

(1995) 11 BOM CK 0059

In the Bombay High Court

Case No : Letters Patent Appeal No. 442 of 1995 in Writ Petition No. 129 of 1995

Mrs. Kamakshi R. Iyer

APPELLANT

Vs

Hindustan Door-oliver Ltd. and Others

RESPONDENT

Date of Decision : 24-11-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 36, 36(2), 36(3), 36(4)

Citation : (1996) 73 FLR 1497 : (1996) 1 LLJ 1131 : (1996) 1 MhLj 404

Hon'ble Judges : V.P. Tipnis, J;A.D. Mane, J

Bench : Division Bench

Judgement

V.P. Tipnis, J.—A Reference under the Industrial Disputes Act is pending before the Labour Court at Bombay since 1988 between Smt. Kamakshi R. Iyer, a workman and Hindustan Dorr-Oliver Ltd. - the employer. The employer on 20th April 1983 made an application to the Labour Court stating that Ms. Iyer is being represented by her husband Mr. Ramchandran, that during all these years application after application is being filed by Mr. Ramchandran. It is further stated that the provisions of Section 36(4) of the Industrial Disputes Act, which debar legal practitioner being allowed to represent in any proceeding under the Industrial Disputes Act, came for scrutiny before the Allahabad High Court and by a decision reported in 1992 (64) F. L. R. 968, the Allahabad High Court held that section 36(4) of the Industrial Disputes Act is ultravires Articles 14 and 19(1)(g) of the Constitution of India. It is stated that earlier Court had specifically rejected the application of the company to engage a lawyer, therefore the said order be reviewed.

2. By an order dated 24.10.1994, the learned Presiding Officer of the Labour Court Bombay reviewed the previous order of refusing permission to engage the lawyer to the company and granted permission to the company for being represented by an advocate. In the order the learned Judge has observed that from the proceedings it is clear that the written statement is filed on record in the month of February 1989 and both the parties filed their documents on and

from 18.5.1989 but the matter has not proceeded any further and considering the case law cited and the facts of the case and the point of delaying tactics by abusing the procedure by both sides by filing unnecessary applications, the learned Judge has come to the conclusion that the assistance of the advocate to proceed with the matter with the legal provisions is required by allowing appearance of advocate for the company. The order states that the learned Judge asked the workman to engage advocate and if it is not possible then to approach the legal aid committee, but the workman has failed to do so. It is on these grounds the learned Judge allowed the application of the company.

3. Being aggrieved by the judgment and order of the Labour Court the workman preferred a writ petition being writ petition No. 129 of 1995. The learned single Judge by his order dated 30.1.1995 passed the following orders :

"Having regard to the facts and circumstances of the case, the objection is against the grant of permission engaging lawyer by the respondent-company. It is true that the petitioner is a lady workman unable to engage lawyer and intend to represent through her husband who is not a legal expert. In that event, it will be open for the petitioner to engage legal expert and if she chooses to engage lawyer, the respondent-company shall pay legal expert's fees. On that condition, the respondent-company is allowed to engage a lawyer. With these directions, this petition is dismissed".

The aggrieved workman has preferred this appeal against the said order of dismissal of the petition.

4. Mrs. Shobha Gopal, learned counsel for the appellant-workman submits that the order passed by the learned single Judge as also by the learned Judge of the Labour Court is contrary to the express provisions of Section 36(4) of the Industrial Disputes Act. In support of her case learned counsel has heavily relied upon the judgment of the Apex Court in the matter of Paradip Port Trust, Paradip Vs. Their Workmen, .

5. As against this Shri Chitale learned counsel for the respondent company has submitted that the order should be upheld inasmuch as taking into consideration the long drawn proceedings with a view to expeditiously dispose of the reference, the learned Judge of the Labour Court has passed the order allowing the company to engage the services of a lawyer. In this behalf he relied upon certain judgments of this Court as well as the judgments of the Apex Court.

6. After having heard the learned counsel for both sides and after having gone through the order passed by the learned Judge of the Labour Court as well as the learned single Judge of this Court, and after having considered the judgments cited before us, we are of the clear view that the orders passed by the learned single Judge and that by the learned Judge of the Labour Court are contrary to the express provisions of section 36(4) of the Industrial Disputes Act and cannot be sustained.

7. The provisions of Sections 36(3) and 36(4) which are relevant in this case, are as under :

"36(1).....

