

(1964) 05 PAT CK 0009

In the Patna High Court

Case No : Misc. Judl. Case No. 463 of 1964

The Behar Journals Ltd.

APPELLANT

Vs

H.K. Chaudhuri and Another

RESPONDENT

Date of Decision : 06-05-1964

Acts Referred:

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

Citation : AIR 1964 Patna 532 : (1966) 1 LLJ 789

Hon'ble Judges : Tarkeshwar Nath, J; H. Mahapatra, J

Bench : Division Bench

Advocate : A.C. Sinha and Ram Narain Tewari, for the Appellant; A.D. Roy Choudhary, for the Respondent

Judgement

Mahapatra, J.:

1. This application under Articles 226 and 227 of the Constitution arises out of orders passed by the Industrial Tribunal Bihar at Patna on the 2nd and 31st of January 1964. By the first order the Tribunal permitted one Mr. Ranen Roy to represent the Behar Journals Ltd. Employees Union and refused permission to one Mr. A. K. Tewari to represent the employer in an industrial dispute between the Management of the Behar Journals Ltd., Patna, and the workmen represented by the Behar Journals Ltd, Employees Union in Reference No. 15 of 1963.

2. The State Government made a reference of the dispute under Industrial Disputes Act on 14th of May 1963. It was received by the Tribunal on the 22nd of May on which date it ordered notices to be given to the parties to file written statements by the 8th June 1963. The Union filed it and after that, the Management filed their written statement on the 17th of August 1963. The hearing date was fixed for the 3rd of September 1963. It was adjourned at one stage and it was fixed for hearing on the 10th of December 1963. A few days before that date, that is, on the 4th of December 1963, the Employees Union made an application asking for adjournment of the case on the ground that Mr. Ranen Ray, Advocate, was to represent them and that he was to be absent in

Calcutta in connection with a marriage in his family on the 10th of December. "That question was taken up by the Tribunal on the 10th of December 1963. Mr. A. K. Tewari and Mr. B. B. Karan appeared on behalf of the Management and the Union respectively. A rejoinder was filed on behalf of the Management against the prayer for adjournment made by the Union. The case, however, was adjourned by the Tribunal to the 17th of December, but again on the 12th of December the Union filed another application for adjournment in advance, stating therein that as the engagement of a lawyer on their behalf had been opposed by the Management, it would not be possible for them to get ready in the case within a short time so as to be able to meet the challenge of the Management through a lawyer representing them. The Tribunal on that date adjourned the case to the 2nd January 1964.

3. On that day Mr. Ranen Ray represented the Union as the Vice-President of that Union. That was opposed by Mr. A. K. Tewari who appeared on behalf of the Management. Certain papers appear to have been produced before the Tribunal on that date as we find from the order recorded by the Presiding Officer. Under Rule 20 of the Constitution of the Bihar Journals Employees Union Mr. Ranen Roy had been nominated by the President of that Union as Vice-President on the 14th of December 1963 on the acceptance of the resignation of Sri Radha Mohan Prasad Verma who was the Vice-President of the Union before. The Tribunal found that on account of this appointment of Mr. Ranen Roy as Vice-President of the Union, he was qualified to represent the Union u/s 36(1)(a) of the Industrial Disputes Act. In that view, the Tribunal permitted Mr. Ranen Roy to represent the Union.

4. Learned Counsel appearing for the Management, which is the petitioner before us, contends that this part of the order of the Tribunal was illegal inasmuch as the facts and circumstances of the case show that the appointment of Mr. Ranen Ray as Vice-president of the Union was brought about with a view to circumvent the disability of the Union to engage a lawyer without the consent of the other side. Sub-section (4) of Section 36 of the Industrial Disputes Act (to be referred hereafter as the Act) lays down that before the Tribunal, no party can be represented by a legal practitioner without the consent of the other side. In the present case as the Management had objected to the engagement of Mr. Ranen Ray as an advocate and legal practitioner on behalf of the Workmen's Union before the 12th of December 1963 (as it appears from the petition filed by the Union on that date), the Union and Mr. Ranea Roy tried to circumvent that situation and got Mr. Ranen Roy nominated as Vice-president of the Union in place of the previous Vice-President who resigned on the same date. From this circumstance, learned Counsel contends, this was a clear case of circumvention. A lawyer who cannot appear directly cannot be permitted to do so indirectly by allowing himself to be appointed as an officer of the Union so as to gain apparently the qualifications prescribed u/s 36(i)(a) of the Act. It is difficult to concede to this argument in absence of any materials on record. In paragraph 18 of the application by the Management before us it was only stated:

