

(2016) 11 DEL CK 0087

In the Delhi High Court

Case No : LPA 162 of 2016 and CM Nos. 9025-27 of 2016, LPA 323 of 2016 and CM Nos. 19428-31 of 2016, LPA 324 of 2016 and CM Nos. 19440-43 of 2016

Ved Praksh Dubey

APPELLANT

Vs

M/s Maheshwari Gas Service

RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 36(3)

Citation : (2017) 1 ADDelhi 572 : (2016) 235 DLT 638 : (2017) 152 FLR 27

Hon'ble Judges : Gorla Rohini, CJ. and Mr. V. Kameswar Rao, J.

Bench : Division Bench

Advocate : Mr. Syed Sajjad Ali, Advocate, for the Appellant; Mr. Praduman Gautam, Advocate, for the Respondent

Final Decision : Allowed

Judgement

CM No.9026/2016 in LPA 162/2016 (for exemption)

CM No.19429/2016 in LPA 323/2016(for exemption)

CM No.19441/2016 in LPA 324/2016(for exemption)

Exemption allowed subject to all just exceptions.

Applications stand disposed of.

CM No.9027/2016 in LPA 162/2016 (seeking condonation of 91 days delay in filing the appeal)

CM No.19430/2016 in LPA 323/2016(seeking condonation of 61 days delay in filing the appeal)

CM No.19442/2016 in LPA 324/2016(seeking condonation of 61 days delay in filing the appeal)

For the reasons stated in the applications, the same are allowed and delay of 91,

61 and 61 days respectively in filing the appeals are condoned.

Applications stand disposed of.

CM No.19431/2016 in LPA 323/2016 2016 (seeking condonation of 52 days delay in re-filing the appeal)

CM No.19443/2016 in LPA 324/2016 (seeking condonation of 52 days delay in re-filing the appeal)

For the reasons stated in the applications, the same are allowed and delay of 52 days respectively in re-filing the appeals are condoned.

Applications stand disposed of.

LPAs 162/2016, 323/2016 & 324/2016

As an identical issue arise for consideration in these appeals, the same are being disposed of by this common order.

2. The challenge in these appeals, is to the common order passed on October 29, 2015 in three writ petition being W.P.(C) 8651/2015 along with CM No. 18909/2015, W.P.(C) No. 8652/2015 along with CM No. 18912/2015 and W.P.(C) No. 8655/2015 along with CM No. 18916/2015, whereby, the learned Single Judge has disposed off the petitions by holding that there is no illegality in the impugned order passed by the Industrial Adjudicator on January 13, 2015 in Miscellaneous Applications under Section 36 of the Industrial Disputes Act, 1947 whereby the appellants herein had sought debarring the appearance of Mr. Anil Singhal, Advocate as the Authorised Representative of the Management.

3. It is noted that the Writ Petitions before the learned Single Judge were second round of litigation, inasmuch as the respondent herein had filed earlier three writ petitions being W.P. 3107/2011, 3160/2011 and 3161/2011, wherein the respondent had impugned orders dated March 11, 2011 whereby the applications of the respondent under Section 36 of the Act of 1947 were dismissed and the applications of the appellants/workmen under Section 36 of the Act of 1947 were allowed. In its application, the respondent took an objection that Universal Proutist Labour Federation (Regd.) was not competent to espouse the cause of the appellants-workmen claiming that the Federation was not registered with the Labour Department. It was the contention of the respondent-Management that it is not a registered Trade Union and nothing has been placed on record regarding the subscription of the membership of the workmen to the Union and that the workmen have not disclosed why they became Members of the Federation. The applications were also filed by the appellants-workmen contending that the Management could not be represented through an Advocate. The learned Trial Court held that in view of bar under Section 36(3) of the ID Act, the respondent-Management could not be represented by a legal practitioner or an advocate and thus, allowed the applications of the appellants/workmen and held that the advocate cannot appear for and on behalf of the Management.

