
(2004) 02 PAT CK 0083
In the Patna High Court
Case No : C.W.J. No. 1397 of 2003

Shree Baidyanath Ayurved Bhawan Ltd.	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 11-02-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 36(4)

Citation : (2005) 1 LLJ 41 : (2004) 2 PLJR 181

Hon'ble Judges : Chandramauli Kumar Prasad, J

Bench : Single Bench

Advocate : Alok Kumar Sinha, for the Appellant; Satya Prakash Tripathy, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kumar Prasad, J.—This application has been filed for quashing the order dated January 22, 2003 passed by the Presiding Officer, Labour Court, Muzaffarpur in Reference Case No. 2 of 2002 (Annexure 1) whereby the petition filed by the workman objecting to the representation of the management by the legal practitioners, has been allowed and petitioner has been directed to be represented by the Legal Practitioner.

2. Facts lie in a narrow compass. The State Government, in exercise of the powers conferred u/s 10 of the Industrial Disputes Act, hereinafter referred to as "the Act", referred the following dispute for adjudication by the Labour Court, Muzaffarpur:

"Whether 10 point demand of Union of Shree Baidyanath Ayurved Bhawan raised before Shree Baidyanath Ayurved Bhawan Ltd. Industrial Area Hajipur is justified? If yes, what relief they are entitled to?"

3. The reference so made by the State Government was placed for consideration before the Labour Court on July 24, 2002 when it directed for its registration and issuance of the notice to both the parties for filing their written statement fixing

August 14, 2002 as the date of their appearance. On February 14, 2002, a petition for time to file written statement and to accept the appearance of the petitioner through its Advocate was served on Respondent No. 3 through its Secretary and thereafter, the petition and Vakalatnama of the Advocate on behalf of the petitioner was filed in the Labour Court. According to the petitioner, the Labour Court accepted the Vakalatnama, allowed the prayer for time and adjourned the case to February 13, 2002 for filing the written statement by both the parties. On the next date fixed, i.e. September 13, 2002 a petition was filed by the workmen objecting to the representation of the management by the Advocate. Ultimately, by the impugned order dated January 22, 2003, the objection raised by the Workman was upheld by the Labour Court and it was held that the petitioner cannot be represented by the legal practitioner.

4, It is not in controversy that in view of the provisions of Section 36(4) of the Act, a party to the dispute can be allowed to be represented by a legal practitioner with the consent of the other party and with the leave of the Labour Court. In the present case, neither the consent has been given by the workman nor leave granted by the Labour Court, but what has been contended by the petitioner is that failure of the workman in objecting to the appearance of the petitioner by its Advocate on August 14, 2002 despite prior knowledge and granting time for filing the written statement, shall amount to grant of implied consent by the workman and implied leave by the Court.

5. Mr. Alok Kumar Sinha, appearing on behalf of the petitioner, contends that the Vakalatnama filed by the petitioner was accepted by the Labour Court without any objection by the workman although a copy was served on the Secretary of Respondent No. 3, it would be a case of workman giving consent for representation of the management by the Advocate and the Court granting the leave. In support of this submission reliance has been placed on an unreported decision of this Court dated May 8, 2000 passed in CWJC No. 10760 of 1999, Key's Brake Hoses and Anr. v. State of Bihar and Ors. and my attention has been drawn to the following passage from the said Judgment:

"10. In *Rockitt and Colman of India Ltd. and Ors. v. Jitendra Nath Maitr and Ors.* (supra) and *MSCO (P) Ltd. v. S. D. Rane* (supra) it was held that if Vakalatnama is filed by the lawyer without objection raised by the workman and it is accepted by the Court it would be a case of workman giving consent for appearance of the lawyer and the Court granting the leave. In *Francis Gomes and Anr. v. President, Thiruvananthapuram Shops and Commercial Establishments Employees Union UTUG and Ors.* (supra) the advocate filed his Vakalatnama for the management on March 6, 1992. The case was adjourned to April 10, 1992. On the sixth adjourned date objection was raised by the Union. The Labour Court upheld the objection. The High Court however, held that once Vakalatnama filed by the advocate on behalf of the Management was accepted by the Labour Court without any objection from the side of Employees Union on the first date itself, the objection raised later on the sixth adjourned date was not maintainable as

not filing objection on the first date amounted to implied consent and once consent is given the same cannot be subsequently taken away."

6. I do not have the slightest hesitation in accepting the broad submission of Mr. Sinha that the consent by the workman and leave by the Court can be implied. In the present case, there is no express consent or leave and one is to adjudicate as to whether the same are implied. In my opinion, no hard and fast rule can be laid to infer implied consent or leave and the same will depend upon the facts and circumstances of each case. In the present case, it was on February 14, 2002 that the petitioner filed petition for time along with the Vakalatnama before the Labour Court. On the said date, the Labour Court adjourned the case to September 13, 2002 and on that very date itself, the workman objected to the representation of the petitioner by the Advocate. Even if I assume in favour of the petitioner that he had filed time petition and Vakalatnama after service of notice on Respondent No. 3. I am not inclined to hold that it was a case of implied consent. As stated earlier, on the very next date fixed in the case, i.e. September 13, 2002, the workman objected to the representation of the petitioner by the Advocate and hence, I have no doubt in my mind that the consent of implied consent and leave cannot be invoked in the facts of the present case.

7. In the case of Key's Brake (*supra*) the objection was raised on sixth adjourned dates and in the background of the said fact, this Court held that the conduct of the workman amounted to implied consent. This is not the situation here. Hence, the decision relied on is clearly distinguishable.

8. In the result, I do not find any merit in the application and it is dismissed in limine.