
(2014) 05 CAL CK 0041
In the Calcutta High Court
Case No : Writ Petition No. 14327 (W) of 2014

K.C. Gope

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 08-05-2014

Acts Referred:

Advocates Act, 1961 — Section 1, 30
Family Courts Act, 1984 — Section 13
Industrial Disputes Act, 1947 — Section 36, 36(4)

Citation : (2014) 5 CHN 333 : (2014) LabIC 4571

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : Hiranmoy Bhattacharyya, Ajoy Sankar Sanyal, Advocate for the Appellant; Balaram Patra, Advocate for the Respondent

Judgement

Soumen Sen, J.—The writ petitioners have challenged Order No. 15 dated January 24, 2013 passed by the Presiding Judge, Second Labour Court, West Bengal allowing the application filed by the workman under Section 36 of the Industrial Disputes Act, 1947 objecting the appointment of a legal practitioner to conduct the case of the writ petitioners before the Second Labour Court. The respondent-workman on April 21, 2011 filed an objection under Section 36 of the Industrial Disputes Act, 1947 stating that the applicant has remained unemployed from the date of termination of his service with effect from May 18, 2008 and is in penury. The respondent-workman contended that he has not given any consent to the appointment of a legal practitioner to represent the writ petitioners before the Second Labour Court in pending reference. The writ petitioners, thereafter, appeared before the Tribunal through a legal practitioner and claimed to have filed a vakalatnama on August 29, 2011, when the Tribunal presumably recorded that the writ petitioners have filed a letter of authority and fixed September 22, 2011 for filing written statement. The parties were directed to file suggested issues and discover document.

2. The objection filed by the respondent-workman was, thereafter, taken up for

consideration on January 24, 2013 and the Presiding Judge, Second Labour Court taking into consideration the facts stated in the objection-petition declined to allow the writ petitioners to be represented in the reference by a legal practitioner.

3. Mr. Hiranmoy Bhattacharyya, learned advocate appearing on behalf of the writ petitioners, submits that once the Labour Court permits the representation of the writ petitioners on August 29, 2011, it has to be presumed that implied consent has been given by the writ petitioners by not contemporaneously raising an objection at the time of filing vakalatnama by the said legal practitioner on behalf of the writ petitioners. It is submitted that the consent referred to in Section 36(4) of the Industrial Disputes Act, 1947, includes an implied consent and having regard to the fact that the respondent-workman did not raise any objection when such vakalatnama was filed. It has to be presumed that the workman had impliedly given consent to the representation of the writ petitioners by a legal practitioner.

4. Mr. Balaram Patra, learned advocate appearing on behalf of the respondent-workman, submits that when the Labour Court passed the order on August 29, 2011, the objection of the workman was on record and it cannot be said that the workman has given any consent to the writ petitioners to be represented in the said proceeding by a legal practitioner. It is submitted that the matter would have been different had there been no objection-petition pending under Section 36 of the Industrial Disputes Act, 1947 and the very fact that such an objection was filed prior to the matter being taken up for hearing clearly shows that the workman has consciously taken a decision to oppose any representation by a legal practitioner on behalf of the writ petitioners.

5. Mr. Bhattacharyya has relied upon a decision Baroda Ispat Pvt. Ltd. Vs. Ramgopal M. Patel and Others, for the proposition that once consent is given whether expressly or impliedly, the same cannot be withdrawn.

6. In Baroda Ispat Pvt. Ltd. Vs. Ramgopal M. Patel and Others, , the objection was taken after the vakalatnama was filed by the management and some progress has been made in the proceeding. It was only, thereafter, an objection was raised with regard to the representation of the management by a legal practitioner.

7. In the instant case, it is just the reverse situation. The objection of the private respondent as to the representation by a legal practitioner was very much on record and that remained on record till the impugned order was passed.

8. Moreover, it has been held in Deepak Puri v. Fifth Industrial Tribunal, West Bengal, 1986 Lab IC 132 (Cal) that the representation by a legal practitioner in the adjudicator proceeding before the Labour Court is subject to twofold conditions, viz. (i) the consent of the other parties to the proceeding, and (ii) the leave of such Labour Court or Industrial Tribunal or Nationalized Tribunal, as the case may be. These conditions are not mere matter of formality to give a full

play to the statutory provision of legal representation, but are mandatory in nature. An attempt to give disjunctive interpretation to "and" in Section 36(4) also does not find favour in *Paradip Port Trust, Paradip Vs. Their Workmen*, . The Hon"ble Supreme Court after taking into consideration the history of the industrial legislation and in recognition of the fact of unequal strength of the parties in adjudication proceeding before the Tribunal, which clearly reveals an intention of the law-maker to discourage representation of a legal practitioner declined to read "or" in place of "and".

