
(2002) 12 KL CK 0027
In the High Court Of Kerala
Case No : O.P. No. 18171 of 1994

Subhash

APPELLANT

Vs

Labour Court

RESPONDENT

Date of Decision : 12-12-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 32(2), 36(2), 36(4)

Citation : (2003) 1 KLT 1029

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : P. Ramakrishnan, for the Appellant; Manju Komath, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The petitioner, an abkari contractor, is one of the respondents in a claim case filed by the abkari workers before the Labour Court claiming arrears of wages. The other respondents who are also abkari contractors do not appear to have filed any Original Petition challenging Ext.P2 common order of the Labour Court, Kollam, declining permission to a lawyer to represent them in the proceedings before the Labour Court on account of objections raised by the workers u/s 36(4) of the Industrial Disputes Act. The petitioner's case is that the lawyer who sought to represent the petitioner and other abkari contractors, namely, Sri. Nalinakshan, is "an officer of the association of abkari contractors and is eligible to represent them by virtue of Section 36(2)(c) of the I.D. Act." A copy of the resolution (not a certified copy) electing the said advocate as Secretary of the Abkari Contractors Association was rejected by the Labour Court as sufficient proof to establish that the said Advocate Sri. Nalinakshan is an officer of the Association eligible to represent the contractors. It is this order that is under challenge in this Original Petition.

2. I heard counsel for the petitioner as well as counsel for the respondents. It is very unfortunate that a wage claim of toddy workers before the Labour Court is

helped up for over eight years on a silly dispute of this nature. Even now, the effort of the petitioner is only to protract the matter by requesting for further time for production of document to substantiate that counsel who sought to represent the petitioner and other abkari contractors is an officer of the association duly appointed by them. In any case, since the case was pending for so many years, at the time of hearing, counsel for the petitioner was asked to produce documents other than what was produced before the Labour Court to substantiate the petitioner's case. In spite of another posting given for the same, no new document is produced and the only contention, as in the Labour Court by the petitioners, is that counsel Sri. Nalinakshan who sought to represent the petitioner and other abkari contractors is an Honorary Secretary of the association of which the petitioner and other abkari contractors are members. There is no dispute that Section 36(4) of the I.D. Act is a prohibition against a lawyer, representing in his capacity as such for either of the parties in the proceedings before court without the consent of the other party and the court. The worker-respondents in this case raised objection before the Labour Court against the Advocate, Sri. Nalinakshan, representing the petitioner and other abkari contractors and unless he comes within the meaning of "an officer of the employers' association" he will not be entitled to represent the petitioner and other abkari contractors by virtue of Section 36(2)(c) of the I.D. Act. For easy reference, the provisions of Section 36 (2) and (4) which are relevant are extracted hereunder:

36. Representation of parties.-

(1)

(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 declaration 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.

.....

(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 Labour Court, Tribunal or National, Tribunal, as the case may be).

Counsel who sought to represent the petitioner and other abkari contractors is a practising advocate of the Quilon Bar. Therefore he cannot be a member of the

Abkari Contractors Association he not being an abkari contractor. By virtue of the professional discipline to which an advocate is subject, he cannot be an employee of the Abkari Contractors' Association as such. There is no claim that the said Advocate is full-time or part-time employee of the Abkari Contractors' Association". The claim of the petitioner is that the said advocate is an Honorary Secretary of the Abkari Contractors' Association. A copy of the resolution appointing him as such which was not even certified as true copy was produced before the Labour Court which rightly rejected the same for want of authenticity. Therefore this is a case where the Labour Court declined permission to the petitioner and other abkari contractors to be represented by advocate, Sri. Nalinakshan, for want of proof of his status "as an officer of the association of employers". There is nothing wrong in the court asking for proof of appointment of an advocate as an officer of the association of employers without which the court is barred from permitting such a person to appear for employers u/s 36(2) (c) of the I.D. Act. The section generally bars legal practitioners from appearing for the parties without the permission of the opposite party and of the court. In the absence of such permission, a legal practitioner can represent an employer only if it is established that he is "an officer of association of employers". In this case, the person, namely, Sri. Nalinakshan, who sought to represent the petitioner and other abkari contractors, being a member of the Quilon Bar is a legal practitioner and on account of the objection raised by the claimant-workers he is barred from representing the employers by virtue of Section 36(4). Therefore in order to get over this disability, it has to be established by the petitioner and other abkari contractors that this legal practitioner happens to be an Honorary Secretary of their association. In the first place, it has to be looked into whether a legal practitioner, namely, an advocate can be an Honorary Secretary of Abkari Contractors' Association. An Honorary Secretary is a person who works for the organisation without remuneration. The only service that a legal practitioner can render to an association of employers/traders, to my knowledge, can only be rendering legal advice. A legal practitioner cannot certainly be presumed to be giving business advice or guiding the abkari contractors in their abkari business. An advocate, if appointed as an Honorary Secretary of Abkari Contractors' Association, can only be advising them and guiding them in legal matters and in that view of the matter, he continues to act only as a legal practitioner even as Honorary Secretary of the association of employers. I do not think "an officer of any association of employers" as contemplated u/s 36(2)(c) of the I.D. Act limits the role of such a person to that of rendering only legal advice. An officer is a person who runs office or who is in charge of an office and the meaning assigned to the word in the dictionary is "holder of public, civil, or ecclesiastical office, sovereign's servant, or minister, appointed or elected functionary". Therefore going by the context in which the words "officer of any association of employers" as used in Section 36(2)(c), it should be assumed that such an officer should be conversant with the business interests and problems of the members and should be in a position to effectively represent them and their interests. After all an officer representing a party in a

court or Tribunal is essential projecting the interests of the party on all aspects and he should be conversant with the whole issues and should be capable of presenting the case in full without limiting himself on any issue or any aspect of it. Therefore the Officer contemplated under the said section who is authorised to represent an employer is not a legal practitioner but a person who generally handles all office and administrative matters of the employers association. Of course there is no disability for a legally qualified person to represent employers if he happens to be employed as an officer of the association. When such a person represents the association, he does not act as a legal practitioner, even though he may have the qualification for the same, but as an officer of the organisation which he represents. In other words legal practitioners who have taken up full-time employment as law officers like Secretary or other Officer of an organisation can certainly represent the organisation by virtue of the provisions of Section 36(2)(c) of the I.D. Act. However, to qualify as an "officer of an association of employers" as visualised in Section 32(2)(c) of the I.D. Act, to my mind, is not permissible for Advocates without being guilty of professional indiscipline except when they represent employers such as law firms, Advocates Associations, Bar Councils and the like. In this view of the matter, I do not think a practising lawyer can be "an officer of Abkari Contractors Associations", whatever be the designation assigned to him. To my view, the only work he can take up is as "legal advisor" and by virtue of the prohibition in Section 36(4), he cannot represent the Abkari Contractors without consent of claimants and the Tribunal. In the circumstance, I feel the Labour Court took the right view when it insisted on proof of appointment of Sri. Nalinakshan a practising lawyer as an officer of the Association of Abkari Contractors, in which the petitioner is stated to be a member.

The O.P. is therefore dismissed upholding the order of the Labour Court.