

(2025) 11 JH CK 1874

In the Jharkhand High Court

Case No : Writ Petition (L) No. 2457 Of 2025

M/s Alembic Pharmaceuticals Limited

APPELLANT

Vs

Jay Prakash Singh

RESPONDENT

Date of Decision : 04-11-2025

Acts Referred:

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

Citation : (2025) 11 JH CK 1874

Hon'ble Judges : Deepak Roshann , J

Bench : Single Bench

Advocate : Nipun Bakshi, Shubham Sinha, Raunak Sahay

Final Decision : Allowed

Judgement

Deepak Roshan, J

1. The instant writ application has been preferred by the Petitioner assailing the Order dated 27.02.2025, passed by the Ld. Presiding Officer, Labour Court, Jamshedpur, in I.D. Case No. 4 of 2024. This order allowed the application preferred by the Respondent-workman under Section 36(3) and (4) of the Industrial Disputes Act, 1947, debarring the Petitioner's advocate from representing it in the Reference

2. Briefly stated, the Respondent workman instituted a case under Section 2(A) (2) of the Industrial Disputes Act, 1947 before the Labour Court, Jamshedpur, challenging his removal from service. The case was registered as I.D. Case No. 4 of 2024 on 08.08.2024.

On 16.08.2024, the workman filed a preliminary objection under Section 36(3) and (4) of the Industrial Disputes Act, 1947. This application is annexed to the Writ Petition as Annexure 6/1, and a bare glance reveals that it is addressed to the Deputy Labour Commissioner-cum-Conciliation Officer. In the body of this petition, the error is rectified by mentioning that he raises a preliminary objection to the appearance of advocate for the Management. No reasons are

assigned in this petition.

The Management appeared on 12.11.2024 through its advocate and filed an application seeking adjournment. The petition seeking time for filing reply/show cause petition was allowed by the Labour Court on this date. Thereafter, the Management filed a reply asserting its right to be represented through an advocate. The Management pleaded that there was implied consent as well as deemed leave being granted by the Labour Court in allowing the adjournment application. The Respondent workman filed his rejoinder and referred to various decisions of the Hon'ble Supreme Court, including the leading case of Paradip Port Trust vs. Their Workman; (1977) 2 SCC 339 and Thyssen Krupp Industries India Private Limited and Others vs. Suresh Maruti Chougule and Others; 2023 SCC OnLine SC 1770).

The Labour Court by its order dated 27.02.2025 has debarred the advocate of the Management relying on the provisions in Section 36(3) & (4) of the Industrial Disputes Act, 1947. This order is under challenge in the writ petition.

3. On the basis of the claims and documents filed by the Parties the following issues arise for determination:

Issues:

- Whether the Petitioner Management can be represented by an Advocate/legal practitioner under Section 36(3) and (4) of the Industrial Disputes Act before the Labour Court ?
- Whether the Learned Labour Court had granted leave and whether there was implied consent from the workman to the appearance of the Petitioner Management by its Advocate ?

4. The Management, in support of its contention, has referred to the entire order sheet annexed to the Writ Petition. The Management specifically refers to the order dated 04.10.2024, on which date the workman had filed attendance through counsel. For brevity, the order passed on this date is reproduced below:

"4.10.24. Workman file attendance through counsel. Record put up on 12.11.24 for S/R".

5. Mr. Nipun Bakshi, Ld. Counsel for the Petitioner-Management submits that even though the workman had initially filed a preliminary objection petition under Section 36(3) and (4) of the Industrial Disputes Act, 1947, he subsequently, appeared through counsel on this later date, which amounts to a waiver of his objection. On the very next date fixed in the case, which was 12.11.2024, the Management's Advocate appeared and filed an adjournment application, which was allowed by the Labour Court, Jamshedpur. On this date also, there was no objection recorded by the Ld. Labour Court.

6. He further argued that the sequence of events, therefore, prima-facie suggests that any preliminary objection filed earlier was either waived or deemed

to have been waived by the workman by appearing through counsel himself on 04.10.2024. Moreover, the Labour Court, by allowing the time petition, has also granted implied leave to the Management for being represented through its counsel. Ld. Counsel for the Petitioner-Management contended that the order dated 27.02.2025, debarring it from appearing through an advocate, is misconceived, as the Presiding Officer, Labour Court has glossed over the records which show that the workman had also appeared through an advocate and, therefore, the preliminary objection was deemed to be waived.

