
(1993) 02 OHC CK 0018
In the Orissa High Court
Case No : O.J.C. No. 9725 of 1992

Kalinga Studios Ltd.

APPELLANT

Vs

Presiding Officer, Industrial Tribunal and Others

RESPONDENT

Date of Decision : 10-02-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 36(4)

Citation : (1993) 76 CLT 302 : (1994) 2 LLJ 108 : (1993) 1 OLR 559

Hon'ble Judges : B.L. Hansaria, C.J.; S.K. Mohanty, J

Bench : Division Bench

Advocate : Narendra Kr. Misra, A.K. Misra and S.K. Misra, for the Appellant;

Final Decision : Dismissed

Judgement

B.L. Hansaria, C.J.—Shri S.B. Nanda, a leading labour lawyer of the State, wanted to appear on behalf of the management of M/s. Kalinga Studios Ltd., the petitioner, as an "officer" of the Utkal Chamber of Commerce and Industries Ltd., and the prayer having been refused by the learned Presiding Officer, Industrial Tribunal, this application has been filed stating that the petitioner was entitled to be represented by Shri Nanda because of what has been stated in Section 36(2) (a) of the Industrial Disputes Act, 1947 (hereinafter, "the Act").

2. There is no dispute that the aforesaid provision allows an officer of an association of employers, of which he is a member, to represent the employer in any proceeding under the Act. The only other relevant provision, which is necessary to be noted, is Sub-section (4) of Section 36, which has stated that 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. The present is admittedly not a case falling within Sub-section (4) and the only provision pressed into service is Clause (a) of Sub-section (2) of Section 36. Let us see whether the case comes within the fold of that clause.

3. The decision of the apex Court on this aspect is that of Paradip Port Trust, Paradip Vs. Their Workmen, . Relying on this decision Shri Misra submits that the impugned order is not sustainable as it is urged that there is no scope for enquiry by the Tribunal into the motive for appointment of a legal practitioner as an officer of the employer's association, as stated in paragraph 16 of the judgment (p. 414). We shall advert to motive later; but first, let it be seen as to the ground on which the Presiding Officer rejected the application of the petitioner to be represented by Shri Nanda.

4. The learned Tribunal came to the conclusion that Shri Nanda was neither under the administrative control of the Utkal Chamber of Commerce and Industries Ltd., nor did he receive any remuneration from that association; and his name had been included as a co-opted member only to give legal advice and conduct cases on behalf of the employer. This view had been taken after adverting to the decision of the Assam High Court in Sarbeswar Bardoloi v. Industrial Tribunal AIR 1955 Gua 148. In that case also the Court was seized with the question as to when a legal advisor of an association can be allowed to represent the members of the association. The Bench applied its mind as to the purport of the word "officer" appearing in Sections 36(2) (a) and (b). Ram Labhaya, J., who wrote the leading judgment, stated in paragraph 8 that the word "officer" has not been defined in the Act and it did not admit of any easy definition. As to the dictionary meanings, it was stated that though they are of some assistance, the same may not be binding on the Courts who have to ascertain the meaning of terms with reference to the context in which they occur. Even so, the meaning given to the word "officer" in the Oxford Dictionary was noted, according to which the word "officer* means one who holds office. In relation to companies or societies, it is a person who holds and takes part in the management or direction of a society or institution, for instance, one who is holding the office of President, Treasurer or Secretary. It was, however, observed that this list is not exhaustive, and a practicing lawyer may conceivably be an officer, but the description of "legal advisor" without reference to the terms of his appointment and the duties of the office would not be enough for a finding that he is an officer of the company. The learned Judge acknowledged that the statement made by him was negative in character, but found it difficult to lay down a positive rule and stated that each case has to be decided on its own facts, while examining the terms of the relationship between the legal practitioner concerned and the association of the company, of which he claims to be a member. A very pertinent observation was thereafter made by stating that the legal practitioner concerned must be a regular officer of the employer's association. It was finally stated that if on facts a legal practitioner be found to be a regular officer, nothing short of an attempt to circumvent the provisions of Section 36(4) would disqualify him from representing him as a member of his association.

