
(2000) 03 CAL CK 0034

In the Calcutta High Court

Case No : G.A. No. 11 of 2000, A.P.O.T. No. 2 of 2000 and W.P. No. 2626 of 1998

Shiraz Golden Restaurant

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 16-03-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 36(4)

Citation : (2000) 86 FLR 978 : (2000) 2 LLJ 1101

Hon'ble Judges : S.B. Sinha, J;M.H.S. Ansari, J

Bench : Division Bench

Advocate : Kalyan Bandopadhyay and Surajit Dey, S.N. Sanyal, for the Appellant; Ashis Kumar Das, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This appeal is directed against a judgment and Order dated October 14, 1999 passed by a learned single Judge of this Court whereby and whereunder the writ application filed by the appellant herein questioning the Order dated September 15, 1998 passed by the learned VIII Industrial Tribunal, West Bengal in Case No. VIII-203/95 was dismissed.

2. The fact of the matter, shorn of all details, is as follows:

An Industrial Dispute in relation to order of dismissal passed against the workmen was raised by the workmen against the appellant in relation where to the State of West Bengal being the appropriate Government, referred the said dispute for adjudication before the Tribunal below for adjudication of the following:

"1. Is the management of Shiraz Golden Restaurant justified in dismissing the services of Md. Iqbal, Md. Islam, Md. Serif, Md. Yusuf, Md. Shamsul, Md. N. Nayeem, Md. Shabuddin Md. Kauser and Aszer w.e.f. June 30, 1993 ? To what relief, if any, are they entitled to ?

3. Admittedly, one Madhya Kalikata Hotels, Bars & Restaurant Employees Union (hereinafter referred to as "Madhya Kalikata") had espoused the cause of the workmen and it was representing the concerned workmen before the Tribunal. An application was filed by the appellant herein for being represented by a legal practitioner, but the same was rejected. One Shri A. D. Singh, an Office Bearer of the said Union, was then representing the workmen.

4. Allegedly, an election of the Office bearers (sic) of Madhya Kalikata was held wherein Sri Prosad Mukherjee was elected as Working President. A Title Suit was filed in relation to the said election matter in the City Civil Court, Second Bench, Calcutta by Sri Prosad Mukherjee against Shri A.D. Singh & Others. In the said suit an interim order of injunction was granted whereafter an application was filed by the appellant herein praying that Mr. A.D. Singh may not be allowed to represent the case of the workmen which was allowed by an order dated July 26, 1997. At that stage of the proceeding Mr. H. Quader, advocate was representing the case of the Union before the learned Tribunal.

5. In view the aforementioned changed situation another application was filed by the workmen that they be permitted to be represented through Shri Satin Roy Chowdhury, the President and Shri A.D. Singh, an Executive Committee Member of Commercial Shops and Factory Establishments Staff Union.

6. The appellant herein also filed an application for being permitted to be represented through Legal Practitioner as the Union was being represented by their learned advocate. The learned VIII Industrial Tribunal by its order dated November 24, 1997 allowed the said application. The petition filed by workmen on August 5, 1997 for being represented through Commercial Shops and Factory Establishments Staff Union, was also allowed. Thereafter, an application was filed by the workmen praying therein that the company should not be allowed to be represented by a legal practitioner. The said application was allowed, despite the fact that the appellant herein had been represented by their learned advocate before the learned Tribunal on November 24, 1997, December 17, 1997, January 9, 1998, January 21, 1998, February 18, 1998, March 10, 1998, March 18, 1998, and June 23, 1998.

7. Questioning the said order dated September 15, 1998, the said writ application was filed in this Court. The writ petition of the appellant was dismissed by the learned Trial Judge, inter alia, holding that as Shri A.D. Singh was representing workmen as Office bearer of either Madhya Kalikata or Commercial Shops and Factory Establishments Staff Union, who had all along been objecting to the prayer of the company for being represented through lawyer, the appellant could not have been directed to be represented through its legal practitioner.

According to the learned single Judge as the workmen had in their application stated that their cause cannot be espoused by Madhya Kalikata Hotels, Bars and Restaurants Employees' Union and consequently, the order passed by the

learned Tribunal was correct.

