

(2025) 05 GAU CK 0329
In the Gauhati High Court
Case No : Crl.Pet. Of 44 Of 2022

Nibrity Dasgupta And Anr

APPELLANT

Vs

The Union Of India And 3 Ors

RESPONDENT

Date of Decision : 01-05-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 24(8), 482
Industrial Disputes Act, 1947 — Section 29, 32, 36, 36(3)

Citation : (2025) 05 GAU CK 0329

Hon'ble Judges : Susmita Phukan Khaund, J

Bench : Single Bench

Advocate : K Biswakarma, A Dasgupta, A S Baidya, B Devi, T J Sahewalla, G Sahewalla, H K Sarma, M Sahewalla, G N Sahewalla, T J Sahewalla, H K Sarma, M Sahewalla

Final Decision : Disposed Of

Judgement

Susmita Phukan Khaund, J

1. Heard Learned Senior Advocate Mr. A. Dasgupta, assisted by Ms. A.S. Baidya for the petitioners, learned Senior Advocate Mr. G.N. Sahewalla for respondent Nos. 2 to 4 assisted by learned counsel Ms. G. Dugar.

2. The petitioners in this case are Smt. Nibrity Dasgupta and Sri Swapan Kumar Chakraborty. The Union of India, Sri N.K. Sinha, Company Secretary of M/S. Oil and Natural Gas Corporation Limited (ONGCL), Sri D.D. Mishra, Director of Human Resource of the same company and Sri M.C. Das, General Manager of the same company, are arrayed as respondent Nos. 1, 2, 3 and 4 respectively.

3. The petitioners have filed this application under section 482 of the Code of Criminal Procedure, 1973. They are aggrieved by the order dated 11.11.2021 passed by the learned Chief Judicial Magistrate, Cachar at Silchar in CR Case No. 46/2015. It is contended that the learned Chief Judicial Magistrate, Cachar (CJM for short) erroneously rejected the prayer of the petitioners to allow them to

participate in CR Case No. 46/2015 and to represent the workers of ONGC Contractual Workers' Union in this instant complaint case.

4. It is submitted that vide Notification No. L-300011/11/90-IR (Misc.) dated 20.08.1990 an industrial dispute was referred to by the Government of India, Ministry of Labour, New Delhi between the General Manager, ONGC Cachar Project and the General Secretary, ONGC Contractual Workers' Union before the Industrial Tribunal, Guwahati for adjudication of the issue of a dispute. The Reference Case No. 6 (C)/1990 was registered at the Industrial Tribunal, Guwahati and written statements were filed by the ONGC, Contractual Workers' Union and the Management of the ONGC.

5. Through their written statements, the ONGC Contractual Workers' Union asserted that they had been serving the establishment of the project at Silchar since the year 1976, but they were denied all the facilities enjoyed by the regular employees and as such, the demand for regularisation of their services at par with regular employees is inevitable. The Management of the ONGC, however, disagreed with their stance.

6. It is submitted that after proper adjudication of the issue, the learned Industrial Tribunal, Guwahati vide award dated 11.07.1994 directed for regularisation of services of the contractual workers. It is stated that the Management of the ONGC did not implement the award dated 11.07.1994 passed by the Industrial Tribunal, Guwahati. Thereafter, an application was filed on 24.04.2012 before the Secretary to the Ministry of Labour, Government of India through the Assistant Labour Commissioner (Central) for implementing the award.

7. A prosecution complaint was forwarded by the Labour Enforcement Officer (Central), Government of India to the CJM Cachar against M/S Oil & Natural Gas Corporation Limited under the provisions of Section 29 read with Section 32 of the Industrial Disputes Act, 1947 (Act of 1947 for short) for taking cognizance of the offence as mentioned in the complaint.

8. The basic purport of the complaint was non-implementing the award dated 11.07.1994. CR Case No. 46/2015 was accordingly registered. It is pertinent to mention that the Management of the ONGC had earlier submitted a reply to the show-cause notice that they have duly complied with the award dated 11.07.1994 passed by the learned Industrial Tribunal, Guwahati.

9. The petitioners are apprehensive as not a single member of the Workers' Union has been made witness. It is contended that the Labour Enforcement Officer (Central) went ahead with the criminal complaint merely as a legal procedure. It is alleged that without mentioning the workmen as witnesses, the officer had to some extent compromised before the Management of the Company.

10. This impelled the petitioners to approach the CJM with an application numbered as 1185 with prayer for allowing the workers to be represented and to

adduce evidence as witness.

11. The respondent No. 2 i.e. the Management of the ONGC, filed an objection challenging the application. It is averred in the objection filed by the Management that it has been falsely mentioned that the petitioners have already joined as regular employees.

12. The petitioners have filed an affidavit-in-opposition against the objection filed by the Management referring to the proviso of section 24 (8) of the CrPC which enables the victim to engage advocate in a criminal proceeding to defend their case and to assist the Public Prosecutor in view of the apprehension of the workers (Annexure-7) of the petition.