"That the petitioner is advised and submits that on the facts and circumstances of the present case, the Tribunal should have held that the Union intended to circumvent the provisions of the statute and also it is not in keeping with the dignity of the legal profession that a practising lawyer should be a party to such device whereby the provisions of a statute are to be defeated and thus the order is bad in law and is fit to be set aside."

This paragraph at the most is either submission made by the petitioner or an inference drawn by him. Nothing more than that. There is no material before us except the fact, as noted in the order of the Tribunal, that Mr. Ranen Ray was nominated as a Vice-president of the Union in place of the previous Vice-president who resigned and that the acceptance of the resignation and nomination by the president of Mr. Ranen Ray and approval of that nomination by the Executive Committee were on the same date. If we have to hold that it was really a circumvention of Section 36(4) of the Act, we will have to hold that, that Mr. Ranen Roy, an advocate and legal practitioner allowed himself to be an active participating agent in the act of circumvention of the provisions of law. Before we can do so there ought and must be proper and fuller facts before us, otherwise it would be a censure of larger consequences, based on inadequate or no materials. On the facts of this case, therefore, I cannot say that there was any attempt or in fact, any circumvention of the provisions of Section 36(4) of the Act either by Mr. Ranen Roy or by the Union or by both of them.

5. Learned Counsel appearing for the opposite party placed before us a decision of the Rajasthan High Court which was delivered by Wanchoo, J. (as he then was) in the case of Duduwala and Co. and Others Vs. Industrial Tribunal and Another, . There the view expressed was that Sub-sections (i) and (2) of Section 36 of the Act were not subject to the provisions of Sub-sections (3) and (4) of that section. In other words, if a person acquires qualification under Sub-section (1) or (2) to represent either the workman or the employer and if he happens also to be a legal practitioner, he must not be debarred from exercising his qualification for the purpose of representing either the one or the other as the case may be.

On the other side a case reported in (1954) 2 Lab LJ 148 Alembic Chemical Works Co. Ltd. v. P. D. Vyas, decided by the Bombay High Court was placed. There a legal practitioner was taken as a director only 10 days before the hearing of an industrial dispute. On the facts and circumstances of that case it was held that that was an attempt to circumvent the provision of law under Sub-section (4) of Section 36. In view of what I have said about the materials in the instant case before us, namely, that there are no materials to lead us to the conclusion that there was, if at all, any circumvention either by Mr. Ranen Roy or by the Union, it is not necessary for us, in the present case, to go into a detailed examination of the two different views taken by the Rajasthan High Court and the Bombay High Court; I am, therefore, clearly of the view that the order passed by the learned Presiding Officer of the Tribunal permitting Mr. Ranen Roy

to represent the Union as its Vice-president was justified.

6. The other part of grievance by the Management is the order refusing Mr. A. K. Tewari to represent the employer. Learned Counsel stressed that Mr. Tewari did not want to represent the employer within the meaning of Sub-section (2) of Section 36 of the Act. Apart from the modes of representation prescribed in Sub-section (1) or (2) of Section 36 of the Act, the employer or the workman himself can certainly appeal and conduct his case before the Tribunal. Section 36 will be no bar to that. Every person has got a fundamental and substantial right to appear in person and conduct his case before a Court or a Tribunal. Denial of that right will be denial of fundamental justice. It is now well settled and neither of the parties before us dispute that an employer as well as an employee between whom an industrial dispute has arisen and has been referred to the Tribunal, can appear in person to conduct his case.