9. The Hon"ble Supreme Court observed that a "consent of the party is not an idle alternative, but a ruling factor in Section 36(4)." The requirement of the statute cannot, therefore, be given a go-bye or wished away. This requirement is to be complied with in order to give full effect to the provisions of Section 36(4). Giving or refusing consent is purely a matter of the will of the party. If the consent is refused by any one of the opposite parties, the question of leave of the adjudicator, does not arise.

10. Mr. Bhattacharyya, at this stage, has referred to a decision of a single Judge of the Kerala High Court in WP (C) No. 18334 of 2011 (N) v. By Adv. Sri T.K. Ajithkumar and submitted that in view of Section 30 of the Advocates Act, 1961, the legal practitioner cannot be prevented from appearing before the Tribunal. In the said decision, the single Judge was considering Section 30 vis-?-vis Section 13 of the Family Courts Act, 1984.

11. The issue before the Kerala High Court was whether any sanction to engage a legal practitioner is necessary as on date of the judgment, that is to say July 19, 2011, when Section 30 of the Advocates Act, 1961 has come into operation. The learned Judge held that the scope of Section 30 of the Family Courts Act, 1984 dealing with the right to legal representation (speaks about the necessity to file sanction petition) has to be analysed in the background of Section 30 of the Advocates Act, 1961, which permits other advocates to practice in all courts including the Hon"ble Supreme Court and before any Tribunal or person legally authorised to take evidence.

12. Non-issuance of notification giving effect to Section 30 of the Advocates Act, 1961 was the subject-matter of debate for many a decade. As a matter of fact, the Advocates Act, 1961 received the assent of the President of India on May 19, 1961. Sub-section (3) of Section 1 of the Act provides that it shall in relation to the territories other than those referred to in sub-section (4) come into force as such date as the Central Government may by notification in the Official Gazette appoint. No notification was issued in respect of Section 30 conferring any right to practice by a advocate before any Court or Tribunal. Since above provision was not notified even after quarter of century, interference of the court was sought for and the issue was ultimately taken up to the Supreme Court, in *Aeltemesh Rein, Advocate, Supreme Court of India Vs. Union of India (UOI) and Others*, , when it has been observed that in view of the law declared by the Constitution Bench of the Supreme Court in *A.K. Roy and Others Vs. Union of India (UOI)* and

Others, , no writ of mandamus could be issued to the Central Government to bring a statute or a provision in a statute into force in exercise of powers conferred by the Parliament. However, after hearing the learned Attorney General and the learned Additional Solicitor General, it was observed that there was no hurdle in directing the Central Government to consider whether the time for bringing Section 30 of the Advocates Act, 1961 into force had arrived or not.

13. It has been observed in the judgment of the Kerala High Court that it took more than another quarter of a century for the Central Government to rise to the occasion and issue a notification published in the Gazette of India on June 9, 2011 declaring the appointed date as June 15, 2011 for giving effect to Section 30 of the Advocates Act, 1961. In view of such notification, Section 30 of the Advocates Act, 1961 has been brought into force from June 15, 2011 and as it stands so, all the lawyers have acquired a right to practise before all Courts and Tribunals and such other Forum of India as a matter of right, which provision is having all the traits and effect of a subsequent legislation to override the restrictive covenants as contained in Section 13 of the Family Courts Act, 1984.

14. In the instant case, no amendment has been carried out to Section 36(4) of the Industrial Disputes Act, 1947. Moreover, as observed in Paradip Port Trust, Paradip Vs. Their Workmen, restriction imposed under such Section was keeping in view the object and purpose of the Industrial Disputes Act, 1947, its object and purpose in regard and in recognition of the fact of unequal strength of the parties in adjudication proceeding before the Tribunal, the intention of the law is to discourage the representation of a legal practitioner as such and the need for expeditious disposal of cases. The word "and" was not considered as disjunctive. Moreover, Deepak Puri (1986 Lab IC 132 (Cal)) (supra), the single Judge of this court has taken a view that the consent must be expressed and not implied. Even on the analysis of facts, it appears that objection of the workman with regard to the representation of a legal practitioner was on record.

15. In view of the aforesaid, the writ petition fails. However, there will be no order as to costs. Parties are to act on the server copy of this order.