4. As regards the application of the respondent-Management, it was held, it was not necessary that workmen may be Member of the Union and any Member of the Executive or the Office Bearers of any Trade Union may be authorised under Section 36(1) (c) of the ID Act to represent the workmen. This Court held that prima facie, there is no evidence before the Trial Court to come to the conclusion that the appellants-workmen were duly represented by U.P.L.F, the Federation, under Section 36(1)(a) and (b) of the ID Act. The writ petitions were allowed vide order dated September 11, 2012, and the impugned orders dated March 11, 2011 in all the three petitions were set aside to the extent, the Industrial Adjudicator dismissed the application of the respondent-Management. It may be noted with emphasis that insofar as the orders on the application of the appellants-workmen disallowing the representation of the Management through an Advocate, this Court did not find any infirmity in the impugned orders dated March 11, 2011. This Court clarified the said conclusion by observing, Section 36(3) of the ID Act clearly bars the representation by a legal practitioner.

5. After the decision dated September 11, 2012, it appears that the appellants-workmen were represented by Mr. Sajjad Ali, Advocate and even the respondent-Management had filed a letter of authority of Mr. Arun Kumar, Advocate. Both the parties had filed applications under Section 36 of the ID Act seeking debarring of the Advocate appearing for the opposite party. It is noted, the said applications had come up for hearing before the Industrial Adjudicator on February 18, 2013 when the authorised representative appearing for the appellants-workmen submitted that Mr. Sajjad Ali will not appear on their behalf in future. This had satisfied the respondent-Management. Similarly, the authorised representative of Management also submitted that Mr. Arun Kumar, Advocate shall not appear for the Management in future. Accordingly, both the applications were disposed of.

6. It is noted that on April 17, 2014 Mr. Anil Singhal, Advocate had filed his letter of authority on behalf of the respondent-Management. Mr. Anil Singhal, Advocate continued to represent the Management thereafter. His appearance for the Management-respondent compelled the appellants herein to file another application before the Industrial Adjudicator for debarring Mr. Anil Singhal, Advocate from appearing for the Management.

7. The Industrial Adjudicator, after narrating the earlier history of the case, was of the view that the Management was allowed to be represented through Mr. Anil Singhal, Advocate or his associate for the first time on July 07, 2014. He also observed, order sheets reflects that either Mr. Anil Singhal or Mr. Saumitra Singhal were appearing in the case since April 17, 2014 and they have appeared for eleven (11) dates prior to raising of the objection by the workmen for the first time on November 12, 2014. He was of the view that Section 36(4) of the ID Act do not completely bar the appearance of the Advocate, inasmuch as it prescribes that with the consent of the other party, the Advocate can appear before the Labour Court. He had referred to the judgment in the case of Management of the Associated Cement Cos. Ltd. v. Workman Smt. Saroj Arora 2001 (57) DRT 151.

He was also of the view that the Act does not contemplate that the consent of other party must be in writing or must be in prescribed proforma. According to him, the consent can be express or implied, inasmuch as when the Advocate appears for a party and the other party do not object his appearance, it amounts to giving an implied consent for his appearance. It was his finding that as Mr. Anil Singhal, Advocate had appeared for the first time on April 17, 2014 and thereafter till November 12, 2014, as no objection was raised by the appellants-workmen on appearance of Mr. Anil Singhal or Mr. Saumitra Singhal, Advocate, it was an implied consent regarding their appearance. He had also concluded that though, this Court debarred the Management to be represented through an Advocate but having not objected to the appearance of Mr. Anil Singhal or Mr. Saumitra Singhal, the workmen have waived their right to raise the objection under Section 36 of the ID Act and dismissed the application filed by the appellants-workmen.

