

(2000) 11 DEL CK 0090
In the Delhi High Court
Case No : C.M. (M) 767/99

Management of the Associated Cement Cos. Ltd.	APPELLANT
Vs	
Workman, Saroj Arora	RESPONDENT

Date of Decision : 16-11-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 36

Citation : (2001) 88 FLR 914 : (2001) 1 LLJ 828

Hon'ble Judges : B.A. Khan, J

Bench : Single Bench

Advocate : Rajiv Nayyar, U.N. Rana and Sakesh Kumar, for the Appellant; D.N. Vohra, for the Respondent

Final Decision : Allowed

Judgement

B.A. Khan, J.—Parties are involved in an Industrial dispute (ID No. 833/90) before the Industrial Tribunal pending for the last about nine years or so and Mr. Sameer Parkash, practicing Advocate is the bone of contention. Respondent workman wants him to be debarred from representing the employer but petitioner justifies his representation u/s 36(2) of ID Act. Though the point in issue is as good as covered by the Supreme Court Judgment in Paradip Port Trust, Paradip Vs. Their Workmen, yet the rival contentions would have to be gone into again.

2. It transpires that respondent objected to Mr. Parkash's representation as late as on 27.4.1999 on the plea that he being a practicing Advocate was disqualified to represent the Management in the face of provisions of Section 36(3)(4) of I.D.Act. Petitioner justified his representation on the ground that he was the President, Treasurer and the Officer on special duty of the Industrial and Commercial Employer Association of India of which petitioner was a Member and was thus competent to represent it u/s 36(2) of the Act. But Tribunal sided with the Workman and held him debarred from representing the Management u/s 36(4) for being a practicing Advocate and for having failed to obtain the consent

of the workman and leave of the court.

3. L/C for petitioner Mr. Rajiv Nayyar, Sr. Advocate pointed out that the issue stood concluded by the judgment of Supreme Court in Paradip Port Trust, Paradip Vs. Their Workmen, to his guns placing reliance and his own interpretation on provisions of Section 36(3) and (4) which according to him prohibited representation of a workman or an employer through a practicing advocate save otherwise by consent of other side or with the leave of court.

4. It would, Therefore, be advantageous to extract the relevant provisions of Section 36 of the Act for proper appreciation of rival contentions.

36. Representation of parties -(1) A workman who is a party to dispute shall be entitled to be represented in any proceeding under this Act by-(a) (any member of the executive ,or other office bearer) of a registered trade union of which he is a member ;

(b) (any member of the executive or other office bearer) of a federation of trade unions to which the trade union referred to in Clause (a) is affiliated ;

(c) where the worker is not a member of any trade union, by (any member of the executive or other office bearer) of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorized in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-(a) an officer of an association of employers of which he is a member;

(b) an officer of a federation of association of employers to which the association referred to in Clause (a) is affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) 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 proceedings and (with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be.)"

5. This section envisages representation of a Workman and Management in Labour fora. While its such Section (1) provides that an employee could be represented by any member of the executive or other office bearer of a registered trade union of which he was a member or of a federation of Trade

unions to which his Trade union was affiliated or by any other workman employed in the industry in which such worker was employed. Similarly Sub-section (2) of this Section allows representation of the Employer through various modes. It says that an employer could be represented by an office of an Association of employers of which he was a member or an officer of a federation of Association of Employers to which his association was affiliated or by any other employer in the Industry in which such employer was engaged.

6. Sub-section (3) of Section 36 bars representation by a legal practitioner in any conciliation proceedings under I.D. Act or in any proceedings before court. Section 4, however, makes an exception and permits such representation with the consent of other party and with the leave of Labour Court, Tribunal or National Tribunal, as the case may be.

7. It is by now well known that the rationale behind bar imposed under Sub-section (3) was to discourage representation by legal practitioner to ensure expeditious disposal of Industrial dispute given regard to the unequal strength of the parties. It was not however a blanket bar as leeway was provided to allow representation to a workman or the employer through a legal Practitioner if it was with the consent of the other party and with the leave of the court. This bar was also not attracted where a representative even though a legal fell within the categories of persons envisaged in Sub-sections (1) and (2) of Section 36. In other words, even if one was a legal practitioner but happened to be a member of the executive or office bearer of a registered Trade union or a Federation of registered Trade union or even a workman employed in the Industry he could well represent the workman u/s 36(1) Similarly if one happened to be an officer of the Association of Employers to which contesting employer was affiliated or a Federation of employees to which his association was affiliated or even other employer engaged in the Industry in which the contesting employer was engaged, and was a legal practitioner also, he was competent to represent the Management/employer in terms of Section 36(2). It was on appreciation of this position that Hon"ble Supreme Court held ;

"The fact that person is a legal practitioner will not affect the position if the qualifications specified in Section 36(1) & (2) are fulfilled by him.

8. The position that emerges is that a legal practitioner by himself cannot represent either the workman or the employer in any conciliation proceedings under I.D. Act or in any proceedings before Court. But he could do so with the consent of the other party and with the leave of the court. But if he represents the workman as office bearer of a registered Trade union or an officer of the association of employer, he was neither barred, nor required to obtain consent of the other side or leave of the court/Tribunal.

9. It seems that Tribunal had messed up various provisions of Section 36 under the belief that Sub-section (3) imposed a blanket bar for a legal practitioner to represent the employer which could be only waived with the consent of the other

party or with the leave of the court/Tribunal under Sub-section (4), ignoring that provisions of Sub-sections (1) and (2) of Section 36 provided representation by other categories of persons who could be legal practitioner or something more at the same time.

10. At this stage, Mr. Vohra, L/C for respondent-workman disputed that Mr. Sameer Parkash, Advocate was the President or Treasurer or an Officer on special duty of the Industrial & Commercial Association of India. I am afraid it would not be possible to examine his plea now as he had failed to resist before the Tribunal. Nor had Tribunal examined this aspect of the matter. In fact, Tribunal had disregarded his being so in the light of judgment *State of Punjab v. Gurdarshan Singh Grewal*, 1993 LIC 1974 which was distinguishable. All the same petitioner or alternatively Mr. Sameer Parkash Advocate is required to file his credentials supporting his claim of being an officer of employer Association and the membership of petitioner thereof before Tribunal within two weeks from receipt of this order.

11. Petition is allowed with this direction and impugned order dated 30.10.1999 passed by Industrial Tribunal is set aside. Parties to appear before the Tribunal on 27th November, 2000.