

(2010) 03 PAT CK 0176
In the Patna High Court
Case No : CWJC No. 439 of 2003

Rakesh Ranjan Keshri

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Citation : (2010) 03 PAT CK 0176

Final Decision : Allowed

Judgement

Ramesh Kr. Datta, J.—Heard learned Counsel for the Petitioner and learned Counsel for the State. No one appears for Respondent No. 2 although notice was duly served upon it.

2. The Petitioner seeks quashing of the orders dated 2.9.2002 and 25.9.2000 passed by the Presiding Officer, Labour Court, Bhagalpur in Reference Case No. 3/2000 and for a direction to the Presiding Officer, Labour Court, Bhagalpur not to permit any professional lawyer to appear and conduct the case of Respondent No. 2 in terms of Sections 36(3) and (4) of the Industrial Disputes Act, 1947.

3. Shorn of unnecessary details, the facts of this case are that an industrial dispute being Reference Case No. 3/2000 was pending before the Presiding Officer, Labour Court, Bhagalpur. The Respondent No. 2, Management executed a special power of attorney in favour of Shri S.M. Firoz Hasnain which was objected to by the Petitioner on the ground that he was a legal practitioner functioning as an Advocate regularly in the Labour Courts of Bhagalpur and thus he could not be permitted to represent the Management without the consent of the workmen as required by Section 36(4) of the Industrial Disputes Act, 1947. The Respondent No. 2, however, contested the matter claiming that the said S.M. Firoz Hasnain is Assistant Secretary of Traders and Manufacturers Association, Patna and thus being an Officer of an Association of Employers of which the Respondent No. 2 is a member, they were entitled to authorize him to represent them in the said reference case.

4. After examining the witnesses and hearing the parties, the Presiding Officer, Labour Court, Bhagalpur by order dated 25.9.2000 held that there was no merit in the objection of the Union, Dukan Karamchari Sangh, Bhagalpur on the point of representation of the Management by Shri S.M. Firoz Hasnain and accordingly, rejected the objection petition. The Petitioner filed another application for recall of the order dated 25.9.2000 which was rejected by order dated 2.9.2002; hence, the present writ petition.

5. learned Counsel for the Petitioner submits that the said lawyer S.M. Firoz Hasnain was a professional Advocate practising in the Labour Courts of Bhagalpur which fact has also been admitted by him in para-5 of his cross-examination that he is practising in the Labour Courts, Bhagalpur for the last 30 years. It is urged that by the mere fact that he was an Assistant Secretary of the Traders and Manufacturers Association, Patna, he does not come within the category of person who can represent the employer u/s 36(2) of the Industrial Disputes Act, and he being a professional Advocate, the relationship between him and the Respondent No. 2 was one of client and lawyer and the representation of Respondent No. 2 by him would be hit by Section 36(4) of the Act which lays down that a party to an industrial dispute before a Labour Court 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. It is contended by learned Counsel that in view of the objections raised by the Petitioner-workman the bar of Section 36(4) would apply and the Respondent No. 2 would not be eligible to be represented by the said S.M. Firoz Hasnain, Advocate.

6. In support of his stand learned Counsel relies upon a decision of the Supreme Court in the case of Paradip Port Trust, Paradip Vs. Their Workmen, in paras 4, 11, 15 and 16 of which it has been laid down as follows:

4. The tribunal after hearing the parties upheld the objection of the union. The tribunal examined the terms and conditions of the appointment of Shri T. Misra as Legal Consultant of the employer and held as follows:

His duties and the restrictions on his practice which have been extracted above and the terms as to his professional fees, etc. indicate that the relationship of the first party and Shri Misra is clearly that of a client and his lawyer and not that of employer and employee. Hence, Shri Misra cannot be said to be officer of the first party.

7. The tribunal further held:, Merely by execution of a power-of-attorney, the restrictions attached to a legal practitioner contained in Sub-section (4) of the Act cannot be circumvented. I would accordingly hold that Shri Misra who is a legal practitioner cannot represent the first party before this tribunal even if he holds a power-of-attorney executed in his favour by the first party.

11. Section 36 provides for representation of parties before the tribunals and the Labour Court. u/s 36(1) a workman who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by three classes of officers

mentioned in (a), (b) and (c) of that Sub-section. Similarly u/s 36(2) an employer who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by three classes of officers mentioned in (a), (b) and (c) of that Sub-section. By Sub-section (3) a total ban is imposed on representation of a party to a dispute by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a court of enquiry. Then comes Section 36(4) which introduces the requirement of prior consent of the opposite party and leave of the tribunals and of the labour court, as the case may be, for enabling a party to be represented by a legal practitioner.

15. 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.

16. If, however, a legal practitioner is appointed as an officer of 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.

8. Learned Counsel for the State has sought to support the- impugned orders passed by the Labour Court submitting that the said order has been passed relying upon the same decision of the Apex Court in Paradip Port Trust case (supra) since the Labour Court was of the opinion that being an Assistant Secretary of the Traders and Manufacturers Association, Bihar, Shri S.M. Firoz Hasnain was an Officer of the employers Association and the Management was entitled to be represented through him.

