

(1964) 05 PAT CK 0007
In the Patna High Court
Case No : Misc. Judl. Case No. 762 of 1963

Ram Udgar Singh

APPELLANT

Vs

Presiding Officer, Labour Court, C.N. Division and Others

RESPONDENT

Date of Decision : 06-05-1964

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2), 36, 36(2)

Citation : AIR 1964 Patna 489 : (1964) 9 FLR 243 : (1967) 2 LLJ 537

Hon'ble Judges : Tarkeshwar Nath, J;H. Mahapatra, J

Bench : Division Bench

Advocate : Ranen Roy, A.D. Croy Chaudhary and Rameshwar Prasad, for the Appellant; K.D. Chatterji and Dinesh Charan, for the Respondent

Final Decision : Dismissed

Judgement

Mahapatra, J.—This is an application under Articles 226 and 227 of the Constitution of India by Ramudgar Singh against the Presiding Officer, Labour Court of Criota Nagpur Division at Ranchi, the Bihar Electricity Board through its Chairman Sri R. Mishra and Md. Arif, Personnel Officer (Labour), Bihar State Electricity Board. The petitioner was an employee under the Bihar Electricity Board. He was dismissed by the Electrical Superintending Engineer, Ranchi Electrical Circle, on the 4th of December 1962 from his service. The Electricity Board which was constituted under the Indian Electricity (Supply) Act made an application u/s 33(2)(b) of the Industrial Disputes Act to the Labour Court for approval of their action of dismissal of the petitioner, On the 3rd of July, 1963, opposite party No. 3, Md. Arif, Personnel Officer of the Bihar State Electricity Board, filed his appearance on behalf of the employer before the Labour Court. The General Secretary of the Bihar State Electricity Supply Workers Union was authorised under the provisions made u/s 36(1)(a) to represent the petitioner before the Labour Court. He raised an objection against Md. Arif's appearance mainly on the ground that he was not a person who could answer the descriptions given in any of the sub-clauses of Sub-section (2) of Section 36 of

the Industrial Disputes Act. This objection was not accepted by the Labour Court by its order passed on the 30th July, 1963. The petitioner challenges that order and wants that to be quashed in the present proceeding,

2. Learned counsel appearing for the petitioner took us to Sections 2, 26, 31 and 32 to contend that Md. Arif cannot be deemed to be an employer in any sense in the case before the Labour Court, and as such, he cannot be permitted to appear before it. Section 2(g) defines "employer" and says "employer" means:

"(i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority."

It is clear that the present employer, namely, the Bihar State Electricity Board does not come within any of the two definitions. It is a corporate body, u/s 5 of the Indian Electricity (Supply) Act, 1948 (to be referred hereafter, for brevity, Electricity Act). Section 12 lays down:

"The Board shall be a Body corporate by the name notified under Sub-section (1) of Section 5, having perpetual succession and a common seal, with power to acquire and hold property both movable and immovable, and shall by the said name sue and be sued". (Underline (here in " ") is mine).

Section 13 empowers the Chairman of the Board or any other member authorised by the Board to authenticate all orders and decisions by his signature and also all instruments issued by the Board. Thus the definition of "employer" given in Section 2(g) of the Industrial Disputes Act does not apply to the Bihar State Electricity Board, but all the same, they will be in the same position as employer under the Industrial Disputes Act. The definition u/s 2(g) is not exhaustive. Anyone not coming within that can still be an employer.

3. Learned counsel then referred to Section 2(k) of the Industrial Disputes Act where "industrial dispute" has been defined as meaning any dispute or differences between employers and employers, or between employers and workmen, or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. There is no variance between the parties about the application of that definition to the present case. Section 25 provides for penalties for workmen and employer in certain cases. Section 31 lays down that any employer who contravenes the provisions of Section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Section 32 which was very much stressed upon by learned counsel for the petitioner is in the following words:

"Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his know ledge or consent, be deemed to be guilty of such offence."

