
(1972) 03 OHC CK 0018
In the Orissa High Court

Orissa Ceramic Industries Ltd. APPELLANT
Vs
General Secretary, Orissa Ceramic Workers Union and Others RESPONDENT

Date of Decision : 07-03-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 227
Industrial Disputes Act, 1947 — Section 10, 24, 36, 38

Citation : (1972) 2 LLJ 443

Hon'ble Judges : G.K. Misra, C.J;B.K. Ray, J

Bench : Division Bench

Judgement

G.K. Misra, C.J.—On 28-4-67 a reference was made by the Government of Orissa, Labour, Employment and Housing Department by an order (Annexure 1) u/s 10(1)(d) of the Industrial Disputes Act, 1947 (Act 14 of 1947) (hereinafter to be referred to as the Act) to the Industrial Tribunal for "adjudication of certain dispute arising between the petitioner-company and the Orissa Ceramic Workers" Union represented by opposite party No. 1. The dispute as referred to in the Schedule to Annexure 1 runs thus:

Whether the suspension of four workmen, namely, Sarbashri Gajapati Sura, Janakar Joha, Bideshi Kumbhar and Iswar Deheria by the management of the Orissa Ceramic Industries Ltd., Jharsuguda, from 24-9-66 to 17-10-66 is legal and justified ? If not, what relief the workmen are entitled?

2. On 13-9-67 the petitioner submitted its statement of the case (Annexure II). Opposite party No. 1 submitted his statement of the case (Annexure III) on 18-10-67. On 30th of January, 1968, a list of documents (Annexure IV) relied on by the petitioner was filed. On 13-2-70 the petitioner filed an application (Annexure V) for permission to engage an advocate. The ground taken in that application was that the case involved complicated questions of law and fact and that for proper adjudication engagement of counsel was an absolute necessity. The petitioner was agreeable to any reasonable terms to be imposed upon it by the Tribunal in allowing the application. Opposite party No. 1 filed objection. The

application was rejected by Shri U.N. Misra, Presiding Officer, Additional Industrial Tribunal, Orissa, by his order (Annexure VI) dated 25-3-70 (hereinafter to be referred to as the impugned order). The material part of that order runs thus:

The application of the management, dated 13-3-70 for engagement of a lawyer is put up for hearing. The record shows that time was given to union to give their counter if any on 20-3-70. The secretary of the union in his counter stated that they did not receive the notice before 20-3-70 and hence they filed objection today. In the counter for engagement of a lawyer, the secretary of the union stated that the workers are out of employment since 1966 and it will be difficult for them to engage a lawyer. They vehemently object to the engagement of a lawyer by the management. The petition of the management for engagement of a lawyer is rejected.

3. The writ application has been filed under Articles 226 and 227 of the Constitution for issuance of a writ of certiorari to quash the impugned order.

4. The sole question for consideration in this writ application is whether the Tribunal illegally acted in the exercise of its jurisdiction in refusing the engagement of a lawyer by the petitioner.

5. Section 36 of the Act deals with representation of parties. To appreciate the point in issue the history of this section may be noticed.

6. Section 36 of the original Act XIV of 1947, which received the assent of the Governor-General on 17th of March, 1947, runs thus:

36 Representation of parties.-(1) A workman who is a party to an industrial dispute shall be entitled to be represented in any proceeding under this Act by an officer of a registered trade union, and any employer who is a party to an industrial dispute shall be entitled to be represented in any such proceedings by an officer of an association of employers.

(2) No party to an industrial dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act.

(3) A party to an industrial dispute may be represented by a legal practitioner in any proceedings before a Court or Tribunal.

7. Section 36 was amended by the Industrial Disputes (Appellate Tribunal) Act, 1950 (Act XLVIII of 1950) (hereinafter to be referred to as the 1950 Act), which received the assent of the President on 20th of May, 1950. Section 34 of the 1950 Act runs as follows:

34. The Industrial Disputes Act 1947 (XIV of 1947) shall be amended in the manner specified in the schedule.

8. The schedule to the 1950 Act deals with amendments to the Industrial Disputes Act 1947 (XIV of 1947). By Section 9 of the amendment, original

Section 36 of the Act was substituted.

9. By Section 24 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (Act 36 of 1956) (hereinafter to be referred to as the 1956 Act), some verbal changes were introduced. Section 36 of the Act as substituted by the 1950 Act with the verbal changes effected by the 1956 Act runs thus:

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) an officer of a registered trade union of which he is a member;

(b) an officer 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 an officer 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 proceedings and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be.

10. By Section 33 of the 1950 Act a provision was made for representation of parties before the appellate Tribunal. That section runs thus:

33. Representation of parties.-(1) a workman who is a party to an appeal shall be entitled to be represented in any proceeding under this Act by-

(a) an officer of a registered trade union of which he is a member;

(b) an officer 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 an officer 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 an appeal 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 employers engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) A party to a proceeding under this Act may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Appellate Tribunal.

