

(2015) 03 GUJ CK 0098

In the Gujarat High Court

Case No : Special Civil Application No. 1579 of 2015

Vadodara Mahanagar Seva Sadan

APPELLANT

Vs

Maha Gujarat Industrial Employees Union and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Industrial Disputes Act, 1947 — Section 36, 36(2), 36(4)

Citation : (2015) 146 FLR 847 : (2015) 3 GLR 1930 : (2015) LabIC 2448 :
(2016) 1 SCT 109

Hon'ble Judges : N.V. Anjaria, J

Bench : Single Bench

Advocate : Niral R. Mehta, for the Appellant; T.R. Mishra, Advocates for the Respondent

Final Decision : Dismissed

Judgement

N.V. Anjaria, J—The petitioner-Vadodara Mahanagar Seva Sadan has filed this petition under Articles 226 and 227 of the Constitution, to challenge order dated 23rd December, 2014 passed by Industrial Tribunal No. 1, Vadodara, allowing application Exh. 38 of respondent No. 1 Union. By the said application, the Union objected filing of Vakalatnama of Advocates on behalf of first party No. 1-the petitioner as well as on behalf of first party Nos. 2 and 3-respondent Nos. 2 and 3 herein. The petitioner has prayed to set aside the said order dated 23rd December, 2014, seeking a further direction that the petitioner may be permitted to engage an advocate to represent its case before the Industrial Tribunal.

2. Respondent No. 1 union has invoked the jurisdiction of the Industrial Tribunal by way of Reference (IT) No. 49 of 2013, raising industrial dispute for treating the workers working in the Suez Treatment Plant as permanent employees and to accord to them from the date of their entry, salary and other allowances at par with permanent employees. In the said reference proceedings, the Statement of Claim came to be filed by the second party on 06.01.2014. It appears that

thereafter, on 21.01.2014, on behalf of petitioner-first party No. 1, an advocate presented his Vakalatnama at Exh. 12. The same was objected to by the union representative appearing before the Industrial Tribunal on behalf of the workers. It appears that advocate presented his Vakalatnama, however any application seeking permission in that regard was not filed. On behalf of the union, written objections were filed before the Tribunal submitting inter alia that consent of the second party was not obtained for seeking representation through advocate by the first party-the petitioner herein, that no consent was given.

2.1 It appears that on behalf of first party No. 2 and first party No. 3 before the Industrial Tribunal-respondent Nos. 2 and 3 herein also sought to engage advocates respectively who filed their Vakalatnama. By the impugned order, the Industrial Tribunal has cancelled all not permitting any of the first parties to be represented by an advocate. The present petition is at the instance of first party No. 1-Vadodara Mahanagar Seva Sadan.

3. Learned advocate Mr. Niral Mehta for the petitioner submitted that in the proceedings of reference, the union is represented by its office bearers as General Secretary one Mr. Bharat K. Pathak, who has represented the cases of workmen in several proceedings and he is an experienced person well-versed with the labour litigation. It was submitted that therefore, the petitioner ought to have been permitted to engage advocate. Learned advocate further submitted that it is a matter of equality that representation by advocate is required to be allowed so as to match the experienced office bearer of the employer union who is representing and conducting the case for workmen. It was submitted that the provisions of Section 36(4) of the Industrial Disputes Act (hereinafter referred to as "the Act") may be applied having regard to the times in the industrial arena where the unions have become powerful. Learned advocate submitted that the order of the Industrial Tribunal refusing permission to engage an advocate would work injustice to the petitioner and the petitioner would stand at a discounting position vis-a-vis the union, as the union's case would be handled by a well-versed office bearer.

3.1 Learned advocate for the petitioner in support of his submissions relied on the decision of this Court in *Schneider Electric India Private Limited v. Kailashben R. Valand* (2014 (2) GLR 1264) . He next relied on another decision of this Court in *Panasonic Energy India Co. Ltd. (Navino) Vs. Makarpura GIDC Employees Union and Another*, (2010) 1 GLH 180 A decision of Bombay High Court in *T.K. Varghese Vs. Nichimen Corporation*, (2001) 4 BomCR 168 : (2001) 4 BOMLR 917 : (2001) 90 FLR 91 : (2002) 4 LLJ 1018 : (2001) 3 MhLj 711 was pressed into service. On the basis of said decisions, learned advocate for the petitioner emphasized that permitting to engage advocate by petitioner was to be the only proper order.