9. I have considered the submissions of learned Counsel for the Petitioner and for the State as also the impugned order passed by the Presiding Officer, Labour Court, Bhagalpur. From perusal of the order dated 25.9.2000 it is evident that the sole reason for the Labour Court in coming to the aforesaid conclusion is that it found that the said S.M. Firoz Hasnain was an Assistant Secretary of the Association of which the employer was a member and thus he would be an

Officer of the said Association and accordingly as held by the Apex Court in Paradip Port Trust case (supra) there was no scope for enquiry by the Tribunal for appointment of such legal practitioner as an Officer of the employers Association.

10. In my view the learned Presiding Officer of the Labour Court has not construed the decision of the Apex Court in Paradip Port Trust case (supra) in the proper perspective. The basic enquiry which was required to be made by the Labour Court in the matter was as to whether merely because Shri S.M. Firoz Hasnain was an Assistant Secretary of the Association he has thereby become an Officer of the said Association. The said aspect of the matter has been considered by the Apex Court in which after considering the scheme of Sections 36(1) and 36(2) it noted the difference in language adopted in Sections 36(1) and 36(2) by which while Section 36(1) provides for "any member of the executive" or "other office bearer" of the union to be entitled to represent the workmen but in the case of an Association or federation of employers the term used in Section 36(2) is "an Officer". The Supreme Court thus noted the distinction that merely by being an office bearer of an Association or federation of Association of employers, does not automatically mean that the said person is also an officer. While it refused to lay down any exhaustive test for determining as to who is an officer in absence of a definition in the Act, it also held that in each individual case the tribunal has to determine on the material produced before it whether the claim of a person being an officer is justified. The following observations made by the Apex Court in Paradip Port Trust case (supra) in para-18 are relevant:

18. We may note here the difference in language adopted in Section 36(1) and Section 36(2). While Section 36(1) refers to "any member of the executive" or "other office-bearer", Section 36(2), instead, mentions only "an officer". Now "executive" in relation to a trade union means the body by whatever name called to which the management of the affairs of the trade union is entrusted [Section 2(gg)]. "Office-bearer" in relation to a trade union includes any member of the executive thereof but does not include an auditor [Section 2(iii)]. So far as the trade unions are concerned there is no difficulty in ascertaining a member of the executive or other office-bearer and Section 36(1) will create no difficulty in practical application. But the word "officer" in Section 36(2) is not defined in the Act and may well have been, as done u/s 2(30) of the Companies Act. This is bound to give rise to controversy when a particular person claims to be an officer of the Association of employers. No single test nor an exhaustive test can be laid down for determining as to who is an officer in absence of a definition in the Act. When such a question arises the tribunal, in each individual case, will have to determine on the materials produced before it whether the claim is justified. We should also observe that the officer u/s 36(2) is of the Association or of the federation of Associations of employers and not of the company or corporation.

11. I further find that the Apex Court has clearly noted the distinction between a practising Advocate and a legal practitioner appointed as an Officer of Company

or Corporation being in their pay under their control and held that his being earlier a legal practitioner or his legal degree will not stand in the way of the company to be represented by him and similar position would prevail with respect to an officer of Association or of a federation of such Association and in such cases the bar of Section 36(4) will not apply.

12. Thus, in view of the aforesaid propositions which have been enunciated, I am of the view that so far as the interpretation of Section 36(2) is concerned, the same would clearly exclude any person who is a practising Advocate in a Court of law or the Labour Courts. Such a person cannot, in any case, be called an officer of Association or federation of Associations of employers and he can merely be their office bearer, since no person can be both a practising Advocate under the Advocates Act as also a full time employee of any company or Association or federation of Associations of employers.

13. It is evident from the material on the record that Shri S.M. Firoz Hasnain was certainly not a person in the pay or under the control of the Traders and Manufacturers Association, Bihar, once he himself has admitted that he was practising as an Advocate in the Labour Courts for the last 30 years.

14. In the above circumstances, there was no occasion for the Labour Court to come to a conclusion that he was an officer of the Traders and Manufacturers Association, Bihar merely on the ground that he was an Assistant Secretary of the Association for two years. An office bearer of a Trade Union may have the privilege of representing the workmen u/s 36(1) of the Act but the same privilege has not been extended by Parliament to an office bearer of an Association or Federation of Association of employers as the term used is "an officer" of such Association u/s 36(2).

15. For the aforesaid reasons, this Court is of the view that the order dated 25.9.2000 and the subsequent order dated 2.9.2002 cannot stand and they are, therefore, quashed.

16. The writ application is accordingly allowed and it is directed that the Respondent No. 2 cannot be permitted to appear through the said Shri S.M. Firoz Hasnain or any other practising lawyer by the Labour Court, Bhagalpur without the consent of the Petitioner.