11. To fit in with its amendment of the corresponding provision of the Act was made in the schedule.

12. Section 38 of the Act confers power on the appropriate Government to make rules for the purpose of giving effect to the provisions of the Act subject to the condition of previous publication. In exercise of that power Rule 85 was framed by the Government of Orissa in the Orissa Industrial Disputes Rules, 1959 (hereinafter to be referred as the Rules). Rule 85 is as follows:

85. Representation of a party by a legal practitioner in any proceedings before a Court, Labour Court or Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of other party or parties to the proceedings and with the permission of the Court, Labour Court or the Tribunal subject to such conditions or restrictions as the Court, Labour Court or the Tribunal may impose.

13. Mr. Nanda for the petitioner urged two contentions:

(i) The "and" in between the expressions "with the consent of the other party to the proceeding" and "with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be" in Section 36(4) should be construed as "or", in other words, the word "and" though is a conjunctive should be taken as a disjunctive.

(ii) In the alternative, certain words should be added in the sub-section to advance the remedy and suppress the mischief. The additional words which should be read into the statute are "in case the consent is unreasonably withheld" with the leave of the Labour Court.... Both the contentions require

careful examination.

14. Section 36 contains 4 sub-sections. Sub-sections (3) and (4) cannot be treated as provisions to Sub-sections (1) and (2) as contended by Mr. Nanda. Even if they are taken as provisions the result is not in any way different. Each of these sub-sections deals with a distinct and separate provision for representation of parties. Sub-section (1) provides how a workman who is a party to the dispute shall be entitled to be represented in any proceeding. By whom he would be represented is mentioned in Clauses (a) to (c).

15. Sub-section (2) enacts as to how an employer who is a party to the dispute shall be entitled to be represented in any proceeding under the Act. As to who would represent the employer has been dealt with in Clause (a) to (c).

16. If any one of the persons to represent a workman under Sub-section (1) or to represent an employer under Sub-section (2) happens to be a legal practitioner, then he can appear on the strength of the provision prescribed in Sub-sections (1) and (2). Such a legal practitioner, who simultaneously functions in another roll, is not required to fulfil the conditions prescribed in Sub-section (4).

17. Sub-section (3) imposes a complete ban as to representation by legal practitioner in any conciliation proceeding.

18. Sub-section (4) is the material provision with which we are concerned. For a legal practitioner to represent either a workman or an employer in any proceeding before a Labour Court, Tribunal or National Tribunal, two conditions are essential. They are:

- (i) The consent of the other party to the proceeding; and
- (ii) The leave of the Court.

19. The question for consideration is whether both these conditions must be fulfilled simultaneously and together or, in the alternative. The word used is "and". To construe the word "and" in its ordinary meaning and grammatical construction as a conjunctive, does not lead to manifest contradiction of the apparent purpose of the enactment. It would be appropriate to examine at this stage as to what would be the resultant consequences if "and" is construed as a conjunctive. A lawyer cannot be engaged unless the other party consents even if the Tribunal is prepared to grant leave. Secondly, even if the parties consent, the legal practitioner cannot be engaged unless the Tribunal grants leave.

20. Take for instance, a case where the dispute involves a simple point and yet the parties went to protract the litigation by engaging lawyers. The Court may not grant leave even though the parties have consented. Of course while granting leave the Tribunal would exercise its discretion judiciously and not arbitrarily or capriciously. Similarly a lawyer cannot be engaged even if the Tribunal thinks that it is a fit case where legal assistance is essential unless the

parties consent.

21. The restrictions thus imposed by construing the word "and" as conjunctive do doubtless cause real hardship as in many industrial disputes complicated questions of law and fact are involved requiring legal assistants. It is, however, not competent for any Court to proceed on the assumption that the Legislature had made a mistake. The hardship or inconvenience so caused cannot be presumably taken as not to have been intended by the Legislature. In such a context, the hardship cannot be avoided by giving a construction contrary to the legislative intention see *Nalinakha Bysack Vs. Shyam Sunder Halder and Others*, , *Tirath Singh Vs. Bachittar Singh and Others*, and *State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another*, .

22. The legislative history of Section 36 as narrated already shows that in 1947 when the original Section 36(3) was enacted a party to an industrial dispute could be represented by a legal practitioner in any proceeding before Court or a Tribunal. Thus there was absolute freedom for representation by lawyers. The 1950 Act imposed restrictions on legal practitioners in their appearance even before an appellate Tribunal. Section 33(3) of the 1950 Act laid down that party to a proceeding under that Act may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the appellate Tribunal. The restriction was imposed for the first time and that again even in respect of an appellate Tribunal. Consistent with the aforesaid objective the same restriction was extended to appearance before original Tribunals and consequently, the Industrial Disputes Act was amended by the amendments in the schedule in the 1950 Act. It is manifest that the 1950 Act put serious restrictions on the appearance of lawyers and the consequential amendment of the Act was not fortuitous but deliberately done. As this caused hardship and great inconvenience to parties and lawyers Section 35(4) was assailed before the Madras High Court in *A.N. Rangaswami and Another Vs. The Industrial Tribunal, Fort St. George, Madras and Others*, , on the constitutional grounds under Articles 14 and 19(1)(g). The facts in that case are also similar to those in this case. In that case both the management and the advocate filed the writ application. There was a dispute arising between the management and the employees. The Government of Madras referred the dispute to the Industrial Tribunal for adjudication. Objection was taken by the employees to the appearance of an advocate before the Tribunal. After the objection was heard the Tribunal refused the prayer of the management and the advocate to be represented through a lawyer. It is against the order of refusal the writ application was filed. Both the grounds of constitutional attack were repelled by Subba Rao, J. (as he then was). In that case the learned Judge referred to the fact that the imposition of restrictions on the right of a party to be represented by an advocate before a Tribunal is not unknown in other parts of the world. Two passages from "Poolard's Administrative Tribunals at Work", were extracted from pages 19 and 32:

