
(1992) 03 KL CK 0024
In the High Court Of Kerala
Case No : O.P. No. 2798 of 1992-G

J. Subhash

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 11-03-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Industrial Disputes Act, 1947 — Section 36, 36(4)

Citation : (1992) 65 FLR 561 : (1993) 1 LLJ 273

Hon'ble Judges : K.P. Balanarayana Marar, J

Bench : Single Bench

Advocate : C.P. Sudhakara Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

K.P. Balanarayana Marar, J.—This is a petition under Article 226 of the Constitution of India seeking the following reliefs:

(i) Issue a writ of certiorari or any other appropriate writ, direction or order calling for the records leading to Exhibits P-3 to P-6 and quashing the same.

(ii) Issue a writ of mandamus or any other appropriate writ, direction or order declaring Section 36(4) of the Industrial Disputes Act as unconstitutional and ab initio void.

(iii) Issue a writ of mandamus or any other appropriate writ, direction or order declaring that the provision contained in Section 36(4) of the Industrial Disputes Act will not prohibit the petitioner to engage a legal practitioner to defend his case properly before the first respondent.

2. The main aspect that arises for consideration is whether an advocate has a right of audience before a Tribunal or a Labour Court constituted under the Industrial Disputes Act.

3. The petitioner is a licensee of toddy shops. Respondents Nos. 2 to 5 are

employees under him. They filed petitions against the petitioner u/s 33C(2) of the Industrial Disputes Act, 1947, before the Labour Court, Kollam, the first respondent herein, claiming overtime wages. Respondents Nos. 2 to 5 were represented by a trade union leader by name Sri. G. Gopinathan Pillai. The petitioner moved the first respondent by Exhibit P-2 petition seeking permission to engage a legal practitioner to defend the petition, C.P. No. 106 of 1991. Similar applications were filed in other petitions also. The first respondent rejected those petitions. The legality of those orders is under challenge in this original petition.

4. Heard counsel for the petitioner. Sri P. Balagangadhara Menon who was requested by Court to assist as amicus curiae was also heard.

5. To appreciate the contention raised by counsel it is only appropriate to read Sub-section (4) of Section 36 of the Industrial Disputes Act. It reads:

"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."

Though by Sub-section (3) of Section 36 representation of parties to any industrial dispute by a legal practitioner was completely banned, the original section gave the parties a right of being represented by a legal practitioner in any proceeding before a Labour Court or an Industrial Tribunal. The present section was substituted by the Industrial Disputes (Appellate Tribunal) Act, 1950 (Act XLVIII of 1950). The position at present is that there is a total prohibition against representation of a party by a legal practitioner in any conciliation proceeding under the Act or in any proceedings before a court by virtue of Sub-section (3) of Section 36. "Court", in that sub-section, means a Court of enquiry. This prohibition is, therefore, applicable only to conciliation proceedings and proceedings before a court of enquiry and not to any proceeding before a Labour Court, Industrial Tribunal or National Tribunal. It is Sub-section (4) which deals with the proceedings before those authorities. Permission to any party to be represented by legal practitioner can be given only subject to the conditions prescribed therein. They are: (1) the consent of the other party to the proceeding, and (2) the leave of the Court.

6. A question arises whether both these conditions must be fulfilled simultaneously and together or are alternative. The Orissa High Court in Orissa Ceramic Industries Ltd. Vs. General Secretary, Orissa Ceramic Workers Union and Others, held that the word "and" has to be construed as a conjunctive and not as a disjunctive. The Supreme Court had occasion to consider this aspect in Paradip Port Trust, Paradip Vs. Their Workmen, It was contended before the Supreme Court that the word "and" in Section 36(4) should be read as "or". Then refusal to consent by a party would not be decisive. The Tribunal will be able to decide each case by exercising its judicial discretion whether leave should be given or

refused. It was pointed out that great hardship will be caused to public corporations if the union is given a carte blanche to finally decide about the matter of representation. It was also argued that denial of legal representation would be tantamount to denial of reasonable opportunity to represent the cases before the Tribunal. The contention was that the final word with regard to representation by legal practitioners before the Tribunal should rest with the Tribunal and this will be effectively implemented if the word "and" in Section 36(4) is read as "or". This contention did not find favour with the Supreme Court. Having regard to the history of the legislation, recognition by law of the unequal strength of the parties in adjudication proceedings before a Tribunal, it was observed that the intention of law was to discourage the representation by a legal practitioner as such. The Supreme Court held that the word "and" in Section 36(4) cannot be read as "or". The position, therefore, is that both the conditions stipulated in Section 36(4) are to be fulfilled before a party can be permitted to be represented by a legal practitioner. Since respondents Nos. 2 to 5 did not give consent to the petitioner to be represented by a legal practitioner and since the first respondent had refused leave requested for, the first respondent was right in dismissing the applications presented by the petitioner. Exhibits P-3 to P-6 orders are, therefore, perfectly legal and are not liable to be quashed.

