
(2005) 04 OHC CK 0050

In the Orissa High Court

Case No : Writ Petition (Civil) No. 1142 of 2004

Plar Latex Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5), 36(4)

Citation : (2006) 101 CLT 195 : (2005) 106 FLR 285 : (2005) 2 OLR 64

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : J. Patnaik, A.A. Das, B. Mohanty, T.K. Patnaik, S. Das, P.K. Nayak and A. Pattnaik, for the Appellant; N. Sahani and N.K. Sahoo, (For O.P. No. 2), for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—The management of the Company-M/s. Polar Latex Ltd., Balasore is the petitioner in this writ application. The petitioner calls in question the legality of the order dated 9.12.2003 passed in I.D. Case No. 5 of 2001 by the Presiding Officer, Labour Court, Bhubaneswar in 9.12.2003.

2. At the instance of the employee-opp.party No. 2 challenging the order of termination dated 24.6.1997, the Government of Orissa in exercise of powers conferred by Sub-section (5) of Section 12 read with Clause-(c) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") referred the dispute to the Presiding Officer, Labour Court, Bhubaneswar for adjudication. The point referred was as follows :

"Whether the action of the management of M/s. Polar Latex Ltd., Somanathpur, Balasore in terminating Sri Manoranjan Khatua, Chemist w.e.f. 24.6.1997 is legal and/or justified. If not, to what relief Sri Khatua is entitled to ?".

3. While the matter was pending before the Presiding Officer, Labour Court, the employee-opp. party No. 2 filed an application on 4.9.2000 with a prayer to

engage a legal practitioner to represent him in the said Industrial Disputes case. The writ petitioner i.e., the management filed an objection to the said petition on 27.2.2003. The Presiding Officer, Labour Court by the impugned order dated 9.12.2003 allowed the prayer of opp.party No. 2 holding that even if there is objection from the side of the management for allowing the employee to be represented by a legal practitioner, leave can be granted by the Court for engaging a legal practitioner. The Presiding Officer further observed that the interest of justice would be best served if the workman is allowed to be represented by a legal practitioner.

4. Mr. J. Pattnaik, learned senior counsel appearing on behalf of the petitioner submitted that the impugned order clearly contravenes the provisions of Section 36(4) of the Act. Relying upon the decision in the case of Paradip Port Trust, Paradip Vs. Their Workmen, , Mr. Patnaik contended that in the above decision, the Supreme Court has clearly laid down that the word "and" occurring in Section 36(4) of the Act is conjunctive in nature and cannot be treated to be "or". Therefore, it is submitted that if consent is not given by the opponent in a case under the Act, the Labour Court/Industrial Tribunal in seisin of the matter cannot grant leave to a party to be represented by a legal practitioner.

5. Mr. Sahu, learned counsel appearing for opp.party No. 2, on the contrary, relying on the counter affidavit filed by the said opp.party No. 2, submitted that the management by an authorisation is being represented by one Mr. P.K. Chand, designating him as Chairman, Balasore Chamber of Industries, Balasore. The said Mr. P. K. Chand is not an industrialist but a regular practising lawyer with a long-standing practice in the profession. Such representation of the management by Mr. P.K. Chand has never been objected to by the workman-opp. party No. 2. Since the management was being represented by an experienced Advocate, the workman filed an application for being represented by a legal practitioner. He further contended that the Act being a piece of beneficial legislation, provisions of the said Act cannot be interpreted in such manner which would go against the interest of the workman who is an unequal contestant with the management. It is, therefore, submitted that there is no illegality in the Impugned order passed by the Presiding Officer, Labour Court. Section 36(4) of the Industrial Disputes Act, 1947 is quoted hereunder :

"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. On a reading of the impugned order under Annexure-2, it appears that the Presiding Officer, Labour Court on a finding that the management is being represented by Mr. P.K. Chand, Chairman, Balasore Chamber of Industries, who is a senior practising Advocate and such action of the management having not been objected to by the workman, the workman who has no legal knowledge to defend his case should not be deprived of his right to be represented by a legal

practitioner. On the above finding, the Presiding Officer allowed the prayer of the workman by interpreting Section 36(4) of the Act to the effect that the said provision empowers the Court to grant leave to a party to be represented by a legal practitioner even though the other party to the proceeding does not give consent to the same. In the case of Paradip Port Trust v. Their workman (supra), the Supreme Court while considering the appeal of the Paradip Port Trust against the order refusing it to be represented by one Sri T. Mishra, a legal consultant of the Trust, interpreted the provisions of Section 36(4) of the Act and held thus :

"The parties, however, will have to conform 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.

xxx xxx xxx 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".

7. From the above interpretation of Section 36(4) of the Act, it is clear that the Presiding Officer, Labour Court has gone wrong in holding that even without consent of the parties, the Court has power u/s 36(4) of the Act to grant leave to a party to be represented by a legal practitioner.

8. In this view of the matter, the impugned order dated 9.12.2003 under Annexure-2 cannot be sustained and is accordingly quashed. The writ petition is allowed, but in the circumstances, without costs.