5. Deka, J. in his concurring judgment observed that legal advisors may not necessarily be officers of their clients, as holding of office would primarily

indicate some sort of official responsibilities than that of a law advisor. It was then stated that the legal advisor must have some stakes in the company or concern, or he must be receiving some pay or remuneration attached to the office, his term of appointment or discharge has to be specified, so too his period or tenure of appointment, or there may be some administrative responsibilities or obligation to render some explanation for his conduct in discharge of his duties.

6. With respect, we are in general agreement with what has been stated in the aforesaid case regarding the meaning to be given to the word "officer" in the context in which it appears in clauses (a) and (b) of Section 36(2). Our agreement is for the reason that any watering down of the aforesaid requirements to constitute a person to be an officer would tend to militate against the provision contained in Sub-section (4), because in that case it would not be difficult for any legal practitioner to masquerade as an officer of the association or federation of associations, the result of which would be that a workman represented by persons mentioned in Section 36(1) would be pitted against a legal practitioner, which would violate the underlying spirit of prohibiting legal practitioners from appearing in industrial disputes without requirements of Sub-section. (4) being satisfied. We have to put ourselves on guard against such a move, which may be made by employers.

7. Before we analyse the case at hand on the touchstone of what has been stated above, we may refer to some other decisions mentioned by Shri Misra. The first is *Hotel Ashok v. Additional Labour Court* 64 FJR 1. A perusal of that decision, which has discussed this aspect of the matter in detail after having noted *Paradip Port Trust's* case and the dictionary meaning of the word "officer"* shows that the word "officer" was ultimately held to mean either an office-bearer of the association or one who is in employment of the association. The second decision is that of this Court in *P. Adinarayana v. Industrial Tribunal* 80 F.J.R. 349, which, however, is not relevant for our purpose, as the view taken is that the provisions of Section 36 are not exhaustive, and the Tribunal can consider the application of a party to be represented in some other manner. The third and the last one is that of *I.C.I. India Ltd. v. Presiding Officer, Labour Court* 64 FLR 968 in which it was held that the provisions of Section 36(4) is ultra vires. In the case at hand, we are not concerned with the vires of any section.

8. The above shows that for deciding whether Shri Nanda can be taken to be an officer, he is to be a regular officer of the association, or an office-bearer of the association, or in the employment of the association. Shri Nanda does not satisfy any of the conditions, as he has merely been co-opted to the Executive Committee and nominated as an officer to give legal advice to conduct cases on behalf of the members of the association. Law does not, therefore, permit to treat Shri Nanda as an officer of the association. Indeed, any other view would have circumvented the provisions of Section 36(4),

9. Let us now see as to how far the observation made in *Paradip Port Trust* case that motive is not to be gone into can help the petitioner. What was observed

therein was that motive for appointing a legal practitioner as an officer of the employers' association cannot be gone into. This does not prevent examination of the question whether the legal practitioner is an officer, and it is this examination which has led the Presiding Officer to conclude that Shri Nanda is not an officer, with which view we concur. Secondly, what Paradip Port Trust's case has prohibited is the examination of "motive*", but not the attempt to get the employer represented by a legal practitioner by a colourable act of painting a lawyer as an officer. In so far as the present case is concerned, we can say that despite cosmetics used, the face could not be changed; and we can see Shri Nanda through the veil of officer, without even lifting it. We owe an obligation to the society to prevent mockery of law, which it would have been if we would have conceded to the plea of the petitioner.

10. Shri Misra has some grievance about the workman being represented by the President and Vice-President of the Union who are practising lawyers. They being office-bearers have to be taken as officers. In them, we see office-bearers first, lawyers afterward. In Shri Nanda we see lawyer, and lawyer alone, and not any officer of the association. So, there is no discrimination, as submitted by Shri Misra.

11. In view of all that is stated above, we do not find any reason to interfere with the impugned order. The petition is, therefore, dismissed,

S.K. Mohanty, J.

12. I agree.