7. Learned counsel for the petitioner would contend that Section 36(4) of the Industrial Disputes Act is violative of Article 14 of the Constitution of India and has to be declared as unconstitutional. The contention is that this provision was enacted in order to see that workers get equal opportunity to represent before Industrial Tribunals and the Labour Courts. By change of time this provision has turned out to be an offending clause and has now resulted in creating inequality in the matter of defending cases by the workers and the management before the Industrial Tribunals and the Labour Courts. It is pointed out that the capacity of the labour force in this country in presenting their cases to ventilate their grievances before the Tribunals and the Courts has advanced much consequent on the formation of strong labour unions. Counsel, therefore, argues that Section 36(4) of the Act was not modified suitably in order to cope with the equality of opportunity guaranteed in Article 14 of the Constitution.

8. Four decades back the Madras High Court upheld the Constitutional validity of Section 36(4) in the decision in A.N. Rangaswami v. Industrial Tribunal 1953 I LLJ 24. His Lordship Justice Subba Rao (as he then was) held that the discrimination made between a litigant in an ordinary Court of law and before a Tribunal can easily be justified on the basis of reasonable classification. The classification was found to be not arbitrary but is based upon the nature of the Tribunal and the purpose for which it is constituted. Incidentally it was observed that a lawyer's right to practice is subject to the limitations contained in the Bar Councils Act, and that it is not infringed by the provisions of Section 36(4) of the Industrial Disputes Act. It was also held that there is no violation of the fundamental right under Article 19(1)(g) of the Constitution of India. The

decision was confirmed by a Division Bench on appeal in *A.N. Rangaswami v. Industrial Tribunal*, (1954-55) 6 FJR 77 (Mds.). The Bench observed that the right of an advocate to practice is just what is conferred on him by Section 9 and Section 14(1)(a), (b) and (c) of the Bar Councils Act. When the particular right claimed by him cannot be found within the four corners of those sections then there is nothing in respect of which the guarantee under Article 19(1)(g) could be invoked. That Article operates to protect the rights which a person otherwise possesses under the law. The result then is that the right of an advocate to appear before the Industrial Tribunal is, u/s 14(1)(b) of the Bar Councils Act, subject to any law for the time being in force. It was observed that Section 36(4) of the Industrial Disputes Act is such a law and under that section an advocate has a right to appear only when the other party to the proceeding consents.

9. On the attack on Section 36(4) as violation of Article 14 of the Constitution, the Bench held that it is not. It is observed that Tribunals are comparatively recent institutions which owe their existence to statutes and the principles by which they are governed are not identical with those which courts observe. Noticing the hardship which results from the denial of permission to be represented by a legal practitioner the Bench observed that it is a matter for the Legislature to consider and not a ground for holding that section unconstitutional. The section does not make any distinction between employers and employees and, therefore, there is no discrimination. The argument advanced by learned counsel in this Court that labour unions have persons with legal education and experience in conducting cases before the Tribunals and the Labour Courts had been raised before that Court also but did not find favour with the Division bench. It is observed that that is not a matter which can be taken into account in deciding whether the section, as it stands, is repugnant to Article 14.

10. In the decision in *The Co-operative Store Ltd., New Delhi Vs. O.P. Dwivedi P.O. Industrial Tribunal II and others*, the Delhi High Court held that there is nothing unreasonable in the provisions of Section 36 and there is no reason to hold that the provisions of Section 36 are violative of Article 14 of the Constitution or are violative of the principles of natural justice. It is observed that the industrial laws have been enacted to maintain peace and harmonious relations between the workmen and the employer. The bar to be represented by a legal practitioner except with the consent of the opposite party and the leave of the court has been introduced with a view to preventing the parties from raising technical pleas which naturally impedes the smooth and expeditious settlement. The Delhi High Court has also referred to the decision in *Paradip Port Trust case* (supra). Though it was noticed that the constitutionality of Section 36 was not dealt with by the Supreme Court, it was observed that the petitioner before the Supreme Court would not have missed to attack the Constitutionality of the section on the ground urged before the Delhi High Court. The Supreme Court in *Paradip Port Trust's case*, (supra) held (pp.416-417):

"A lawyer, simpliciter, cannot appear before an Industrial Tribunal without the

consent of the opposite party and leave of the Tribunal merely by virtue of a power of attorney executed by a party. A lawyer can appear before the Tribunal in the capacity of an office -bearer of a registered trade union or an officer of association of employers and no consent of the other side and leave of the Tribunal will then be necessary."

