

(2012) 07 BOM CK 0216

In the Bombay High Court

Case No : Writ Petition No. 3052 of 2012

Shri Atul Pande

APPELLANT

Vs

M/s. Siemens IT Solutions and Services Pvt. Ltd. LBS Marg, Vikhroli (West), Mumbai-400083, Also known as, ATOS IT Solutions and Services Pvt. Ltd. LBS Marg, Vikhroli (West), Mumbai-400083 and M/s. ATOS Origin Limited, Prism Towers, Mumbai-400 062.

RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

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

Citation : (2012) 5 ALLMR 179 : (2012) 5 BomCR 32 : (2012) 135 FLR 109 : (2012) LLR 1203 : (2013) 1 SCT 229 : (2013) 2 SLJ 73

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Atul Pande, for the Appellant; S.K. Talsania, with Mr. V.P. Vaidya, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—The Petitioner in person, has challenged the impugned interlocutory order dated 3 March 2012 passed by the Presiding Officer, Labour Court, Mumbai, whereby his Application u/s 36 of the Industrial Disputes Act, 1949 (for short, "the I.D. Act") dated 19 December 2011 was rejected, whereby objected the Respondent's alleged advocates, though now appeared as officers based upon the authority letter, being member of the Union. The main Application u/s 33-C (2) filed by the Petitioner on 4 July 2011, is still pending. As the Application was filed objecting to the appearances of Shri R.P. Gawde and Shri G.S. Desai, as initially they appeared as Advocates of Respondent Union/ Association, but as objected they filed authority letter in capacity of Officers of the Indian Employers Association, of which the opponent is a member. There is no dispute and/or challenge raised that they are not Officers of the Association, though there is also no denial that initially filed Vakalatnama which they

withdrew as an Advocate.

2. Section 36 permits the officer of such Association to represent the case and for that leave is not necessary as they are representing as an officer of the Association and not an advocate. The election of this capacity in no way debarred them from not appearing as officers of the Association. They are advocate, that itself is not sufficient to deny their right to appear as officers. There is no bar mentioned and/or needs to be gathered from the provisions so relied upon, basically when there is no challenge to the fact about their authority letter as well as their representation in the capacity as officers of the Association.

3. The learned Judge relied upon Paradip Port Trust, Paradip Vs. Their Workmen, , recorded that "a lawyer can appear as an officer of Trade Union or as an officer of the Association of Employer and in such cases the consent of opposite party and the leave of the Tribunal is not necessary."

4. This Court, in Philips India Limited Vs. Kishor S. Lad & Ors. 2006 III CLR 87. after considering apart from Paradip Port Trust, Paradip (Supra), other Judgments including Division Bench Judgment, recorded as under:-

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Thus, it is now well settled that it is open for the Tribunal under the Act to permit a person to be represented by any other person of his choice, even though such person of his choice may not strictly fall in any of the categories specified in section 36 of the Act.

5. A Division Bench of Madras High Court in Rajamani R. Vs. Presiding Officer, II Additional Labour Court, Chennai 2007-MADLJ-3-53 = 2007 LLR-O-831 again after considering the Supreme Court Judgment of Paradip Port Trust, Paradip (Supra), and the Judgment of Bombay High Court (Associated Cement Staff Union Vs. Associated Cement Companies Limited and Ors. 2002 II LLJ 768 (Bom. DB)) and also Delhi, Calcutta and Madras High Courts, permitted the members of the Managing Committee of the Employer Association to represent the company by observing as under:-

14. THE word "officer" of of a wider import in that it includes not only those, who are appointed to a post of responsibility, but it includes persons elected or nominated to a governing body or executive or managing committee in accordance with the constitution or bye-law of the concerned institution or body.

6. Therefore, the finding that the learned advocate Shri R.P. Gawde and G.S. Desai, now appearing as officers of the Association of the employer, the consent of opponent and/or leave of the Court is not necessary, is well within the purview of law and the record.

7. The Judgments so cited and relied upon by the Petitioner are distinct and distinguishable on facts and specifically in view of the Supreme Court Judgment Paradip Port Trust, Paradip (Supra), as referred above. The learned Judge right in

observing the same held to be of no assistance. In *Siemens Limited Vs. K.K. Gupta and Anr.* 2006-LLJ-Del-66, the finding was given that the concerned person was not officers. There is no such issue raised and/or decided in the present case. In *Kalinga Studios Limited Vs. Presiding Officer*, 1994-II-LLJ-108 Ori. an application was filed by the Labour Lawyer to appear and on facts as recorded, the same was held not to be "Officer" on merits as he was only legal advisor.

8. In *J.B. Transport Company and Others Vs. Shankarlal @ Mavaram Nathuji Patel*, , the findings were based upon the facts of the case, as noted there is no serious challenge raised and/or no contra material placed on record by the party opposing their appearances as officers of the Association of employer. I am not inclined to accept the view so taken and the submissions so made by the Applicant in this regard, basically on the facts that there is no serious dispute except the issue of "Election" that they are the officers of the Association of employer.

9. I am also inclined to accept the view as expressed in *Rajamani R.(Supra)*. I am also inclined to accept the view taken by this Court in *Associated Cement Company Limited Vs. Associated Cement Staff Union and Anr.* 2001-III-CLR 949 referring to same consequences and the meaning of "office bearers" and "officers, which are as under:-

8.

The definition of workman has not included the expression "Officer" unlike the Companies Act. I have therefore, no hesitation to hold that the expression Officer in S. 36(2) would mean those holding Office in the Association namely controlling affairs of the Association and that would including the Executive Committee of the Association or its office bearers.

The conclusion as arrived at by the Hon"ble Supreme Court in *Paradip Port Trust, Paradip (Supra)*, as followed in all the Judgments and as recorded below in the present facts and circumstances, clinches the issue.

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A lawyer can appear before the tribunal in the capacity of an office-bearer of a registered trade union or an officer of associations of employers and no consent of the other side and leave of the tribunal will, then, be necessary.

11. Therefore, taking over all view of the matter and considering the facts and circumstances of the case, as there is no perversity and/or illegality and as the order so passed, is well within the purview of the law and the record needs no interference. The Petition, is accordingly dismissed. There shall be no order as to costs. Rule is discharged. Representation is permitted.