
(1997) 11 PAT CK 0021

In the Patna High Court

Case No : C.W.J.C. No's. 1619 and 1620 of 1997

Refractory Specialities (India) Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-11-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 36, 36(1), 36(2), 36(4)

Citation : (1998) 46 BLJR 210 : (1998) 93 CompCas 461 : (1997) 2 PLJR 1013

Hon'ble Judges : A. Alam, J

Bench : Single Bench

Advocate : T.K. Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

A. Alam, J.—Two individual workmen dismissed from service by the management of Refractory Specialities (India) Limited (the petitioner in these two writ petitions) raised industrial disputes which were sent for adjudication before the Labour Court, Deoghar in two separate references made u/s 10(1)(c) of the Industrial Disputes Act, 1949 (hereinafter referred to as "the Act"). The two references were registered before the Labour Court as I. D. Cases Nos. 1 and 3 of 1984. Initially the management sought to be represented in those two cases before the Labour Court through B. Lal and D.K. Verma, advocates, who filed the authority given by the management in terms of rule 34 of the Industrial Disputes (Bihar) Rules. The workmen who were not being represented by any legal practitioner objected to the management's representation through practising advocates whereupon the Labour Court declined to grant leave to the two advocates to represent the management.

2. B. Lal, not one to accept defeat easily, later appeared in the two cases before the Labour Court on September 3, 1996 and claimed to represent the management not as an advocate but as a shareholder in the company. On that date a witness was examined on behalf of the workman. In I. D. Case No. 1 of 1994 whom B. Lal cross-examined on behalf of the management; in I. D. Case

No. 3 of 1994 a witness was examined for the management whose examination-in-chief was conducted by B. Lal, on the same date workmen filed petitions in both the cases objecting to B. Lal appearing for the management. The management filed its rejoinder to the workmen's objections and the Labour Court after hearing the parties came to the finding that the device adopted by the management was intended to circumvent the bar created by Section 36(4) of the Act. Accordingly, by order dated December 12, 1996 passed in I.D. Case No. 1 of 1994, the Labour Court disallowed B. Lal to represent the management even under the pretext of being a shareholder of the company. It is this order that comes under challenge in these two writ petitions filed by the management of Refractory Specialities (India) Limited.

3. When the two cases were earlier taken up on October 27, 1997 it was found that the material facts were not fully stated in the writ petitions and the management-petitioner was accordingly directed to file a supplementary affidavit furnishing the information(s) desired by the court. Thereupon, a supplementary affidavit has been filed by the petitioner in which it is stated that the Labour Court earlier disallowed the management from being represented by legal practitioners on July 26, 1995 and B. Lal applied for purchase of the shares of the company on July 26, 1996, "through only filed (sic) up application form". A photostat copy of the application form is made annexure-11 to the supplementary affidavit from which it appears that it is quite incorrect to say that the application form was duly filled up. Annexure-11 is a share transfer form which is practically blank. The only column of the form which is filled up relates to the transferee's/buyer's particulars which bears the name, signature and address of Babban Lal; the column concerning the transferor's/ seller's particulars is left blank with only the signature there of some one. The rest of the form relating to the name of the company, the description of equity/preference shares, the number of shares and the consideration paid for it and the place and date of making the application are all left blank. Annexure-12 is a copy of a leaf from some minutes book which indicates approval of transfer of 20 shares from R.D. Sharma to Babban Lal. Annexure-12 also does not bear any date, signatures, etc. The value of the shares purchased by B. Lal, though directed to be stated by order dated October 27, 1997, is nowhere stated in the supplementary affidavit. As noted above, in the share transfer form (Annexure-11), the transferee Lal did not even indicate the name of the company whose shares he wanted transferred in his name and on the basis of the materials brought on record leave me wondering whether the transfer of shares in favour of Lal can at all be said to have been validly made. For the purpose of this case, however, I will assume that the transfer of shares was validly made and Lal came to hold 20 shares (value not known) of the company with effect from July 26, 1996.

4. The position that emerges thus is that one year after he was disallowed from representing the management in the two cases before the Labour Court, 20 shares of the company were transferred in his name and on that strength he

reappeared before the Labour Court to represent the management. In those facts the Labour Court was fully justified in coming to the conclusion that B. Lal, advocate, was made a shareholder of the company only to defeat the earlier order of the court that the management cannot engage a lawyer to represent it before the Labour Court.

5. The matter can also be examined from another angle without going into the management's motive in making the transfer of 20 shares in favour of Lal. Then the question would be whether a practising advocate who also happens to hold some shares in the company can claim to represent the company before the Labour Court or Industrial Tribunal as a matter of right and regardless of the consent of the workmen and the leave of the Labour Court or the Tribunal ?

6. The provision concerning representation of the parties is contained in Section 36 of the Act. Sub-section (4) of Section 36 provides that in any proceeding before a Labour Court, Tribunal or National Tribunal a party to the dispute may be represented by a legal practitioner only with the consent of the other parties to the proceeding and with the leave of the Labour Court, the Tribunal or National Tribunal, as the case may be. The provisions under which the workman or the employer can be represented without the consent of the other side and the leave of the Labour Court or Tribunal are contained in Sub-sections (1) and (2) respectively of Section 36. Sub-section (2) of Section 36 is as follows :

"(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."