11. Counsel would then contend that the right of a lawyer to practice his profession is a right guaranteed under Article 19(1)(g) of the Constitution. But it is settled law that the right of a lawyer to practice is not an absolute right and that it is governed by the Bar Councils Act and the Advocates Act. If any law which regulates the procedure before any Court or Tribunal prevents the appearance of a lawyer, he has no right to practice therein. The question whether Section 36(4) of the Industrial Disputes Act offends Article 19(1)(g) of the Constitution was considered by the Calcutta High Court in the decision in *Reckitt and Colman of India Ltd. and Others Vs. Jitendra Nath Maitra and Others*, Though the learned Judge was personally of the view that the restriction imposed is not entirely reasonable it was held that the provisions of Section 36(4) are not ultra vires in view of the preponderance of binding authority. Tribunals have become as much as a Court as any other and the cases before the Tribunals bristle with points of law, some of which involve questions which are not easily solved. In spite of the suggestion in that decision and in some of the subsequent decisions, the Legislature has not thought it necessary to make any amendment to this provision which has been in the statute book for more than four decades by now.

12. The plea that equality of opportunity is violated by a strict interpretation of the provisions of Section 36(4) is also not sustainable. The management and the union are treated alike in the matter of representation before the Tribunal. The union also can be represented by a legal practitioner only if the management consents and the leave of court is obtained. No discrimination has, therefore, been shown in favour of the management as contended by the petitioner. Neither the union nor the management has, therefore, an unqualified right to be represented by a legal practitioner in proceedings before the Labour Courts or Tribunals under the Industrial Disputes Act. The provision in Section 36(4) is, therefore, not violative of either Article 14 or Article 19(1)(g) of the Constitution of India.

13. A contention is raised that denial of a request to defend by a counsel violates the principles of natural justice. A right for legal representation is a right to be recognised in a democratic society to defend one's case properly before an authority, argues counsel. Attention is drawn to the decision in *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*, That was a case where the workman sought permission to engage a legal practitioner for his defence before an enquiry officer who was conducting an enquiry into the alleged misconduct of the workman. The Supreme Court held that where in an enquiry before a domestic Tribunal the delinquent is pitted against a legally trained person and if he had sought permission to appear

through a legal practitioner, refusal to grant such request would amount to denial of reasonable opportunity to defend himself. This has been the established position as far as representation before a domestic enquiry is concerned. Counsel would argue that even if the presenting officer on the side of the management is not a legal practitioner but a legally trained person, the concerned employee is entitled to engage a legal practitioner of his choice. Reliance is placed on the decision in *C.L. Subramaniam Vs. Collector of Customs, Cochin*, in support of this contention. Counsel also draws attention to the decision of this Court in CP. No. 1966 of 1983, where it was held that a person should be given an opportunity to be heard in order to ensure a minimum fairness in action. The following passage in *Union of India and Another Vs. Tulsiram Patel and Others*, contained in paragraph 86 at p. 245 of the decision is relied on by counsel:

"The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality, which is the subject-matter of that Article. Shortly put, the syllogism runs thus: Violation of a rule of natural justice results in arbitrariness which is the same as discrimination: where discrimination is the result of State action, it is a violation of Article 14: therefore, a violation of the principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice; what it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and the State action but also where any Tribunal, authority or body of men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially."

14. The principles enunciated in the above-mentioned decisions are not applicable to the present case in view of the specific provision contained in Section 36(4) of the Industrial Disputes Act which bars the representation of a party by a legal practitioner without the consent of the opposite side and without the leave of the Court or Tribunal. This provision has been found to be valid and not ultra vires either Article 14 or Article 19(1)(g) of the Constitution. The settled position is that the right of a lawyer to practise is not an absolute right and that is subject to the provisions of the Bar Councils Act and any other law for the time being in force. Since Section 36(4) of the Industrial Disputes Act regulating the procedure before the tribunal prevents the appearance of a lawyer, he has no right to practise therein.

15. For the aforesaid reasons Section 36(4) of the Industrial Disputes Act is not liable to be struck down as violative of either Article 14 or Article 19(1)(g) of the Constitution. The limited restriction imposed by that sub-section in a law passed by Parliament in exercise of its legislative competence as conferred by the Constitution does not, therefore, amount to an abridgment of any fundamental

right. The impugned orders of the Labour Court are, therefore, valid and do not require any interference.

In the result the original petition is dismissed.