13. It is further submitted that the objective of inserting the proviso in section 24 (8) of CrPC is to give due justice to the victim and the petitioners who have not been properly represented in a criminal trial has every right to be represented. It is further submitted that due to the lacuna, the Management of the ONGC would be able to shrug off from the criminal responsibility.

14. The learned CJM has misconstrued the provisions of the CrPC with that of the provisions of the Act of 1947. The learned CJM referred to sub-section 3 of Section 36 of the Act of 1947, where there is a specific bar to allow any legal practitioner to represent any party to a dispute in a conciliation proceeding.

15. It is submitted that this provision has no nexus with the proviso of Section 24 (8) of CrPC.

16. It is further submitted that it is manifestly apparent on the face of the record that the workmen are the vital witnesses to establish the guilt of the Management with regard to non-implementation of the award dated 11.07.1994 and the facts that have been narrated in the complaint is required to be proved beyond a reasonable doubt. It is submitted that the allegation against the Management can be proved by the testimony of the workmen and not by the testimony of any other witnesses and this vital aspect of the matter was not taken into consideration by the learned CJM.

17. The petitioners have thus prayed for setting aside and quashing the impugned order dated 11.11.2021 passed by the learned CJM in connection with CR Case No. 46 of 2015.

18. Flaying the petition, learned Senior Advocate for the respondent Nos. 2 to 4 has submitted that this petition is not maintainable for various reasons. The impugned order has reflected sound reasonings, and there is nothing to interfere with the impugned order.

19. Moreover, the other reason why the petition is not maintainable is that both the petitioners have filed this petition on their individual capacity and not on behalf of the workers of the ONGC. Thus, this petition is not maintainable. It is further submitted that the petition was not rejected entirely by the Court, but

there was scope to ponder over the prayer and to decide it later if the petitioners are victims.

20. The petitioners are regular employees and are not representatives of the Contractual Workers' Union, and thus the petition is liable to be rejected.

21. I have considered the submissions at the bar with circumspection. The award was passed way back in the year 1994 by the order dated 11.07.1994 in connection with Reference Case No. 6 (C) of 1990.

22. The impugned order was passed on 11.11.2021. The criminal case was stayed by this Court vide order dated 28.01.2022. In connection with this criminal petition, the workers are yet to reap the fruits of the award. At this belated stage, it is discernable that some of the workers may have retired by now.

23. While considering the petition, it was observed in the order dated 11.11.2021 that there is no scope for the petitioners to be impleaded in this case at this stage.

24. It is submitted on behalf of the petitioners that they are not praying to be impleaded but they are praying to be represented by learned counsel to place their case and to examine witnesses on their behalf.

25. On the contrary, it is also submitted that it has been observed by the learned CJM that a final order has not been passed. It has been observed by the learned CJM that so far as the claim of the petitioners of their being victim is concerned, the case was not at the stage where the Court could ascertain that the petitioners are victims. It was observed that whether the petitioners are victims will be considered after the complainant adduces evidence in this case. The learned counsel for the Management has submitted that a negotiation has already been made with the petitioners and the demands of the petitioners have already been fulfilled.

26. It is apparent that an award is in favour of the petitioners which has not yet been implemented. So, it cannot be ignored that the petitioners are victims, moreso when a prosecution complaint was forwarded by the Labour Enforcement Officer against the Management.

27. Section 36 of the Act of 1947 reads :-

"[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 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]].”

28. Section 24 (8) of CrPC reads :-

24(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

[Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-Section.]

29. It is true that both the petitioners have filed this petition in their personal capacities. They have not represented the workmen of ONGC, but at the same time they are the stakeholders or awardees of the award dated 11.07.1994 passed by the learned Industrial Tribunal, Guwahati in connection with Reference Case No. 6 (C)/1990. The prayer of the petitioners is not regarding their impleadment, as submitted by the respondents, but to participate in the criminal trial by assisting in the prosecution in CR Case No. 46 of 2015. It does not appear that the learned CJM has misconstrued the provisions under section 36 (3) of the Act of 1947 as the petition under Section 24(8) was not finally decided by the learned CJM in the order dated 11.11.2021.

30. It is true that as per Section 36 (3) of the Act of 1947, 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. However, 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 and with the leave of the Labour Court, Tribunal or National Tribunal.

31. Analogously, the Court of the learned CJM has taken into consideration the objection filed by the Management and leave was thus not granted for impleadment, and the prayer was kept in abeyance to be taken into consideration at a later stage after ascertaining whether the petitioners are victims per-se. During argument, it has also surfaced that the petitioners have already joined the work force as regular employees.

32. It has also surfaced through the arguments of the learned counsel for the respondents that the petitioners are regular employees and are not representatives of the Contractual Workers' Union. As the prayer of the petitioners to assist the prosecution as victims under Section 24 (8) of CrPC has not been conclusively decided by the learned CJM vide order dated 11.11.2021, the order dated 11.11.2021 is modified. The learned CJM is directed to consider the petitioners' prayer as per Section 24 (8) of CrPC afresh without the condition to consider the matter after the complainant adduces evidence in this case.

33. In terms of the above observation, this petition stands disposed of.