
(2005) 02 KAR CK 0028
In the Karnataka High Court
Case No : Writ Petition No. 42517 of 2004

Katwa Infotech Limited

APPELLANT

Vs

Bhaskar Laxamanrao Patil

RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 36, 36 (2), 36 (4)

Citation : (2005) 3 KarLJ 521(1)

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : S.N. Murthy, for the Appellant; Party-in-Person, for the Respondent

Judgement

R. Gururajan, J.—Petitioner is challenging the order of the Labour Court dated 20-9-2004 passed in reference No. 185 of 2002 in the matter of appearance u/s 36(2)(a) of the Industrial Disputes Act, 1947.

2. Petitioner is a company engaged in the business of medical transcription. Respondent in the light of his termination from the petitioner-company raised a dispute in terms of the provisions of the Industrial Disputes Act. Matter was referred to the Labour Court. One Mr. Hansi filed authorisation on 16-5-2004 in his capacity as an Executive Committee Member of the Indian Employers Federation to represent on behalf of the petitioner-company. The same was objected to by the respondent. Matter was heard. After hearing, the Court has chosen to reject the appearance of Mr. Hansi in the matter. This order is challenged in this petition.

2-A. Contesting respondent has entered appearance through caveat. He opposes the petition.

3. Heard the learned Counsel for the petitioner. He would invite my attention to the bye-laws of Indian Employers Federation to contend that representation by Mr. Hansi is in order. He particularly invites my attention to Clause 10 of the bye-laws in this regard. He also refers to me Clause 15(f) in the matter of

representation before the authorities. Learned Counsel in the light of this material would say that Labour Court is wrong in rejecting the appearance of Mr. Hansi. Petitioner also took me through the impugned order to say that the rejection is on the ground that the officer has to be a paid employee. This finding according to the petitioner is contrary to law governing such matters.

4. Respondent party-in-person would argue that Labour Court on 20-1-2004 rejected the vakalath filed by Mr. Hansi and that order has not been challenged. The present authorisation is nothing but an attempt to circumvent the statutory provisions of Section 36 of the Act.

5. Heard the learned Counsels for the parties. After hearing, I have carefully perused the material on record.

6. Admittedly, the Labour Court has chosen to reject the appearance of Mr. Hansi in the impugned order. The Labour Court observes that the word used in the case of Paradip Port Trust, Paradip Vs. Their Workmen, to represent the employer by a lawyer is an officer, but not office-bearer. The word officer denotes that he should be on the pay roll of the said association of the employers. Mr. Hansi is not on the pay roll of the said federation and the said federation is not having full control over him. Therefore Mr. Hansi is not qualified to represent the petitioner. This finding of the Labour Court, as I mentioned earlier, is attacked by the petitioner.

7. Section 36(4) of the Industrial Disputes Act reads as under:

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).

A reading of the said section would show that appearance is permissible in certain circumstances. Let me see as to whether an officer or office-bearer in terms of Section 36 requires to be only a paid official in terms of the finding of the learned Judge.

8. Though several judgments have been referred to me it is necessary only to refer to the famous case of Paradip Port Trust, which incidentally has been relied on by the Labour Court to reject the case of management. The facts in that case would show that the company sought to be represented through Sri T. Misra, Advocate, who was a "Legal Consultant" of the trust. Union objected and the objection was sustained by the Tribunal. The Apex Court noticed the finding of the Tribunal in para 4 of the order. The Court after noticing the rival arguments rules in para 15 as under:

"15. If, however, a legal Practitioner is appointed as an officer of a company or Corporation and is in their pay and under their control and is not a practising Advocate, the fact that he was earlier a legal Practitioner or has a legal degree will not stand in the way of the company or the Corporation being represented by

him. Similarly, if a legal Practitioner is an officer of an association of employers or of a federation of such associations, there is nothing in Section 36(4) to prevent him from appearing before the Tribunal under the provisions of Section 36(2) of the Act".

9. The said judgment does not in any way would say that a lawyer has to be on the pay roll in the event of authorisation as an office-bearer as held by the learned Judge. In Paradip Port Trust's case, on the facts of that case, the Supreme Court ruled that Mr. T. Misra must be on the pay roll of the trust. The same yardstick cannot be applied in all cases as held by the Labour Court. In fact in the very same judgment, in para 15, the Supreme Court has chosen to say in unmistakable terms that if a legal Practitioner is an officer of an association of employers or of a federation of such associations, there is nothing in Section 36(4) to prevent him from appearing before the Tribunal under the provisions of Section 36(2) of the Act. Hence, the finding of the Labour Court in the present case requires my interference.

10. Moreover, parties have not placed the powers of an officer in terms of the bye-laws before the Labour Court. However, certain documents have been placed before me. Since these documents were not available to the Labour Court, I deem it proper to direct the Labour Court to consider the matter afresh in the light of the bye-laws with regard to appearance of Mr. Hansi as an office-bearer of the association.

11. The argument of respondent that the earlier order is not challenged does not in any way prevent the management from getting represented by Mr. Hansi in his capacity as an office-bearer. The earlier order cannot come in the way of subsequent appearance in a different capacity. Therefore, this argument cannot factually and legally be accepted in the case on hand.

12. In the result, the impugned order is set aside. Matter is remitted back for rededcision. Liberty is reserved to the parties to place additional material in support of their contention. Parties are directed to appear before the Labour Court on 24-3-2005 without waiting for any notice. The Labour Court is directed to pass orders on appearance, within two months from the date of appearance of the parties.

Ordered accordingly. No costs.