

(2008) 01 CAL CK 0046
In the Calcutta High Court
Case No : Writ Petition No. 253 of 2007

Sonali Bank

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-01-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 36(4)

Citation : (2008) 01 CAL CK 0046

Hon'ble Judges : Alok Kumar Basu, J

Bench : Single Bench

Advocate : Uddipan Banerjee, for the Appellant; Supriyo Chattopadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Alok Kumar Basu, J.—This writ petition is at the instance of petitioner, Sonali Bank challenging the order of the Tribunal dated 16th November, 2006 whereby the Tribunal accepted the contention of the workmen regarding representation of the petitioner through a legal counsel u/s 36(4) of the Industrial Disputes Act.

2. In a reference dispute before the Tribunal the petitioner as management entered appearance through its engaged legal counsel and coming to know about this engagement the workmen raised objection by filing a petition and the Learned Tribunal by the order impugned in this writ petition observed that since the workmen did not give their consent to such engagement of legal counsel, under provisions of Section 36(4) of the Act Tribunal cannot allow the petitioner management to be represented by any legal counsel.

3. Being aggrieved by and dissatisfied with this order the present writ petition has been filed and the learned Advocate appearing on behalf of the petitioner management has mainly made these submissions before me in support of this writ petition and those are, first, that in this case from the several orders recorded by the Tribunal it would be clear that there was implied consent from

the workmen in the matter of engagement of a legal counsel on behalf of the management and finally the petitioner management being not aware of the intricacies of the labour laws of the land they would not be in a position to represent their case effectively and in that case and considering their peculiar position in the interest of justice and fair play the petitioner management should have the right to place its case through a legal counsel and the Tribunal neglected both the points while disposing of the petition filed by the workmen challenging engagement of a legal counsel by the petitioner management.

4. The learned Advocate for the petitioner in support of his contention has relied on decision reported in (2005) 1 CLR 922 and also a decision reported in (2006) 3 CLR 1988.

5. The learned Advocate representing the respondent workmen, on the other hand, submits that language of Section 36(4) of the Act is very clear and the legislature in its wisdom made it abundantly clear that generally before a Tribunal dealing with labour dispute management and workmen should fight at the same footing and there should not be any scope of representation through legal counsel by the superior party and the Hon^{ble} Supreme Court in a judgment delivered by a Bench consisting of three Hon^{ble} Judges and reported in the case of Paradeep Port Trust and Workmen reported in 1976 LLJ 409 held that from the clear provision of Section 36(4) of the Industrial Disputes Act for engagement of a legal counsel two conditions are required and those are consent of both the parties and also leave of the concerned Tribunal or the Labour Court and if one of the conditions is lacking no party in a reference dispute can be represented through a legal counsel.

6. The learned Advocate for the respondent therefore submits that in this particular case when at the outset the workmen respondent raised an objection and did not give their consent for engagement of legal counsel, following the provision of Section 36(4) of the Act, Tribunal rightly upheld the objection and rejected the prayer of the management to be represented through a legal counsel.

7. I have heard the submissions of the learned advocates of both the sides and I have also examined the order impugned in the writ petition along with different decisions cited at the bar. The provisions relating to engagement of a legal counsel by either of party in a industrial dispute to be adjudicated through a Tribunal has been clearly mentioned in 36(4) of the Industrial Disputes Act and from that Section it is clear that to engage a legal counsel first of all parties must give consent and finally the Court must give its leave for such engagement and it is very much clear that if any of the above condition is lacking no party can engage a legal counsel to represent its case before the Tribunal.

8. This position of law has been well-clarified by the Hon^{ble} Supreme Court in the case of Paradeep Port Trust (supra) and there is nothing before me to show that this ratio of decision of the Hon^{ble} Apex Court has been overruled by any

subsequent Larger Bench.

9. I have also examined in detail the point taken by the learned Advocate for the writ petitioner that in case there has been any implied consent which would be available from the conduct of the parties in that case the condition of consent as specified in Section 36(4) of the Act may be said to have been satisfied. The learned Advocate for the writ petitioner has mentioned several orders in this regard to impress upon me that there was implied consent but after going through the orders as mentioned by the learned Advocate I am unable to accept the contention of the learned Advocate and further by filing a written objection by the workmen it was clearly demonstrated that at no point of time the workmen had any intention to give consent for engagement of a legal counsel by the management. Thus on hearing the learned Advocates of the parties and having regard to the ratio of decision rendered by the Special Bench of the Hon^{ble} Supreme Court and also following the clear legislative intention behind Section 36(4) of the Act I am of the view that there is no merit in the present writ petition and Learned Tribunal rightly rejected the prayer of the management to be represented by legal counsel. The writ petition stands dismissed without any order as to costs.

10. All parties concerned are to act on a signed xerox copy of this order on the usual undertakings.