8. The learned Single Judge of this Court, in the impugned order was of the view that there was no opposition from the appellants-workmen on eleven (11) dates of hearing and the Labour Court had rightly inferred implied consent of the appellants-workmen to respondent-Management being represented by a legal practitioner. The learned Judge had referred to the judgment in the case of Samarendra Das v. Win Medicare Pvt. Ltd. 2014 LawSuit (Del) 609, wherein the Court had relied upon a Division Bench decision in LPA No. 212/2008 Bhagat Brothers v. Paras Nath Upadhyay rendered on 13th August, 2008, wherein, it was categorically held that consent can be implied and once, consent has been given, it cannot be revoked at a later stage because there is no provision in the Industrial Disputes Act enabling such withdrawal or revocation. The learned Single Judge has concluded that the judgments relied upon by the appellants-workmen are of no avail; and have no application to the facts of the case. Similar was the view of the learned Single Judge with regard to the judgment of the Supreme Court in the case of Paradip Port Trust, Paradip v. Their Workman AIR 1977 SC 36. It may be stated here that the submissions of the learned counsel for the parties were similar to the one advanced before the Courts below.

9. The Tribunal has overlooked a very important aspect of the matter, that is, this Court in its order dated September 11, 2012 had upheld the disallowing of an Advocate on behalf of the respondent-Management. We quote the relevant para 10 in that regard as under:-

"10. So far as the orders on the application of the Respondents disallowing the representations of the Petitioner through an Advocate are concerned, I find no infirmity in the impugned orders on this count. Section 36(3) of the ID Act clearly bars the representations by a legal practitioner. Further, vires of Section 36(3) ID Act have been upheld in a number of decisions and hence, there is no infirmity to this extent. In view of the above discussions, the petitions are disposed of."

10. In view of such a conclusion debarring the Management from engaging an Advocate to represent them before the Industrial Adjudicator has attained

finality. The Management could not have appointed Mr. Arun Kumar, Advocate thereafter. Assuming, the same was made as the appellant-workmen were also being represented by an Advocate Mr. Sajjad Ali, a statement was made by the authorised representative of the appellants-workmen that Mr. Sajjad Ali would not represent them in future. It appears that because of the statement made by the appellants-workmen, a statement was also made by the authorised representative of the Management that Mr. Arun Kumar, Advocate shall also not appear for the Management in future. Regrettably, overlooking the order of this Court dated September 11, 2012 and the fact, the statement was made by the respondent-Management that Mr. Arun Kumar, Advocate will not appear for the Management in future surely means that the respondent-Management shall not be represented by an Advocate/legal practitioner. The statement can't be construed to mean that Mr. Arun Kumar, Advocate shall only not appear for the Management in future. The engagement of Mr. Anil Singhal, Advocate is contrary to the spirit underlying the statement made. If that be so, Mr. Anil Singhal, Advocate or his associate, who is also an Advocate could not have represented the respondent-Management.

11. Additionally, even on facts, it is noted that there was no implied consent as held by the Tribunal/learned Single Judge.

12. Before, we come to the facts of this case, we would like to consider the judgment of the Division Bench on which, reliance was placed by the learned Single Judge i.e in the case of M/s Bhagat Brothers (supra). In the said case the appellant-management appeared before the Labour Court through its lawyer on June 03, 2004 and filed its written statement. The workman was represented by a Senior Union Representative, who filed his replication on October 29, 2004. Thereafter the respondent-workman filed his evidence by way of affidavit. Throughout the proceedings the workman and his representative did not take any objection to the appearance of Mr. J.K. Singhal, Advocate on behalf of the appellant-management. However, an application was filed on behalf of the workman on July 05, 2005 seeking that the management be not allowed to be represented by an Advocate. On November 30, 2005, vide impugned order, the application was allowed by the Labour Court and the management was directed to appoint a new authorised representative as an Advocate could not be allowed to appear on behalf of the management in view of provisions of Section 36(4) of the Industrial Disputes Act. This Court concluded that Section 36(4) does not prescribe that the consent must be given in a particular manner or in a particular form. This Court was of the view that in a given case the consent of a party, which is the basis for grant of leave to the other party for being represented by an advocate in a proceeding under the Industrial Disputes Act, could be inferred from the surrounding circumstances as also the conduct the consenting party. It was also concluded that Section does not insist upon a written consent. Consent can be implied. Consent once given cannot be revoked at a later stage because there is no provision in the Industrial Disputes Act enabling such withdrawal or revocation. This Court referred to the judgment in the case of Calicut

