
(2008) 04 RAJ CK 0080
In the Rajasthan High Court

Manager Atlanta Infrastructure Pvt. Ltd.	APPELLANT
Vs	
Judge, Labour Court and Another	RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 36

Citation : (2008) 04 RAJ CK 0080

Hon'ble Judges : Munishwar Nath Bhandari, J

Bench : Single Bench

Judgement

Munishwar Nath Bhandari, J.—This writ petition is directed against the order dated 24.01.2008, passed by the Industrial Tribunal-cum-Labour Court, Udaipur, whereby the application preferred by the petitioner u/s 36 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D. Act") was rejected.

2.The petitioner has come with a case that one Mahendra Singh Chauhan and Associates was authorized to represent their case before the Industrial Tribunal-cum-Labour Court, Udaipur and, for that purposes, an application u/s 36 of the I.D. Act was filed with the averment that said Shri Mahendra Singh Chauhan, being an officer of association/federation of employers, thus, is entitled to represent, in view of the provisions of Section 36(2) of the I.D. Act.

3. The respondents-workmen contested the said application on the ground that Mahendra Singh Chauhan is an advocate, thus, cannot represent the petitioner-firm. It was contended that for invoking the provisions of Section 36(2) of the I.D. Act, one has to be an officer of the association of employers or federation of associations of employers, but Mahendra Singh, not being an officer of association of employers or even federation of association of employers, thereby, he should not be permitted to represent the employer before the Industrial Tribunal-cum-Labour Court, Udaipur.

4. The learned Court-below considered the issue as to whether Mahendra Singh Chauhan, advocate, can be treated as an officer of Mewar Chambers of

Commerce and Industry or not and considering the facts relevant therein, it was held that Shri Mahendra Singh Chauhan is not an officer, thus, the application u/s 36 of the I.D. Act was rejected. Learned Counsel for the petitioner submits that Mahendra Singh Chauhan was appointed as a legal adviser, not only for Udaipur Chambers of Commerce and Industry, but also Labour adviser for Mewar Chambers of Commerce and Industry. Thus, he was an officer of the association of employers and even federation of association of employers. Thus, he was authorized to represent employer, in view of the provisions of Section 36(2) of the I.D. Act. To sub-stantiate arguments, reference of the of the judgment reported in Paradip Port Trust, Paradip Vs. Their Workmen, is made. A further reference of the judgment in the case of Radhey Shyam v. Presiding Officer Labour Court II 2004 I CLR 39 is given, apart from the judgment of this Court reported in Grapes Synthetics Private Limited Vs. The Judge, Labour Court and Another, In the case of Grapes Synthetics Pvt. Ltd., this Court considered almost the same issue and therein, the writ petition was allowed. In the aforesaid case, one J.P. Patodia, shown to be an officer of Mewar Chambers of Commerce and Industry, Bhilwara, was allowed to represent the case of the employer. The Labour Court earlier dismissed the application moved by the employer u/s 36 of the I.D. Act. Shri J.P. Patodia was otherwise a legal practitioner, but he was legal adviser of Mewar Chambers of Commerce and Industry, Bhilwara, which fact has otherwise also borne out from document at Annexure-9 page-53 of the writ petition, where the name of Shir J.P. Patodia has been shown as legal adviser, whereas the name of Shri Mahendra Singh Chauhan has been shown as Labour adviser, therefore, it is submitted that present case is covered by the judgment aforesaid as Annexure-9 was under consideration in the case of Grapes Synthetics (Supra) also.

5. Learned Counsel for the respondents, on the other hand, submits that the petitioner is trying to delay the adjudication of the Labour Court, for one reason or the other, and, therefore, the matter is brought to the High Court, hence though there is an objection regarding acceptance of the writ petition, but if the writ petition is allowed, a further prayer is made that a direction should be given to the Industrial Tribunal-cum-Labour Court, Udaipur to expedite the adjudication of dispute referred.