7. The Respondent workman appeared in person and opposes the stand of the Management and has filed his counter-affidavit in this case. In Para 11 of his counter-affidavit, he states that the order dated 04.10.2024 erroneously and wrongly recorded the attendance of the workman through counsel. He again reiterates in paragraph 12 of his counter-affidavit that the order dated 04.10.2024 wrongly records his attendance through counsel. The sole-respondent vehemently relies on the order dated 29.07.2025, which has been passed by the Presiding Officer, Labour Court while this case was pending, and submits that the Labour Court has also accepted his contention that the order dated 04.10.2024 was erroneous.

8. The representation of parties in industrial adjudication under the Industrial Disputes Act, 1947, is governed by Section 36 of the Industrial Disputes Act, 1947. Section 36 reads as under:-

36. Representation of parties.—

(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

(a) any member of the executive or 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 authorised 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.

9. Section 36 of the Industrial Disputes Act, 1947, which governs the representation of parties in disputes, primarily allows workers to be represented by members of a registered trade union and employers by an officer of an employers' association. A key restriction is in Section 36(3), which prohibits legal practitioners from representing parties in conciliation proceedings or before the Court.

However, Section 36(4) permits legal representation before a Labour Court, Tribunal, or National Tribunal with the consent of the opposing party and the leave of that judicial body.

10. Thus, though Section 36(3) of the Industrial Disputes Act, 1947, imposes a complete embargo on representation of parties through advocates/legal practitioners before the Conciliation Officer and the Labour Court/Tribunals; however, Section 36(4) of the Act of 1947, permits representation through a legal practitioner before Labour Courts and Tribunals with the consent of the other parties and the leave of the Court.

It is, therefore, evident that the complete embargo on the appearance of Advocates in Industrial adjudication is confined to conciliation proceedings alone. A party to a proceeding under the Industrial Disputes Act, 1947 can be represented by a legal practitioner with the consent of the other parties and the leave of the Court.

11. At this stage it is pertinent to indicate that the law is well settled that consent can be either express or implied. Leave can also be granted directly by the Labour Court, or it can be inferred when the Labour Court permits an advocate to appear and allows any application filed by an advocate.

In this case, though the workman filed a preliminary objection on 16.08.2024, he subsequently, appeared through an advocate on 04.10.2024. His subsequent conduct amounts to a waiver of his preliminary objection filed earlier in this case and amounts to deemed consent. Once the workman has appeared through an advocate on one of the dates fixed in the case, he cannot prevent the other side from being represented by an Advocate.

12. The Respondent's allegation that the order dated 04.10.2024 has wrongly

recorded his appearance through counsel is misconceived and cannot be accepted as he has not filed any rectification application before the Labour Court. His reliance on the subsequent order dated 21.07.2025 also does not support his case, as the Labour Court only records his submission that there was an error in the order dated 04.10.2024. As a matter of fact, there is no finding to that effect that there was any error in the order which is available on record.

13. Even otherwise, an order sheet drawn by a Court is conclusive of the proceedings transacted and the happenings of the Court. The Respondent, who appears in person, cannot be permitted to discredit the order recorded in the order sheet dated 04.10.2024 without filing any application for rectification/modification of the order.

14. The Hon'ble Supreme Court in the case of Paradip Port Trust vs. Their Workman (1977) 2 SCC 339 has exhaustively dealt with the scope of Section 36(3) and (4) and has held under:-

20. The Solicitor General contends that "and" in Section 36(4) should be read as "or" in which case refusal to consent by a party would not be decisive in the matter. The tribunal will then be able to decide in each case by exercising its judicial discretion whether leave, in a given case, should be given to a party to be represented by a lawyer notwithstanding the objection of the other party. It is pointed out by the Solicitor General that great hardship will be caused to public corporations if the union is given a carte blanche to finally decide about the matter of representation by refusing to accord its consent to representation of the employer through a legal practitioner. It is pointed out that public corporations, and even Government running a transport organisation like the State transport, cannot be expected to be members of any employers' association. In their case Section 36(2) will be of no avail. To deny them legal representation would be tantamount to denial of reasonable opportunity to represent their cases before the tribunal. It is submitted that since such injustice or hardship cannot be intended by law the final word with regard to representation by legal practitioners before the tribunal should rest with the tribunal and this will be effectively implemented if the word "and" in Section 36(4) is read as "or". This, it is said, will also achieve the object of the Act in having a fair adjudication of disputes.

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 representation 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.