8. Mr. Kalyan Bandopadhyay, learned counsel appearing on behalf of the appellant, inter alia, submitted that keeping in view the fact that Commercial Shops and Factory Establishments Staff Union had merely been added as a "Party" and Madhya Kalikata is still being represented by a Lawyer, and its name having not been deleted from the records of the proceeding, the order of the learned Tribunal which was impugned in the writ petition must be held to be bad in law as one of the Unions continued to be represented by its lawyer. The learned counsel, further, submits that once a lawyer had been permitted to be represented for number of days, a consent on the part of the workmen would be presumed to have been made to the effect that it has no objection thereto.

It was further submitted that once a Vakalatnama has been permitted to be filed by the learned advocate, the Tribunal below must be held to have granted its permission in terms of Section 36(4) of the Industrial Disputes Act. In support of the said contention reliance has been placed on Reckitt and Colman of Reckitt and Colman of India Ltd. and Others Vs. Jitendra Nath Maitra and Others,), Francis Gomez and Another Vs. President, Thiruvananthapuram Shops and Commercial Employees" Union and Others, , MSCO (P) Limited Vs. S.D. Rane and others, , Calicut Co-operative Milk Supply Union Vs. Calicut Co-operative Milk Supply Workers Union, .

9. The learned counsel appearing for the workmen on the other hand submitted that as his clients had objected to the company being represented through a lawyer and as its application was filed for addition of party prior to the application filed by company before the learned Tribunal, the learned Trial Judge must be held to have acted legally in passing the impugned order. In support of the said contention, reliance had been placed on Paradip Port Trust, Paradip Vs. Their Workmen, , The Manager, Hotel Imperial Vs. The Chief Commissioner and Others, Steel Authority of India Ltd. v. Hindustan Steel Employees Union and Ors., reported in Steel Authority of India Ltd. Vs. Hindustan Steel Employees Union and Others, & Prasar Bharati Broadcasting Corporation of India Vs. Shri Suraj Pal Sharma and Another, .

10. Section 36(4) of the Industrial Disputes Act, 1947 reads thus:

"Section 36(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 proceeding and with the leave of the Court, Tribunal or National Tribunal, as the case may be;

Section 36(4) of the Act, thus, lays down two conditions viz. (i) consent of the other party to the proceedings and (ii) leave of the adjudicator, before a party can be allowed to be represented by a legal practitioner.

Although consent of the party to the disputes is one of the necessary ingredients for the said purpose but it is well settled that such consent need not be in a

particular form. (See *Reckitt and Colman of India Ltd. v. Jitendra Nath Maitra*, (Supra)).

11. In the instant case leave in terms of Section 36(4) of the Act had been granted by the learned Tribunal. Once a leave had been granted, there is no provision in the said Act to review the same. There is no doubt that an order as regard appearance of learned counsel in terms of Section 36(4) would be a substantive one and in that view of the matter and the Tribunal has no substantive power of review, it could not have revoked the leave granted to a party. Admitted at the relevant time when the Tribunal below granted leave to the appellant, the workmen were also being represented by a legal practitioner.

12. In *Prasar Bharati Broadcasting Corporation of India v. Sri Suraj Pal Sharma and Anr.* (Supra), a learned single Judge of the Delhi High Court rendered the judgment in a different fact situation. The question in that case was as to whether the Government counsel was a legal practitioner.

As regard interpretation of Section 36(4) of the Industrial Disputes Act, 1947 there cannot be any doubt or dispute that the points which have arisen herein for consideration did not arise in that case.

13. In *Paradip Port Trust v. Their Workmen* (Supra) whereupon Delhi High Court in *Prasar Bharati Broadcasting Corporation of India*, (supra) placed strong reliance, the question was that as to whether a retainer of a company would be legal practitioner within the meaning of the aforementioned provision although instead of Vakalatnama a power of attorney was executed in his favour by the employee.

GOSWAMI, J. however, noticed, "if legal practitioner may be appointed as an Officer of the Company he may represent the employer."

14. In *Hotel Imperial v. Chief Commissioner, Delhi*, (Supra), the Apex Court, inter alia, held that although the case of the workmen was being represented by a Union at the time when reference was made by the appropriate Government, but subsequently, the workmen may themselves represent their case or they may be allowed to be represented by another Union, the only prerequisite being that the workmen should be members of the said Union. The said decision has no application in the facts of the present case.