At page 19: Lawyers as a whole have never understood the reasons for the growth of administrative tribunals and in many cases have opposed or tried to limit them....The doctrine of precedents would be introduced, the law of evidence would hamper it, and its procedure becomes cumbersome, slow and costly. It is partly their freedom from rules of procedure and customs in advocacy which makes administrative tribunals adaptable to changing social needs and gives parties before them an ease and confidence never known in law Courts. It is for lawyers to adapt themselves to administrative tribunals but not try to twist the growth of these bodies into the pattern of the ordinary Courts.

At page 32 : If the propertied side were legally represented and the other party not, as has been in many county Courts the Chairman would feel it incumbent on him to conduct the unaided man's case for him. If the professional advocate is admitted, there is the question of expense. Property can always command good brains versed in traditional law. The penniless man or wage-earner needs an advocate versed in human values, in the poor man's budget, in voluntary unenforceable industrial agreements, in the point of view of trade union and shop committee, and in the Acts and orders regulating factories, mines, etc.

After referring to the aforesaid passages the learned Judge observed that similar considerations might have weighed with the legislature in enacting the aforesaid provision prohibiting a party to be represented by an advocate unless with the consent of the Presiding Officer and the opposite party. The consent of the opposite party prevents one party from engaging an advocate unless the other party is also in a position to do so. The ultimate conclusion may be put in his own language ;

The Tribunal in exercise of its jurisdiction, subject to the consent of the other side, may allow an advocate to appear in cases where it thinks the assistance is necessary to elucidate the questions of fact or law. But the rule is intended to prevent one party taking advantage of the other party's weakness and also to prevent the unnecessary prolongation....

The learned judge was fully alive to the question of hardship which has been dealt with in paragraphs 4 and 5 of his judgment but yet dismissed the writ application on the ground that when legislative intention was clear a plain language cannot be given a different construction merely because of hardship. This decision was confirmed in appeal in A.N. Rangaswamy and Another Vs. The Industrial Tribunal, Fort. St. George, Madras and Others, . Venkatarama Aiyar, J. (as he then was) observed thus:

To deprive them of legal assistance because the opposition of the representatives of labour would be to clog the wheels of justice. It is with a view to avoid this result that provisions are usually made in statutes conferring on the Tribunal itself discretion to grant permission to parties to appear by counsel. Such a provision would on the one hand enable the Tribunal to decide simple disputes speedily without the aid of counsel and at the same time enable them to get the

necessary legal assistance in complicated cases. Our attention has not been drawn to any statute wherein a provision similar to Section 36(4) of the Industrial Disputes Act of 1947 has been enacted. There is, therefore, considerable force in the contention of the appellants that the section, as it stands, must result in hardship. But this, however, is a matter for the Legislature to consider.

23. Both these decisions are, therefore, authoritative pronouncements made by eminent judges construing the word "and" as a conjunctive. These decisions have stood in the field for more than twenty years. Neither the Parliament nor the State Legislature have stepped in for amendment on the ground of hardship or inconvenience. Doubtless the attack in those cases was on constitutional ground but the basis of attack was on the ground of hardship arising out of the construction given to the word "and" as a conjunctive and not as a disjunctive.

24. The same conclusion would be reached by an elementary analysis also. If the word "and" would mean "or" the Tribunal will have always jurisdiction to grant leave varying according to the facts and circumstances of each case even though the parties might not give their consent. This would render the first condition that the engagement would be with the consent of the parties wholly nugatory.

25. The same argument applies to the alternative contention. If the expression "in case the consent is unreasonably withheld" is inserted after "and", then also the first condition would become nugatory. In such a case even if the consent of the parties is not given, the Tribunal would be in a position to allow representation through lawyers. It is not necessary to further dilate on this point as the answer to the first contention adequately meets the second contention. Words can be read into the statute only to give effect to the clear and definite meaning of the legislature. Nothing is, however, to be added to the statute unless there are adequate grounds to justify the inference that Legislature omitted something which it intended to express see *Tirath Singh Vs. Bachittar Singh and Others*, , and *Nalinakhya Bysack Vs. Shyam Sunder Halder and Others*, . It is not necessary to refer to a plethora of authorities cited on either side.

26 On the aforesaid analysis, the writ application has no merit. It is accordingly dismissed; but, in the circumstances, without costs.

B.K. Ray, J.

27. I agree.