3.2 As against the above submission, learned advocate Mr. T.R. Mishra for respondent No. 1 Union submitted that the office bearer of the union has been appearing and that engaging lawyer in the proceedings before the Labour Court

or Industrial Tribunal is not an absolute right. He relied on Section 36(4) of the Act. He submitted that when the workmen are conducting their case in the reference proceedings by office bearer of the union, if the other side is allowed to be represented by advocate, it would lead to an unequal context. He submitted that in the facts and circumstances of the case, the order of the Industrial Tribunal is just and proper.

4. Section 36 of the Industrial Disputes Act deal with representation of parties. Sub-section (1) says that a workman who is a party to the dispute shall be entitled to be represented in any proceedings under the Act either by member of the Executive or office bearer as specified in clauses (a), (b) and (c) in the said provision. Similarly, sub-section (2) of Section 36 provides that an employer shall be entitled to be represented by an officer of an association of employers of which he is a member or if the employer is not a member of any association of employers as stated in clauses (a), (b) and (c). Sub-sections (3) and (4) of Section 36 are relevant, which are reproduced hereunder,

"36. Representation of parties.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(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."

4.1 Sub-section (3) provides that no party to a dispute shall be entitled to be represented by a legal practitioner, whereas as per sub-section (4) a party to a dispute in the proceedings may be represented by a legal practitioner with consent of other parties and with the leave of the Labour Court, Tribunal, National Tribunal, as the case may be. Thus sub-section (3) permits none of the sides to the dispute to engage a legal practitioner to represent his case, but a legal practitioner can be permitted upon consent of the other party and with the permission of the Labour Court.

4.2 The office bearer who represents second party union in the reference proceedings is not a legal practitioner. He is not an advocate having a Sanad but not practicing, nor a law degree holder. That he has appeared in many proceedings and has experience in representing the cases of workmen in the labour courts, is by itself no consideration to allow the other side to engage an advocate and have a representation in the case on his behalf by a legal practitioner.

4.3 In the facts of the present case, the decision by the Apex Court in Paradip Port Trust, Paradip Vs. Their Workmen, AIR 1977 SC 36 : (1977) 43 CLT 419 : (1976) LabIC 770 : (1976) 2 LLJ 409 : (1977) 2 SCC 339 : (1977) 1 SCR 537

applies with its rigors. On the applicability and interpretation of Section 36(4), the Supreme Court has held as under,

"The parties, however, will have to conform to the conditions laid down in Section 36(4) in the matter of representation by legal practitioners. Both the consent of the opposite party and the leave of the tribunal will have to be secured to enable a party to seek representation before the tribunal through a legal practitioner qua legal practitioner. This is the clear significance of Section 36(4) of the Act." (para 15)

4.3.1 The Supreme Court further discussed,

"The Solicitor General contends that "and" in Section 36(4) should be read as "or" in which case refusal to consent by a party would not be decisive in the matter. The tribunal will then be able to decide in each case by exercising its judicial discretion whether leave, in a given case, should be given to a party to be represented by a lawyer notwithstanding the objection of the other party. It is pointed out by the Solicitor General that great hardship will be caused to public corporations if the union is given a carte blanche to finally decide about the matter of representation by refusing to accord its consent to representation of the employer through a legal practitioner. It is pointed out that public corporations, and even Government running a transport organization like the State transport, cannot be expected to be members of any employers' association. In their case Section 36(2) will be of no avail. To deny them legal representation would be tantamount to denial of reasonable opportunity to represent their cases before the tribunal. It is submitted that since such injustice or hardship cannot be intended by law the final word with regard to representation by legal practitioners before the tribunal should rest with the tribunal and this will be effectively implemented if the word "and" in Section 36(4) is read as "or". This, it is said, will also achieve the object of the Act in having a fair adjudication of disputes." (para 20)

4.3.2 And held thus,

"We have given anxious consideration to the above submission. It is true that "and" in a particular context and in view of the object and purpose of a particular legislation may be read as "or" to give effect to the intent of the legislature. However, having regard to the history of the present legislation, recognition by law of the unequal strength of the parties in adjudication proceedings before a tribunal, intention of the law being/to discourage representation by legal practitioners as such, and the need for expeditious disposal of cases, we are unable to hold that "and" in Section 36(4) can be read as "or". (Para 21)