36(2).....

36(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.

36(4). In any proceedings (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) ".

As such it is clear that sub-clause (3) of section 36 prohibits appearance of legal practitioner. However, sub-clause (4) of Section 36 provides that legal practitioner may be allowed to represent with the consent of the other parties to the proceedings and with the leave of the Labour Court. The matter should not detain us any further inasmuch as the Apex Court in the matter of Paradip Port Trust has clearly decided the said issue. The Apex Court in the aforesaid case has held as under :

"11. Section 36 provides for representation of parties before the Tribunals and the Labour Court. u/s 36(1) a workman who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by three classes of officers mentioned in (a), (b) and (c) of that sub-section. Similarly, u/s 36(2) an employer who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by three classes of officers mentioned in (a), (b) and (c) of that sub-section. By sub-section (3) a total ban is imposed on representation of a party to a dispute by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court of enquiry. Then comes Section 36(4) which introduced the requirement of prior consent of the opposite party and leave of the Tribunals and of the Labour Court, as the case may be, for enabling a party to be represented by a legal practitioner.

15. The parties, however, will have to confirm to the conditions laid down in section 36(4) in the matter of representation by legal practitioners. Both the consent of the opposite party and the leave of the Tribunal will have to be secured to enable a party to seek representation before the Tribunal through a legal practitioner qua legal practitioner. This is the clear significance of section 36(4) of the Act.

21. We have given anxious consideration to the above submission. It is true that "and" in a particular context and in view of the object and purpose of a particular legislation may be read as "or" to give effect to the intent of the legislature. However, having regard to the history of the present legislation recognition by law of the unequal strength of the parties in adjudication proceedings before a

Tribunal, intention of the law being to discourage presentation by legal practitioners as such, and the need for expeditious disposal of cases, we are unable to hold that "and" in Section 36(4) can be read as "or".

"22. Consent of the opposite party is not an idle alternative but a ruling factor in section 36(4). The question of hardship, pointed out by the Solicitor General is a matter for the legislature to deal with and it is not for the Courts to invoke the theory of injustice, and other consequences to choose a rather strained interpretation when the language of Section 36 is clear and unambiguous."

8. In view of the aforesaid decision of the Apex Court the matter admits of no doubt, and inasmuch as admittedly the workman had objected to the company being allowed to be represented by legal practitioner, it was not permissible for the Labour Court to grant the prayer of the management.

9. Shri Chitale, learned counsel for the company brought to our notice the judgment of the Apex Court in the matter of Bhuwaneshwar Singh v. Union of India and Ors. reported in 1994I LLN 360. However, the said judgment may not help Mr. Chitale because in the said matter the Supreme Court was dealing with the appearance of parties in person before the Supreme Court and the Apex Court suggested to evolve procedure for scrutinising their petitions and screening the parties wishing to appear in person. Reliance placed by Shri Chitale on the decision of the division bench of this Court in the matter of Perfect Paper & Steel Converters Pvt. Ltd. & Ors. v. The Bombay National General Workers Union & Ors. 1989 I CLR 492 and the judgment of the single Judge of this Court delivered on 26th October 1990 in writ petition No. 2963 of 1990 - The Workman of Bank of India v. Bank of India & Anr. are also not helpful in the matter inasmuch as, in neither of these cases there was any question of legal practitioner being allowed to represent the parties and the interpretation of section 36 of the Industrial Disputes Act. As stated earlier in our opinion the issue is clearly finally determined by the Apex Court in the matter of Paradip Port Trust which is binding on us.

10. In the result appeal is allowed and the order passed by the learned single Judge dated 30.1.1995 in writ petition No. 129 of 1995 is set aside.

11. In the normal course once the order of dismissal of petition is set aside, petition would have gone to the learned single Judge after being admitted. However, in the peculiar facts and circumstances of the case and in view of the clear dicta of the Apex Court in Paradip Port Trust case we not only allow this appeal and set aside the order of the learned single Judge but also allow the petition being writ petition No. 129 of 1995 only to the extent of setting aside the order of the Labour Court permitting the company to be represented by the advocate. We make it clear that we are not expressing any opinion on any other issues.

12. Appeal is accordingly allowed. In the facts and circumstances of the case, there shall be no order as costs.

13. In view of the order passed in the appeal the notice of motion does not survive and the same is accordingly stands disposed of with no orders as to costs.

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