23. Besides, it is also urged by the appellant that under Section 30 of the Advocates Act, 1961, every advocate shall be entitled "as of right" to practise in all courts and before any tribunal [Section 30(i) and (ii)]. This right conferred upon the advocates by a later law will be properly safeguarded by reading the word "and" as "or" in Section 36(4), says counsel. We do not fail to see some difference in language in Section 30(ii) from the provision in Section 14(1)(b) of the Indian Bar Councils Act, 1926, relating to the right of advocates to appear before courts and tribunals. For example, under Section 14(1)(b) of the Bar Councils Act, an advocate shall be entitled as of right to practise save as otherwise provided by or under any other law in any courts (other than High Court) and tribunal. There is, however, no reference to "any other law" in Section 30(ii) of the Advocates Act. This need not detain us. We are informed that Section 30 has not yet come into force. Even otherwise, we are not to be trammelled by Section 30 of the Advocates Act for more than one reason. First, the Industrial Disputes Act is a special piece of legislation with the avowed aim of labour welfare and representation before adjudicatory authorities therein has been specifically provided for with a clear object in view. This special Act will prevail over the Advocates Act which is a general piece of legislation with regard to the subject-matter of appearance of lawyers before all courts, tribunals and other authorities. The Industrial Disputes Act is concerned with representation by legal practitioners under certain conditions only before the authorities mentioned under the Act. *Generalia specialibus non derogant*. As Maxwell puts it:

"Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language ... or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the special one [Maxwell on Interpretation of Statutes, 11th Edn, p. 169]."

24. Second, the matter is not to be viewed from the point of view of legal practitioners but from that of the employer and workmen who are the principal contestants in an industrial dispute. It is only when a party engages a legal practitioner as such that the latter is enabled to enter appearance before courts or tribunals. Here, under the Act, the restriction is upon a party as such and the occasion to consider the right of the legal practitioner may not arise.

The Hon'ble Apex Court has thus, emphatically held that both consent of the opposite party and leave of the Court are required before any legal practitioner is permitted to represent either party in such proceedings. This view has recently

been reaffirmed in Thyssen Krupp Industries India Private Limited and Others vs. Suresh Maruti Chougule and Others 2023 SCC Online SC 1707.

15. It is thus, necessary to examine the factual matrix in this case keeping in mind the twin tests of "consent of the other party" and the "leave of the Court." The Patna High Court in CWJC No. 10760 of 1999, titled M/s Key's Brake Hoses and another vs. State of Bihar has examined the scope of implied consent in the context of Section 36 of the Industrial Disputes Act in paragraphs 11 and 12 of the Judgment, which are extracted below:

"11. The test, in my opinion, is whether the party was aware of the fact that the other party is being represented by an advocate. Where such ignorance is established, he cannot be said to have acquiesced or impliedly consented to the appearance, but where the party is aware of the fact that the other party is being represented by an advocate but does not object and instead of objecting, in fact accepts his appearance by serving a copy of his statement (Reply to the Show Cause) on him, he cannot turn around later and say that the advocate be not allowed to represent the other party. In the application which Respondent No. 2 filed before the Labour Court under Section 36, vide Annexure 5, he did not say that he was not aware of the appearance of the advocate prior to 5.5.99. Once on facts it is held that Respondent No. 2 was aware of the appearance of the advocates but did not object to their appearance, it must be held that he impliedly consented to their appearance, and the court having accepted the Vakalatnama, it must also be held that the conditions of Section 36(4) were satisfied. That being so, at a later stage, neither Respondent No. 2 could withdraw the consent nor the Court could recall its acceptance of the Vakalatnama. In the above premises, the impugned order of the Labour Court cannot be said to be in accordance with law.

12. The so-called objection contained in the prayer portion of the main application under Section 33C(2) is of no significance. The occasion to object, or not, arises only when a party to the proceeding engages an advocate to represent him in the case. Such a blanket so-called objection was out of context and meaningless. The proper stage to object to the appearance in the present case, according to me, was the stage when Respondent No. 2 filed his reply to the show cause. Therein, he should have raised the objection."

On these lines, the Bombay High Court in T.K. Varghese vs. Nichimen Corporation 2001 (4) L.L.N. 187 has also taken the view that consent cannot be withheld without any reasons or justification. Paragraphs no. 9, 10 & 11 of this decision may be usefully reproduced below:

"9. Moreover, if we consider the history of industrial litigation the legal fraternity has its major contribution to the development of this branch of law. It would be totally unjust to deny the legal community access to this field and the Courts and the Tribunals would face great handicap if they do not get proper assistance from the legally trained persons in their decisions which finally land in the higher

Courts. The judgments of the lower Courts do reflect the kind of assistance received by them. It facilitates even the higher Courts if the decisions are written after good assistance from the bar. The foundation of the justice is the fair and equal fight between the parties. Ultimately, if the Court/Tribunal grants "Leave" to a legal practitioner to represent a party before it such leave by the Court/Tribunal would be in the interest of justice and fair-play while the "consent" of the other party very often is actuated by malice or mala fides or motivated to try to get upper hand in the litigation.