6. I have considered the rival submissions of the parties and scanned the matter carefully. The perusal of the impugned order shows that learned Court-below refused to consider Mahendra Singh Chauhan as an officer of employers association and, thereby, the application u/s 36 was dismissed. Perusal of the judgment in the case of Gapes Synthetics Pvt. Ltd. Reveals that there also, similar controversy came up for consideration, where the representation through one Shri J.P. Patodia was denied on the same ground. It is important note that the name of Shri J.P. Patodia exists in the very same document, which was taken into consideration by the Court-below in this case also and now, in the light of the judgment of this Court in the case aforesaid, the order of the Industrial Tribunal-cum-Labour Court goes in conflict. It is true that a legal practitioner

simplicitor cannot represent an employer without the consent of the other party but, then, an officer of association of employers or federation of associations employers can definitely represent an employer. Thus, in view of the judgment in the case of *Grapes Synthetics v. The Judge Labour Court (Supra)*, the petitioner can be granted the same relief. It is further considered that even in the case of *Radhey Shyam v. Presiding Officer, Labour Court II (Supra)*, a Division Bench of the Punjab & Haryana High Court had further gone on the issue that the Labour Court cannot look into the motive of an appointment of a legal practitioner as an office bearer of the trade union or an officer of the employers association, therefore, in the aforesaid case also, the representation was permitted. Coming to the judgment of the Hon''ble Apex Court in the case of *Pradip Port Trust v. Their Workmen (Supra)*, I find that therein also, the Hon''ble Apex Court held that even if a legal practitioner is an officer of association of employers, then there is no bar for him to represent an employer. In para 17, the Hon''ble Apex Court held that there is no scope of inquiry by the Tribunal into the motive for appointment of such practitioner as office bearer of the trade union as officer of the employers association. In para 17 of the 7 aforesaid judgment, it was held thus:

17. It must be made clear that there is no scope for enquiry by the Tribunal into the motive for appointment of such legal practitioners as office bearers of the trade unions or as officers of the employers'' associations. When law provides for a requisite qualification for exercising a right, fulfillment of the qualification in a given case will entitle the party to be represented before the Tribunal by such a person with that qualification. How and under what circumstances these qualifications have been obtained will not be relevant matters for consideration by the Tribunal in considering an application for representation u/s 36(1) and Section 36(2) of the Act. Once the qualifications u/s 36(1) and Section 36(2) are fulfilled prior to appearance before Tribunals, there is no need under the law to pursue the matter in order to find out whether the appointments are in circumvention of Section 36(4) of the Act. Motive of the appointment 8 cannot be made an issue before the Tribunal.

7. In view of the para quoted above, the Tribunal is having no jurisdiction to look into the motive of appointment. It will not be relevant matter for consideration for the Tribunal. However, in the present matter, we find that the Industrial Tribunal-cum-Labour Court has enquired upon such issue, more so when not only Mahendra Singh Chauhan is legal adviser, as well as labour officer of the association of employers, but there is no condition therein to the effect that he will still be permitted to represent the case against the association of employers, thereby the service rendered by Mahendra Singh Chauhan was of a particular nature for and on behalf of the association of employers.

8. In view of the above, it cannot be said that a legal and Labour adviser cannot be an officer of the association of employers within the meaning of Section 36(2) of the I.D. Act, more so when such a legal adviser is not expressly or impliedly

given the liberty to contest cases against the members of the association of employers. In fact, the issue aforesaid is covered by the judgment in the case of Grapes Synthetics Pvt. Ltd., hence the impugned order passed by the Tribunal-cum-Labour Court is set aside and the writ petition is allowed. However, looking to the prayer made by the learned Counsel for the respondents, the Labour Court is directed to expedite the matter and decide the pending dispute within a period of four months from today, looking to the fact that the matter is pending consideration before the Labour Court from the year, 2000 and almost a period of eight years has already passed by now. Both the parties are directed to co-operate with the Industrial Tribunal-cum-Labour Court, so that the dispute aforesaid may be decided positively well within time-frame given above.