

(1992) 06 GUJ CK 0005

In the Gujarat High Court

Case No : Spl. Civil Application No. 4526 of 1988

Hosing Ardasar Ichhaporiya

APPELLANT

Vs

Mahavir General Hospital and Another

RESPONDENT

Date of Decision : 18-06-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 36(2)

Citation : (1993) 2 GLR 1394 : (1994) 2 LLJ 326

Hon'ble Judges : R.D. Vyas, J; R.A. Mehta, J

Bench : Division Bench

Advocate : V.M. Trivedi, for the Appellant;

Final Decision : Allowed

Judgement

Mehta, J.—The petitioner-workman is aggrieved by the order of the Labour Court, permitting the respondent-management to appear through Shri G.M. Vakil (a practicing Advocate) as an officer of the Southern Gujarat Chamber of Commerce and Industry. The respondent-management is Mahavir General Hospital. That management initially wanted to be represented by Shri G.M. Vakil, Advocate and a Vakalatnama in his favour was filed. The petitioner-workman objected to the same and, therefore, he could not appear in the proceedings. Thereafter, by an application Ex. 19 it was contended that the respondent-management is an ordinary member of Southern Gujarat Chamber of Commerce and Industry and that Shri G.M. Vakil is a patron member of the said Chamber, and that he has been coopted as a member of the Managing Committee thereof. It was, therefore, submitted that, he can appear and represent the employer in the present case as an officer of the Chamber of Commerce and Industry. The Labour Court accepted that contention and passed the order dated April 27, 1988. This order has been challenged by the Counsel for the workman.

2. Section 36 of the Industrial Disputes Act reads as follows:

"36. Representation of parties:- (1) A workman who is a party to a dispute shall

be entitled to be represented in any proceeding under this Act by-

(a) any member of the executive or other office bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in Clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in, the Industry in which the worker is employed and authorised in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

(a) an officer of an association of employers of which he is a member,

(b) an officer of a federation of associations of employers to which the association referred to in Clause (a) is affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the Industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(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".

Sub-section (3) provides that no party to a dispute shall be entitled to be represented by a legal practitioner in any proceedings before a Court Sub-section (4) provides for representation by a legal practitioner with the consent of the parties and with the leave of the Court, Therefore, without the consent of the parties and without the leave of the Court, representation by a legal practitioner is not permitted. Section 36(1) provides for representation of a workman and Section 36(2) provides for representation of employer. In the present case, the crucial words are " an officer of an association of employers". Therefore, the employer has to show that he is a member of an association of employers.

3. Southern Gujarat Chamber of Commerce and Industry is an association. Eligibility for membership thereof is to be found in Clause (4) and the relevant part reads as follows:

"Any person, firm, association or institution engaged in mercantile pursuits or interested in trade, commerce or industry and desirous of joining the Chamber

shall be eligible for Membership"

Therefore, any person, even a student or a teacher of economics or commerce can become a member of the Chamber of Commerce, on payment of fee of Rs. 100/-. Such person need not be an employer, therefore, any association of any persons or all persons cannot be said to be an association of employers. For example, a club having, as its members, industrialists, factory owners, doctors, engineers, lawyers, chartered accountants, etc. cannot be said to be an association of employers. An association of employers would be an association of persons having only such persons having common interest as employers and where the membership is restricted to such persons. If there is such an association, an officer of such association can represent a member employer. But, in order to enable an officer of such association to represent the member employers, the first and basic condition is that it should be an association of employers and not any association.

4. In the case of Workmen of B.R. Darbar Ginning and Pressing Factory, Hubli Vs. B.R. Darbar Ginning and Pressing Factory and Others, a Division Bench of Mysore High Court had to deal with almost identical situation, where the question was whether Karnataka Chamber of Commerce was an association of employers and it was held that, if an association consists of employers and non-employers, it need not be an association of employers and it was held that, construing the words of Sub-section (2) of Section 36 in their plain and normal sense, the association of employers should be an association of employers only. In that case also, one Shri Apte, who was a practicing Advocate, initially sought permission to appear as an Advocate. That was objected to and, therefore, he sought to appear as Labour and Law Officer of Karnataka Chamber of Commerce and Industry on the ground that the Gokak Mills and the Darbar Ginning and Pressing Factory were members of the Chamber of Commerce and Industry, which was alleged to be an association of employers. In that case the relevant Article 6 of Karnataka Chamber of Commerce and Industry regarding membership read as follows;

"Indians who are mainly engaged in trade, commerce, transport, banking, insurance, accountancy, mining or manufacture and/or industry and business and have their business in Karnataka shall be eligible for election as ordinary members of this Chamber".

Article 9 read as follows:

"Gentlemen distinguished for public service or eminent in commerce, industry or manufacture or otherwise interested in the aims and objects of the Chamber may be elected as honorary members by a general meeting of the Chamber...."

Section 36(2) refers to association of employers. That necessarily means that it cannot be an association of persons who are not employers or any association where non-employers can become members. This association of employers contemplates a trade union of employers. When the Legislature permits an association of employers to represent the cause of a member-employer, it implies

that the association must be of persons interested in safeguarding and defending the claims of member- employers. Whether such association is of workmen or of employers, the main feature of such association is collective bargaining; and such association should consist of members with community of interest in the matter of employment forming of coherent union and competent to speak or make agreement for its own side. Since the representation contemplated by Section 36(1) or 36(2) is through another, the intention of the Legislature is to permit each side of the industry to combine under a registered trade union or recognised association to act with one mind in the interest of the respective union or association. In the present case, it is clearly shown that Southern Gujarat Chamber of Commerce and Industry cannot be said to be as association of employers and, therefore, an officer of that association cannot be permitted to represent a member of that association in a proceeding under the Industrial Disputes Act. Therefore, the Labour Court was not right in permitting Shri G.M. Vakil, as an officer of an association of employers, to represent the respondent-managment in the present proceedings. Hence, the order of the Labour " Court is required to be quashed and set aside.

5. In the result, this petition succeeds and rule is made absolute by quashing and setting (aside) the impugned judgment and order permitting Shri G.M. Vakil to appear as an Advocate or representative of the first respondent. Rule is made absolute with costs. Since the recovery application is pending several years, the Labour Court is directed to expedite the hearing thereof and dispose it of within a period of six months.