4. By this provision the Legislature made it clear that for purposes of imposition of penalty as provided for in the Act, a particular person or persons as mentioned in Section 32 will be taken to be guilty of the offence to incur the punishment therefor. Learned counsel wanted to contend on the basis of this provision, that the persons mentioned therein can be taken to be the employer. This, in my view, cannot be accepted for the simple reason that Section 32 does not define an employer, nor does it say that the different kinds of persons holding different assignments as mentioned therein will be taken to be the employer or the company itself. All that it provides for is that they will incur the punishment on behalf of the company or corporate body. Learned counsel wanted to stretch his argument by saying that Md. Arif does not answer to any of the descriptions given in Section 32 and therefore he cannot be taken to be in employer. Since his argument on the interpretation of Section 32 is not acceptable, as I have already indicated, this part of his contention does not have any substance.

5. The real question is, what is the nature of appearance of Md. Arif before the Labour Court. Section 36 of the Industrial Disputes Act provides different modes of representation for the workman or the employer involved in any industrial dispute. Besides those modes, it is also open to the workman and the employer to appear in person before the Tribunal or Labour Court, as the case may be, and to conduct his own ease. This position is beyond any dispute and both parties conceded that it was the correct position in law also. Section 36 does not rule out this fundamental right of a party to appear in person before a Court or a Tribunal. Denial of such thing will amount to denying the rudimentary justice to the party concerned. In the present case in a meeting of the Bihar State Electricity Board held on the 25th and 26th January 1963 at Patna a resolution was passed in the following terms (annexure A to the counter-affidavit filed by opposite party 2 and 3):

"To authorise the Personnel Officer and Deputy Personnel Officers (Labour) Bihar State Electricity Board to file petition under Industrial Disputes, Act, 1947, on behalf of the Board."

"The proposal to authorise the Personnel Officer and Deputy Personnel Officers (Labour) of the Board to file applications including applications u/s 33 of the Industrial Disputes Act, 1947, petitions, show-cause etc. and to represent the Board in all proceedings pending or to be filed for and against the Board, before the Industrial Tribunal and Presiding Officers of the Labour Court, was approved."

On the strength of this resolution and authority of the Board Md. Arif appeared

before the Labour Court on the 3rd of July, 1963. Unfortunately this resolution was not placed before that Court. In paragraph 5 of the counter-affidavit Md. Arif has shown before us that such a resolution had been passed by the Bihar State Electricity Board. A corporate body is physically unable to appear in person and it is to act, when it chooses to act itself, through a living person it will authorise for that purpose. This authority may flow from either legal provisions or from the rules made by the corporate body for transaction of its work. In the present case if the State Electricity Board passed a resolution giving such authority to particular persons, then those persons acquire the legal competency to act for and on behalf of the Board. That will not be representing the Board in the sense as envisaged in Clauses (a), (b) and (c) of Sub-section (2) of Section 36 of the Industrial Disputes Act. That will be equivalent to a person "appearing or acting in person". The case of Arjun Prasad Vs. Shantilal Shankarlal Shah and Others (and Connected Appeal), , cited by learned counsel for the petitioner has no application here because the facts there were entirely different and the question decided was as to how a corporate body can participate in a meeting of the creditors under the Companies Act because appearance in person as envisaged in that respect in law is not possible for a corporate body. They can act by proxy. That was what was held in that case. The case of Simpson and Co. Ltd. v. The State of Andhra Pradesh 1960 1 Lab LJ 611 is more to the point where it was held that Section 38 does not take away the power of a workman or an employer to appear himself and make representation before the Tribunal or a Labour Court in an industrial dispute.

6. On the facts of the present case, therefore, there cannot be any doubt that the Bihar State Electricity Board wanted to act itself before the Labour Court and authorised Md. Arif to do so on behalf of the Board.

7. The argument on behalf of the petitioner that Md. Arif's appearance was a representation of the Board and as such did not come within any of the descriptions given in Clauses (a), (b) and (c) of Sub-section (2) of Section 36 has no substance.

8. The result is that I do not find any error in the impugned order passed by the Labour Court. The application is, therefore, dismissed but in the circumstances of the case, I would direct that parties will bear their own costs, in this Court.

Tarkeshwar Nath, J.

9. I agree.