In this case the employer is a public limited company having no physical person in the sense that the company can go and appear in person, as any other man of flesh and blood being an employer, can do. We have, therefore, to find out in what way can a public limited company or a corporate body, who is the employer in a particular case, can avail itself of the opportunity and the right to appear in person for conducting its own case. If appearance in person is physically impossible for a corporate body, we have to look to other modes of its appearance. u/s 291 of the Indian Companies Act the Board of directors of a company shall be entitled to exercise all such powers and to do all such acts and things as the company is authorised to exercise and do. It is well known that a corporate body discharges its duty, work and activity through one or more living persons. In what way that living person will be empowered to represent the corporate body is a matter which will spring either from the Companies Act or from the laws of incorporation or from the articles of association, rules, bye-laws or things like "that, by which a corporate body is governed.

In the present case, it has been shown on behalf of the Management before us on affidavit that the Board of directors of the Behar Journals Ltd., who are the employers, passed a resolution on, the both of May 1963 authorising Mr. A. K. Tewari a share-holder of the Behar Journals Ltd., keeper of the Press "Searchlight" and publisher of the "Searchlight" and "Pradeep" to appear on behalf of the Behar Journals Ltd., in all proceedings before the Industrial Tribunal and Presiding Officers of the Labour Court. A copy of that resolution is annexure F to the present application. Another annexure B is a memorandum signed by Mr. S. N. Sahi, Secretary of the Behar Journals Ltd., in which it was stated that he authorised Sri A. K. Tewari who is the employee of the Behar Journals Ltd. and a shareholder of the Company to appear in Reference Case No. 15 of 1963 who had also been authorised by the employer to appear in that reference case.

The Tribunal appears to have thought that Mr. S. N. Sahi, Secretary, was a representative of, the employer, within the meaning of sub-section (2) of section 36 of the Act and this memorandum (annexure B) showed that Mr. Sahi had

delegated his power of representation to Mr. A. K. Tewari. I am afraid, in view of the resolution of the Board of directors, to which I have already referred (which unfortunately was not placed before the Tribunal) and the second part of the memorandum, (annexure B), it cannot but be held that Mr. A. K. Tewari had been authorised in a proper manner to act for the Company in the reference case. If that is a permissible way for a company to act itself, I do not find why the permission should be refused to Mr. Tewari to act on behalf of the management before the Tribunal. This acting, which can be called loosely in general parlance representation, by Mr. Tewari is really not a representation as envisaged in Sub-section (2) of Section 36. That representation is of a different character. Mr. Tewari is a shareholder of the Behar Journals Ltd. and is the keeper of the Press "Searchlight" and publisher and printer of the newspapers. All these concerns belong to the Behar Journals Ltd.

There was some argument at the Bar that the provisions about representation in Section 36 of the Act are not restrictive and exhaustive but they are enabling. By that, it was meant that apart from the modes of representation prescribed in that section, the employer or workman can adopt other modes of representation. There have been two views on this point. It is not necessary in the present case to go into an examination of that question, because, there, the management did not seek and does not seek to be represented by any person who may be covered by Sub-section (2) of Section 36. They want to act themselves and since their acting in person is not physically possible, they adopted the mode of authority by the Board of directors through a resolution duly passed by them, which is in keeping with the laws governing the private limited companies and their activities.

I am therefore, of the view that Mr. A. K. Tewari is competent to act on behalf of the management in the reference case before the Tribunal. That part of the order of the Tribunal by which Mr. A. K. Tewari was refused permission to appear before it will have to be quashed. The other, part permitting Mr. Ranen Roy to represent the Union need not be interfered with in any way. As for the order passed by the Tribunal on the 31st of January 1964, it is not necessary to go into that matter, in view of what I have already said about the order dated the 2nd of January 1964. By that order, the Tribunal observed that it had no power to review its own order passed on the 2nd January 1964. An application was made before it by the Management (employer) to review the previous order. Since the order passed on the 2nd of January has already been dealt with, it is not necessary to examine the position whether the Tribunal has got the power of review of its previous order or not, in the present case.

7. The result is that a writ of certiorari shall issue quashing that part of the order of the Tribunal passed on the 2nd of January 1964 by which permission was refused to Mr. A. K. Tewari to act on behalf of the Behar Journals Ltd. in the reference case pending before the Tribunal. Since both the sides have succeeded in part, they will bear their own costs in this Court.

Tarkeshwar Nath, J.

8. I agree.