5. Adverting to consider the decisions relied on by learned advocate for the petitioner Schneider Electric India Private Limited (*supra*) was a case where the office bearer of the union named Rajya General Kamdar Mandal appearing on behalf of the workmen in the proceedings before the Labour Court was a practicing lawyer in the High Court of Gujarat. His son was General Secretary of

the Union. In that context, it was contended before the Court that if either of the two appears before the Labour Court as an office bearer of the Union, in effect workmen would be represented by an advocate. This Court therefore allowed the request of the petitioner company to engage advocate and made buttressing observations in paragraph 7.1 and 7.2 of the judgment. Again in Panasonic Energy Company Limited (supra) also, the workman was represented by a lawyer and the court held that the Industrial Tribunal committed apparent error in not permitting the petitioner to engage the lawyer. The Bombay High Court decision in T.K. Varghese (supra), has to be understood and applied in the context of facts of that case special in itself where the respondent company was a Japanese Company and the Court observed that it had admittedly no knowledge about Indian Labour Law, therefore it would be at great detriment if it is deprived of the implied consent given by the petitioner-workman to allow it to be represented by a legal practitioner. In the facts of that case, the advocate of other side did not raise any objection to the appearance of advocate of the company who himself had filed his affidavit-in-reply and represented himself on behalf of the company in the proceedings at certain stages, but the same was not objected to and the objection was raised at a later point of time.

6. This Court in *Rajya General Kamdar Mandal v. Member or her successor in office* being Special Civil Application No. 3059 of 2015 decided on 09.03.2015, upheld the order of the Tribunal permitting the employer to engage a lawyer. In the said case also, the facts were almost similar to in *Schneider Electric India Private Limited* (supra) as the Union was represented by the advocate who was a practicing lawyer. In such context, it was held after considering various decisions as under,

"The question of giving permission to other party to engage advocate would have to be addressed on the consideration and on the principles of equality and the guiding principles would be the reasonableness, fairness and non-arbitrariness in meeting out treatment to a party vis-a-vis other party in the matter of engaging advocate. The scales in the contest would have to be balanced placing both the sides at par in terms of availing them the opportunity to be represented by a legal practitioner. This is necessary to put equal weight to balance the scales of the parties who would be contesting before the Labour Court or Industrial Tribunal. Where one party has the lawyer engaged, denial to the other party for similar services of engaging his advocate would be irrational and arbitrary."

"If the side of the worker or the Union is represented through office bearer who is an advocate-a legal practitioner but appearing in capacity of an office bearer or the employer is being represented by its Manager who is having a qualified law degree, then in either case it would be only reasonable to allow the request of the other party to engage an advocate. The word "legal practitioner" appears as a common connotation and if one party is taking services of a legal practitioner in that sense, the other party has to be allowed to engage."

6.1 The facts in this case are quite opposite. But the aforesaid reasoning applies

in the facts of this case with reverse logic. The ratio operates and has its way differently in the set of facts here.

6.2 The legal statement that emerges is simple of one side in the proceedings before the Labour Court or Industrial Tribunal has the benefit of being represented through a legal practitioner, an advocate, the other side cannot be refused the service of engaging a lawyer. The shackles of phraseology of Section 36(4) have been relaxed by the courts in such situation. In the facts and circumstances of given case, individually considered, the provision of Section 36(4) is purposively viewed and applied so as to permit the other side to engage a lawyer irrespective of consent of other party, which while not giving consent to rival side to be represented by legal practitioner-lawyer, rides the advantage of having a lawyer's service for itself. In such cases or in certain other cases where peculiar facts and complexities of the case may require, the need for consent by the other side may be rightly discarded, and the Court would be justified in exercising the discretion to allow the other party to be represented by advocate-legal practitioner. The underlying rationale for detouring the language of Section 36(4) is the higher principle of equality and fairness enshrined in and emanating from the mandate of Article 14, which would outweigh and clinch. As already noted, this is not the case here. The office bearer of respondent-union is not a legal practitioner. Section 36(4) would have a full play.

6.3 The crux of the matter is that representative of respondent-Union appearing in the proceedings of Reference before the Industrial Tribunal is not a legal practitioner. He is an office bearer of the Union and in that capacity represents the Union to conduct the case before the Tribunal. When he is not shown to be an advocate or even holding a degree in law, the petitioner-Vadodara Mahanagar Seva Sadan cannot claim as of right to engage an advocate in the proceedings. In the facts and circumstances, bar under sub-section (4) of Section 36 of the Industrial Disputes Act and the interpretation attached to it by the Apex Court in *Paradip Port Trust* (supra) applies.

7. The Industrial Tribunal, has while passing the impugned order, attentively considered the facts of the case and elaborately discussed the judicial decision on the question to come to an appropriate conclusion to accept objection by the Union and refuse to seek representation by legal practitioner. The Tribunal applied the principles correctly. The impugned order does not book any error requiring interference by this Court.

8. The reasoning supplied and view taken by the Industrial Tribunal, Vadodara in its impugned order dated 23rd December, 2012 allowing the application (Exh. 38) of the second party Union and consequently not permitting the first party employer to be represented by an advocate, could not be said to be booking any error, much less an error of law or an error of jurisdictional exercise. As a result, the present petition stands dismissed.