7. It is obvious that a shareholder of the company is not covered either by Clause (a), (b) or (c) of Sub-section (2) of Section 36 as quoted above. This, however, is not the end of the matter because the Supreme Court in the case of Paradip Port Trust, Paradip Vs. Their Workmen, , has held that Section 36 is not exhaustive but only supplemental of any other lawful mode of representation of parties. In that regard, it was held that in addition to the "officers" and persons enumerated in the three clauses of Section .36(2), a company or a corporation can also be represented by their directors or their own officers authorised to act in that behalf in a lawful manner. The relevant observations are to be found in para 13 of the judgment which is the follows (page 45 of 50 FJR) :

"It is not intended under the Act that companies and corporations are confined to representation of their cases only through the officers specified in Section 36(2)

of the Act. They can be represented by their directors or their own officers authorised to act in that behalf in a lawful manner, provided it is not contrary to any provision of the Act. This would not, however, mean that the companies and corporations, and for the matter of that any party, are free to engage legal practitioners by means of a special power of attorney to represent their interests before the tribunals without consent of the opposite party and leave of the Tribunal."

8. Tara Kishore Prasad, learned senior counsel for the petitioner relied heavily on paras. 16 and 17 of this judgment. In my view, the reliance on those two paras is completely misplaced. In para. 16 of the judgment it is held that if a person who was earlier a legal practitioner and an advocate was appointed as an officer of a company or corporation whereupon he ceased to a practising advocate and came in the pay and under the control of the company or corporation, he would be entitled to represent the company and the bar of Section 36(4) would not apply to him regardless of the fact that before his appointment in the company, he was a practising advocate. In para. 17 of the judgment, it was said that the motive behind such appointment would also not be open to question. B. Lal admittedly has not been appointed as an officer of the petitioner-company and is not in the pay and under the control of the petitioner-company and he continues to be a practising advocate. The observations made in paras. 16 and 17 of the judgment in Paradip Port Trust, Paradip Vs. Their Workmen, , have no application to this case.

9. It is also to be remembered that in the case of Paradip Port Trust, Paradip Vs. Their Workmen, Misra, a practising advocate of the Orissa High Court by whom the employer sought to be represented was a "legal consultant" of the trust and also held a power of attorney executed in his favour by the chairman of the board of trustees. In his case the Supreme Court held that the bar of Section 36(4) fully applied and observed as follows (page 50 of 50 FJR) :

"In the appeal before us we find that the Tribunal after considering the materials produced before it held that T. Misra could not claim to be an officer of the Corporation simply because he was a legal consultant of the trust. The Tribunal came to this conclusion after examining the terms and conditions governing the relationship of Misra with the trust. He was neither in the pay of the company nor under its control and enjoyed freedom as any other legal practitioner to accept cases from other parties. It is significant to note one of the conditions of Misra's retainer is that "he will not appear in any suit or appeal against the Port until he has ascertained, from the chairman that his services on behalf of the Port will not be required". That is to say, although on a retainer and with fixed fees for appearance in cases there is no absolute ban to appear even against the Port. This condition is not at all consistent with the position of an officer of the Trust. We agree with the opinion of the Tribunal that Misra cannot be held to be an officer of the Trust."

10. T.K. Prasad also relied upon a Bench decision of this court in the The Behar

Journals Ltd. Vs. H.K. Chaudhuri and Another, . In that case the controversy was regarding the employer being represented by a certain A.K. Tewari in regard to whom the court observed as follows (page 534) :

"In the present case, it has been shown on behalf of the management before us on affidavit that the board of directors of the Behar Journals Limited, who are employers, passed a resolution on May 20, 1963 authorising A.K. Tewari, a shareholder of the Behar Journals Limited keeper of the press "Search Light" and publisher of the "Search Light" and "Pradeep" to appear on behalf of the Behar Journals Limited in all proceedings before the Industrial Tribunal and Presiding Officers of the Labour Court. A copy of the resolution is annexure-F to the present application. Another annexure-B is a memorandum signed by S.N. Sahi, Secretary of the Behar Journals Limited in which it was stated that he authorised A.K. Tewari who is the employee of the Behar Journals Limited and a shareholder of the company to appear in Reference Case No. 15 of 1963 who had also been authorised by the employer to appear in that reference case."

11. It is, therefore, evident that A.K. Tewari in addition to being a shareholder was also keeper of the press "Search. Light" and publisher of the "Search Light" and "Pradeep" and was also an employee of Behar Journals Limited. This case too, therefore, is of no help to the petitioner.

12. Having thus considered the question in the light of the relevant legal provisions and the decisions cited at the Bar, I am of the view that a practising advocate even though holding some share(s) in a company cannot claim immunity from the bar created by Section 36(4) of the Act and on the basis of the share(s) held by him cannot claim a right to represent the company before the Labour Court or Tribunal regardless of the consent of the other side and the leave of the court.

13. Prasad then submitted that by allowing B. Lal to conduct the two cases on September 3, 1996 the workmen gave their implied consent to his appearance in those cases and they cannot be allowed to later withdraw the consent. The submission is only to be noted to be rejected. The workmen had been opposing the employer being represented by Lal from the very beginning ; on objections raised by them the Labour Court had disallowed B. Lal to appear in those cases by order dated July 26, 1995. Lal nevertheless appeared on September 3, 1996 and cross examined a witness in one case and conducted examination-in-chief of a witness in another case. On the same date the workmen again filed a petition raising their objection to his appearance in those cases. In these facts, the question of any implied consent does not arise.

14. For the reasons discussed above, I am of the considered view that the Labour Court rightly disallowed the management from being represented in the two cases by a practising advocate and I find no merit in these two writ petitions. Each writ petition is accordingly dismissed with costs of Rs. 500. The costs will be payable by the management to the workmen in each of the two I. D. cases

before the next date fixed in the Labour Court.