
(2001) 02 JH CK 0061
In the Jharkhand High Court
Case No : CWJC No. 3759 of 2000 (R)

Nav Chandra Jha

APPELLANT

Vs

The Presiding Officer and Another

RESPONDENT

Date of Decision : 01-02-2001

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 34
Industrial Disputes Act, 1947 — Section 10(1), 36, 36(2), 36(4)

Citation : (2001) 1 LLN 1190 : (2001) 0 LIC 1594 : (2001) 1 JLJR(Jhar) 134 :
(2001) 49 BLJR 714 : (2001) 89 FLR 156 : (2001) 1 LLJ 1464

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; V. Shivnath, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application, the petitioner has challenged the order, dated 5th September, 2000 passed by the Presiding Officer, Labour Court, Jamshedpur in Reference Case No. 1/2000, whereby, the application filed by the petitioner opposing, the appearance of a lawyer in the proceeding u/s 10 of the Industrial Disputes Act has been rejected.

2. The aforementioned reference case arose out of a reference sent to the Labour Court for adjudication u/s 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act")- The dispute was, "whether termination of service of the concerned workman is justified". Both, the petitioner and the management filed their respective written statements and documents in support of their case. On 29.1.2000, the petitioner filed a separate application with a prayer to the effect that the management may not be allowed to be represented by any legal practitioner as he himself represents the case. It appears that on 17th April, 2000 an authorisation slip in Form-E under Rule 34 of the Industrial Disputes Rules was filed by the Vice President, Chaibasa Cement Works purportedly authorising three persons, namely, Sri K.N. Tiwary, Honour ary

Secretary, Employers' Association, Jamshedpur; Sri Joydeep Roy, Treasurer, Employers' Association, Jamshedpur and Sri Ranjit Ghosh, ACC Limited, Jhunkpani, Singhbhum West. The petitioner filed objection on 17.5.2000 opposing the appearance of an advocate on behalf of the management. The Labour Court after hearing the parties rejected the objection petition filed by the petitioner in terms of the impugned order.

3. Mr. A.K. Sahani, learned counsel appearing on behalf of the petitioner, assailed the impugned order as being illegal and wholly without jurisdiction. According to the learned counsel, the impugned order is against the provisions of Clauses (a) and (b) of Sub-section (2) of Section 36 of the said Act. It is contended that Sri K.N. Tiwary showing himself to be the Honourary Secretary of the Employers' Association, is a practising advocate and, therefore, he is not entitled to represent the management in the said reference case. Learned counsel relied upon the decisions of the Madras High Court in the case of R.M. Duraiswamy v. Labour Court 1998 (1) LLN 712 and a decision of the Rajasthan High Court in the case of Bhawani Art Handicrafts v. Gulab Singh and Ors. 1999 II LLJ 1070.

4. On the other hand, Mr. V. Shivnath, learned counsel appearing for the management, submitted that when a legal practitioner is an office bearer of the Association of employer or of a federation of such Association, there is nothing in Sub-section (4) of Section 36 to prevent him from appearing before the Tribunal. Learned counsel further submitted that an office bearer of a trade union or a member of its Executives even if he is a legal practitioner, can appear in the capacity of an officer of that Association and in the capacity of office bearer in the case of union.

5. Having regard to the facts of the case and the rival contentions made by the counsels for the parties, the question that falls for consideration is whether an office bearer of an Employers' Association, who is a legal practitioner, can be debarred from representing the management in a reference case before the Labour Court or Tribunal. Before answering the question, it would be relevant to look into the provisions of Section 36 of the said Act, which reads as under :--

"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 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 associations 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 proceeding and with the leave of the Labour Court, Tribunal or National Tribunal as the case may be."

6. From bare perusal of the aforesaid provisions, it is manifest that this Section entitles a workman as well as employer to be represented by persons other than himself, in any proceeding under this Act. Sub-section (1) enumerates the persons through whom a workman can be represented while Sub-section (2) enumerates the persons through whom the employer can be represented. Subsections (3) and (4) imposed restriction on representative of the parties through "legal practitioner" before the adjudicatory authority.