Cooperative Milk Supply Union v. Calicut Cooperative Milk Supply Workers" Union 1986 Labour Industrial Cases 1681, wherein, it was held that consent can be inferred from the conduct of the parties and the consent once given by a party entitling the other party to be represented in the proceedings by an advocate would ensure to his benefit till the proceedings are finally disposed. The Court noted, a similar view was taken by the Calcutta High Court in Reckitt and Colman v. Jitendra Nath AIR 1956 Calcutta 353.

13. The Court also in T.K. Varghese v. Nichimen Corporation 2002 Vol.-IV LLJ (Suppl) Bombay 1018, wherein the Bombay High Court held, if there was no objection raised on the first date of the proceedings to the appearance of a legal practitioner on behalf of the other side, the consent is to be taken as implied consent. Finally this Court held that in the facts, as the Labour Court has allowed Mr. J.K. Singhal, the legal practitioner, to appear on behalf of the appellant company, it will have to be deemed that the Labour Court had granted leave to Mr. Singhal to appear for the appellant-management, though there was no specific or express consent given by the respondent-workman or his representative. It also held, from the conduct of the union representative as well as from the fact that Mr. Singhal was allowed to appear in the matter before the Labour Court for several dates, leave will have to be inferred having been granted. The said facts are distinguishable.

14. We have perused the record of the Industrial Adjudicator and we note, between the dates April 17, 2014 and November 12, 2014, the matters were listed before the Industrial Adjudicator on thirteen (13) dates i.e. April 17, 2014, April 29, 2014, May 5, 2014, May 13, 2014, May 15, 2014, July 7, 2014, July 28, 2014, August 12, 2014, August 25, 2014, September 10, 2014, October 1, 2014, October 18, 2014 and November 12, 2014.

15. On April 17, 2014, April 29, 2014, May 15, 2014, July 7, 2014, July 28, 2014, August 12, 2014, August 25, 2014, September 10, 2014, October 1, 2014, October 18, 2014 and November 12, 2014 Mr. Anil Singhal and/or Mr. Saumitra Singhal, Advocates appeared for the Management and except on October 1, 2014 and November 12, 2014, the appearances of Mr. Anil Singhal and/or Mr. Saumitra Singhal were recorded as ARM (Authorised Representative of the Management) without suffixing the word "Advocate". On October 1, 2014 for the first time Mr. Saumitra Singhal was represented as Advocate followed by in the order sheet dated November 12, 2014. It can be inferred that there was no occasion for the workmen to know before October 1, 2014 Mr. Anil Singhal or Mr. Saumitra Singhal were Advocates. The application came to be filed on November 22, 2014. It is noted that on October 1, 2014, the learned Presiding Officer of the Labour Court was on leave. October 18, 2014 was the next date of hearing when the matters were adjourned on the request of the representative of the Management. Immediately thereafter, on the next date of hearing i.e. November 12, 2014 objection was taken on the appearance of an Advocate for the respondent. On facts, the judgment as noted by the learned Single Judge in the

case of Bhagat Brothers v. Paras Nath Upadhyay (supra), is distinguishable.

16. In view of the discussion above, the order in the appeals dated October 29, 2015 as well as the orders of the Labour Court dated January 13, 2015 are hereby set aside and the applications of the appellants under Section 36 of the ID Act dated November 22, 2014 shall stand allowed and Mr. Anil Singhal, Advocate is debarred from appearing on behalf of the respondent-Management in the proceedings before the Industrial Adjudicator between the parties.

17. All the appeals are accordingly allowed. No costs.

18. Record(s) of the Labour Court/Industrial Adjudicator be sent back.

CM No.9025/2016 in LPA 162/2016 (for stay)

CM No.19428/2016 in LPA 323/2016(for stay)

CM No.19440/2016 in LPA 324/2016(for stay)

19. Dismissed as infructuous.