

(1999) 04 AP CK 0036

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16654 of 1998

Kanadapudi Bharathy, Gudivada and another

APPELLANT

Vs

Authority Under Section of A.P.S.E. Act-cum-Labour Officer,
Machilipatnam and another

RESPONDENT

Date of Decision : 28-04-1999

Acts Referred:

Andhra Pradesh Shops and Establishments Act, 1996 — Section 50, 73(1)
Civil Procedure Code, 1908 (CPC) — Order 3 Rule 2
Evidence Act, 1872 — Section 118

Citation : (1999) 3 ALD 420 : (1999) 3 ALT 428

Hon'ble Judges : A. Hanumanthu, J

Bench : Single Bench

Advocate : Mr. A.K. Narasimha Rao, for the Appellant; Government Pleader for Labour and Ms. T. Jayanthi, for the Respondent

Judgement

1. The short question that arises for consideration in this writ petition is as to whether power of attorney holder of a party is entitled to appear as a witness on behalf of the said party ?

2. The facts leading for filing of this writ petition are as follows :

The writ petitioners are the owners of a Hotel at Gudivada in Krishna District. The second respondent herein was the Manager of the said Hotel. As a result of some mis-givings, the second respondent was kept away from Hotel business from the year 1992 onwards. The second respondent raised a dispute before the Authority u/s 50 of A.P. Shops and Establishments Act-cum-Labour Officer (first respondent herein) in A.P.F.C. No.4 of 1996. The second respondent also filed a civil suit in OSNo.209 of 1996 in the Court of the District Munsif, Gudivada, claiming a sum of Rs.40,000/- towards bonus arrears. The petitioners filed a counter in A.P.F.C.No.4 of 1996 contending that since the second respondent was drawing a salary of Rs.3,000/-per month at the relevant point of time, the first respondent has no jurisdiction to entertain the case in terms of Section 73(1)(a) of A.P.

Shops and Establishments Act. The first respondent failed to decide that contention of the petitioners relating to jurisdiction. The petitioners filed WP No.4722 of 1997 in this Court and this Court while disposing of the said writ petition on 2-5-1997 directed the first respondent to decide its jurisdiction and competence to entertain the claim of the second respondent. The petitioner executed General Power of Attorney on 2-5-1997 in favour of K. Ramana Ran. The petitioners also filed IA No.1 of 1998 requesting the first respondent-authority to permit the G.P.A. Holder to depose on behalf of the petitioner in A.P.F.C. No.4 of 1996. The said application was resisted by the second respondent. The first respondent by his Order dated 21-4-1998 upheld the objection taken by the second respondent for examining the G.P.A. Holder as a witness on behalf of the petitioner and consequently dismissed that application. Challenging the said Order, the petitioners have come up with this writ petition.

3. It is necessary to refer to relevant statutory provisions. Rule 2 of Order 3 CPC provides thus :

"2. Recognized agents.--The recognized agents of parties by whom such appearances, applications and acts may be made or done are-

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts."

Rule 32 of Civil Rules of Practice reads thus :

"32. Party appearing by Agent : --

(1) When a party appears by any agent, other than an Advocate, the agent shall, before making of or doing any" appearance, application, or act, in or to the Court, file in Court the power of attorney, or written authority, thereunto authorising him or a properly authenticated copy thereof together with an affidavit that the said authority still subsisting, or, in the case of an agent carrying on a trade or business on behalf of a party, without a written authority, an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject-matter of the suit, and that no other agent is expressly authorised to make or do such appearance, application, or act.

(2) The Judge may thereupon record in writing that the agent is permitted to appear and act on behalf of the party; and, unless and until the said permission is granted, no appearance, application, or act, of the agent shall be recognised by the Court."

4. The learned Counsel for the petitioners submits that the petitioners executed the General Power of Attorney in favour of K. Ramana Rao as it is inconvenient for them to attend the proceedings before the first respondent and give evidence on their behalf and that the said General Power of Attorney is a registered one and the second respondent has not disputed the execution of the said General Power of Attorney. On the other hand, the learned Counsel for the second respondent canvassed that the General Power of Attorney Holder is authorised to appear and submit the applications and act on behalf of the executant of the General Power of Attorney and that it is not open for the General Power of Attorney Holder to give evidence on behalf of the party who executed the General Power of Attorney. The [earned Counsel for the second respondent further submitted that no affidavit has been filed by the executants of the General Power of Attorney as contemplated under Rule 32 of Civil Rules of Practice and that there is no jurisdictional error in the impugned Order enabling this Court to interfere with.

5. I have given my anxious consideration to the rival contentions and carefully perused the impugned Order. I am of the considered view that word "acts" used in Rule 2, Order 3 CPC does not include the act of Power of Attorney Holder to appear as a witness on behalf of the petitioners. Power of Attorney Holder of a party can appear only as a witness in his personal capacity to speak about the facts which are within his personal knowledge about the case, but, he cannot appear as a witness on behalf of a party in the capacity of that party. It has been observed in the impugned Order that the executant of General Power of Attorney by name Bharathi has been attending to her cases personally and non-examination of her in A.P.S.C. No.4 of 1996 will result in great injustice to the second respondent. In this context, it is also relevant to refer to Section 118 of the Indian Evidence Act which reads that "all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or giving rational answers to those questions, by tender years, extreme oldage, disease, whether of body or mind, or any other cause of the same kind". Thus, testimonial compulsion is the very foundation of the Law of Evidence for without such compulsion every refusal to give evidence will render administration of justice impossible. It is not a legal fetish, It is a necessity and also the general rule. The petitioners cannot stay back without entering into witness box and subjecting themselves to cross-examination by the second respondent. Further, even if the petitioners are unable to appear in Court, a Commissioner for recording their evidence may be taken, out under the relevant provisions of the Code of Civil Procedure. This view of mine gets support from a decision of the Rajasthan High Court (Jaipur Bench) in Ram Prasad Vs. Hari Narain and Others, .

6. In the light of my above observations, I do not see any good reason to interfere with the impugned order passed by the first respondent. Hence, the writ petition is liable to be dismissed. In the result, the writ petition is dismissed. No costs.