15. In the instant case so long the application of the workmen to be represented by another Union was not allowed, they were being represented by Madhya Kalikata and consequently through their lawyer. If at one stage the workmen were being represented through lawyer and that the said fact weighed with the learned Tribunal in allowing the employer also to be represented through a lawyer, in our considered opinion, such an order could not be recalled by revoking the leave granted in that regard.

16. In *Francis Gomez v. President, T.S. & C.E. Emp. Union*, (Supra), the Kerala High Court followed *Reckitt and Colman of India Ltd. v. Jitendra Nath Maitra*,

(Supra) as also other judgments to hold that if Vakalatnama is filed by a lawyer without any objection raised by the workmen and it is accepted by the Court then it is inferred that the Union had given consent for appearance of a lawyer and leave of the Court was also given.

17. In the instant case not only the employer's lawyer filed a Vakalatnama, in fact, had also appeared at least on seven occasions in the proceedings without any demur on the part of the workmen.

18. In MSCO (P) Limited Vs. S.D. Rane and others, :

"4. Neither the said Act nor any of the rules made thereunder provide for the form or the manner in which the consent of the other party is to be given. Normally, any leave granted by a Court or a Tribunal would be in writing. Similarly, in ordinary cases, the consent of the other party would also be given in writing. But the question is whether from this does it follow that the consent of the other side or the leave of the Court must always be in writing. Sub-section (4) of Section 36 does not contain any such requirement, and therefore, it cannot be held that an implied consent is negated by the Statute. The case of Engineering Mazdoor Sabha, Bombay v. Meher and Ors. (supra) is a direct authority for the proposition that the consent of the other side can be implied from the facts and circumstances of the case."

The fact of the said case is almost similar to the fact of the present one.

19. No case has been pleaded and proved that Madhya Kalikata had been acting in collusion with the employer. In fact, the fact that Madhya Kalikata was being represented through their legal practitioner had not been disputed. The fact that Madhya Kalikata and Commercial Shops and Factory Establishments Staff Union are fighting a lis before the City Civil Court is also not in dispute.

20. In Calicut Co-operative Milk Supply Union Vs. Calicut Co-operative Milk Supply Workers Union, :

"6. The learned counsel for the petitioner submits that Section 36(4) of the Industrial Disputes Act, for short the I.D. Act, does not contain a provision enabling the 1st respondent to revoke the consent once given and which is the basis of the order of the 2nd to engage a lawyer to represent its case. The order, Ext. P3, under challenge therefore is liable to be set aside, the learned counsel submits.

7. Section 36(4) reads: 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.

8. This section does not prescribe that the consent must be given in a particular manner or in a particular form. If that be so, the consent of a party which is the basis for the grant of leave to the other party for being represented by a lawyer

in a proceeding under the I.D. Act, can be inferred from the surrounding circumstances as also the conduct of the consenting party. Consent can be implied. The section does not insist upon a written consent. Consent once given cannot be revoked at a later stage because there is no provision in the I.D. Act enabling such withdrawal or revocation. To put it pithily the consent once given by a party, entitling the other party to be represented in the proceeding, by a lawyer would enure to his benefit till the proceeding is finally disposed of, I am fortified in this view by a decision of the Calcutta High Court in *Reckitt and Colman v. Jitendra Nath*, (supra).

9. Considered in the light of the principles of law enunciated above. I am of the view, that the conduct of the 1st respondent in objecting to the petitioner being represented by a lawyer, in I.D. 7/83, amounts to a revocation of its consent. This is not permissible."

21. Keeping in view the fact that the learned Tribunal had already given leave and a legal practitioner appointed by the appellant had appeared on a number of days, we are of the opinion that the Industrial Tribunal had no jurisdiction to recall its own order as he did not have such jurisdiction in that behalf.

22. For the reasons aforementioned the judgment of the learned Trial Judge as also the Tribunal cannot be sustained which are set aside accordingly and the writ petition filed by, the appellant is allowed. However, in the facts and circumstances of this case there will be no order as to costs.

M.H.S. Ansari, J.

I agree.