10. At the same time, we cannot forget that under section 7(3)(d-1) of the Act an advocate or attorney is permitted to practise before the Industrial Court or Tribunal or Labour Court to become eligible for appointment as a presiding officer of a Labour Court. In the light of this provision what is more important for a legal practitioner to be able to appear before the Labour Courts/Tribunal is the unbiased leave of such forum than the interested and motivated denial of consent by the other party. The grant of "leave" would be more decisive rather than the "consent" of the party. In view of the above discussion, according to me, the leave granted by the Labour Court/Tribunal will have overriding effect as a party cannot be represented by a legal practitioner even when the other side consents without the leave of the Labour Court/Tribunal. Considering the vast development of law and the complications which arise in the litigation the Labour Court/Tribunal has an inherent right in the interest of justice to seek proper assistance in resolving the Industrial dispute to the satisfaction of both the parties and in accordance with law and grant "leave" to a party before it to be represented by a legal practitioner.

11. There is no absolute bar for the legal practitioner to appear before the Labour Court/Tribunal as it is under section 36(3) in the Conciliation proceedings. No party can withhold appearance of a legal practitioner by denying "consent" without any justification and arbitrarily for no rhyme or reason. If a party is represented by an office bearer etc. of a Trade Union or an Association, it cannot refuse to grant consent to the other side without any reasonable cause and justification to engage a legal practitioner and the Labour Court/Tribunal can always consider the bona fides of such a party withholding consent and can always grant "leave" to the other parties to be represented by a legal practitioner in the interest of justice notwithstanding the refusal of consent by the other side. No party to the proceedings has an unbridled and absolute right to refuse to give consent to other party. No party can adopt unreasonable attitude to exploit the situation arising out of section 36(4) of the Act to the deliberate disadvantage of the other side. This provision was enacted to help the budding Trade Union movement and it was never intended for them to take wrongful advantage of the same even after the Trade Unions have become capable of defending themselves and their workmen. The provision is always subject to the scrutiny of the Labour Court/Tribunal and it can always decide the question of refusal of consent by the other party and can overrule the refusal of the consent on merits independently while considering to grant or refuse the "leave" contemplated under section

36(4) of the Act.”

16. As stated hereinabove, in this case, the workman had filed an objection petition even before the Management was given notice for appearance. He appeared through an advocate himself on 04.10.2024. The Advocate representing the Management appeared immediately thereafter on the next date which was 12.11.2024, and his application for adjournment was also considered and allowed, as recorded in the order sheet of the Labour Court. On the first date of appearance, there was no objection from the workman. His failure to object is obvious, as on the immediately preceding date i.e. on 04.10.2024, he himself appeared through counsel.

Further, the Presiding Officer, Labour Court not only permitted the legal practitioner to file Vakalatnama but also allowed his adjournment application on 12.11.2024. It is obvious that there was implied consent and implied leave of the Court. The subsequent withdrawal or allegation of wrong order is unsustainable. The Labour Court’s order-sheet reflects the factual developments which suggest implied consent as well as waiver of the objection by the workman who himself appeared through a legal practitioner on 04.10.2024.

17. Therefore, both the issues are decided in favour of the Petitioner-Management, inasmuch as, there is no absolute prohibition on representation of any party before the Labour Court. The restriction is confined to Conciliation proceedings only. The second issue relating to implied consent and leave of the Court is also decided in favour of the Petitioner.

18. In the above facts and circumstances of the case and on close examination of the applicable law, there was no justification in debarring the Advocate/legal practitioner representing the Management. The order dated 27.02.2025 is unsustainable on facts and the law and, is hereby, set aside.

19. Before parting, it is necessary to indicate that the framework of legal services has been strengthened and effective legal representation is readily available to any person in need. The Respondent-workman can also be offered legal assistance through the District Legal Services Authority, Jamshedpur (East Singhbhum).

The Presiding Officer, Labour Court, Jamshedpur, should apprise the workman of his right to take legal assistance before proceeding any further in the case. It goes without saying that the Labour Court shall also decide the dispute expeditiously.

20. As a result, the instant writ application stands allowed. Pending I.A., if any, also stands closed.