7. The question whether an employer can be validly represented by a legal practitioner describing him to be its officer, directly came before the Supreme Court in the case of Paradip Port Trust, Paradip Vs. Their Workmen, . In that case, the employer Port Trust wanted to be represented by an advocate before the Industrial Tribunal describing him as the officer, being its legal consultants. The Tribunal declined to grant him leave of appearance for the reason that the relationship between the bank and the trust was clearly that of a client and its counsel. In appeal by Special Leave, the Supreme Court affirmed the decision of the Tribunal. However, the Court clarified that a person, who is a law graduate but not enrolled as an advocate under the Advocates' Act, 1961 or one, who having once been enrolled as an advocate gave-up his practice, can always be appointed as an officer of Company, association of employers or a federation of such Association. Their Lordships observed :--

"16. If, however, a legal practitioner is appointed as an officer or a company or corporation and is in their pay and under their control and is not a practising advocate the fact that he was earlier a legal practitioner or has a legal degree will not stand in the way of the company or the corporation being represented by him. Similarly, if a legal practitioner is an officer of an association of employers or of a federation of such associations, there is nothing in Section 36(4) to

prevent him from appearing before the Tribunal under the provisions of Section 36(2) of the" Act. Again, an office bearer of a trade union or a member of its executive, even though he is a legal practitioner, will be entitled to represent the workmen before the Tribunal u/s 36(1) in the former capacity. The legal practitioner in the above two cases will appear in the capacity of an officer of the association in the case of an employer and in the capacity of an office bearer of the union in the case of workmen and not in the capacity of a legal practitioner. The fact that a person is a legal practitioner will not affect the position if the qualifications specified in Section 36(1) and Section 36(2) are fulfilled by him."

Their Lordships further observed :--

"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, fulfilment 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 cannot be made an issue before the Tribunal."

8. A similar questions arose in a case before the Delhi High Court in the case of Management of the Associated Cement Co. Ltd. v. Workmen, Smt. Saroj Arora, C.M.(M) 767/99, judgment, dated 16th November, 2000. Their Lordships observed :--

"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 rep- resentative even though a legal fell within the categories of persons envisaged in Subsections (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 competent to represent the Management/employer in terms of Section 36(2)."

9. In the instant case, as noticed above, the petitioner has not seriously challenged the status and position of Sri K.N. Tiwary as a Honourary Secretary of the Employers' Association. It is stated in the counter-affidavit that the management appeared before the Labour Court through the Honourary Secretary and Treasurer of Employers' Association, Jamshedpur. The petitioner has not disputed that Sri Tiwary is not the Honorary Secretary of the Employers' Association. His contention is that since he is a legal practitioner, he is debarred from representing the employer in a reference case before the Labour Court.

10. In view of the settled proposition of law, it can safely be held that a legal practitioner by himself cannot represent either the workman or the employer in any conciliation proceeding or any proceeding before the Court under the said Act. But, he could do so with the consent of 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 is neither debarred nor required to obtain consent of the other side or leave of the Court or the Tribunal. The decisions relied upon by the learned counsel for the petitioner do not apply in the facts and circumstances of the present case.

11. In the case of R.M. Duraiswamy v. Labour Court, (supra), the Madras High Court, after coming to a finding that the person, who appeared to represent the employer was only a member of the executive committee of Indian Chamber of Commerce and Industry and neither an officer nor an office bearer of the Employers' Association, held that such person cannot represent the employer in a proceeding before the Labour Court or Tribunal.

12. In the case of Bhawani Art Handicrafts v. Gulab Singh, (supra), the Rajasthan High Court, after taking notice that the person wanted to represent the employer filed his authority as legal advisor and later on claimed to be the Honourary Member and Honourary Additional Secretary of the Executive Committee of Jodhpur Industrial Association and it was found that the person was not the office bearer of the Association, held that, that person is debarred from representing the employer.

13. In the instant case, as noticed above, it has not been disputed by the petitioner that the persons, who entered appearance to represent the employer are not the office bearers of the Employers' Association. In that view of the matter, merely because a person is a legal practitioner cannot be debarred from representing the employer, if that person is an officer of the Association of employers or of a federation of such Association.

14. Having regard to the facts of the case and the law discussed hereinabove, I do not find any reason to interfere with the impugned order passed by the Labour Court. There is no merit in this application, which is accordingly dismissed. It is needless to say that reference case must be disposed of expeditiously.

15. Petition dismissed.