will be no order for costs.

K.B.N. Singh, J.

8. I agree.