
(1965) 12 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No. 1744 of 1964

Workmen of B.R. Darbar Ginning and Pressing Factory, Hubli	APPELLANT
Vs	
B.R. Darbar Ginning and Pressing Factory and Others	RESPONDENT

Date of Decision : 10-12-1965

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1) (c), 36, 36 (1), 36 (2)

Citation : (1969) 2 LLJ 25

Hon'ble Judges : T.K. Tukol, J;M. Sadasivayya, J

Bench : Division Bench

Judgement

Tukol, J.—The petitioner has approached this Court under Arts. 226 and 227 of the Constitution, challenging the validity of the order passed by the labour court at Hubli on 18 July, 1964.

2. The circumstances which have led to the present petition are briefly as follows. Two industrial disputes - one between the workmen of Gokak Mills and its management, and the other between the workmen of B. R. Darbar Ginning and Pressing Factory, Hubli (the petitioner before us) and its management - were referred to the labour court at Hubli under S. 10(1)(c) of the Industrial Disputes Act by orders respectively dated 25 February, 1964 and 2 April, 1964. These were numbered as No. 12 and 15 of 1964. The cause of the workmen the former was represented by one N. Keshava while in the latter by one Gothe. It appears from the order of the labour court that Sri V. N. Apte who is an advocate practising law in Hubli, sought for permission to appear in both the cases as an advocate. That appearance was objected to by the workmen in both the cases. On his request being rejected, Sri Apte sought to appear in both the cases as the labour and law officer of the Karnatak Chamber of Commerce and Industry, Hubli, on the ground that the Gokak Mills and the Darbar Ginning and Pressing factory were members of the Chamber of Commerce and Industry which, it is alleged, was an association of employers. The workmen in both the cases objected to Sri Apte's appearance on the grounds that he is not an "officer" of

the association of employers and that the Karnatak Chamber of Commerce and Industry is not an association of employers as contemplated by law. The labor court rejected both the contentions of the workmen holding that Sri Apte "is a regular officer of the chamber" and that the Chamber of Commerce and Industry, Hubli, is an association of employers, as, in its opinion, an association of employers need not be constituted exclusively of employers. In view of these conclusion the labour court permitted Sri Apte to represent both the employers by an order dated 18 July, 1964. It is the validity of this order that is in issue in this writ petition.

3. So the first question that arises for our consideration is whether Sri Apte is an officer of the Karnatak Chamber of Commerce and Industry. Section 36 of the Industrial Disputes Act, 1947 (which is hereinafter called the Act), provides for representation of parties. Sub-section (1) of this section lays down that a workman who is a party to a dispute is entitled to be represented either by

- (a) an officer of a registered trade union of which he is a member,
- (b) an officer of a federation of trade unions to which the trade union referred to in Clause (a) is affiliated; and
- (c) where the worker is not a member of any trade union, by an officer of any trade union connected with, or by any other workmen employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed.

4. As we are concerned with the representation of the two employers by a legal practitioner, it would be pertinent to quote the remaining three sub-sections :

"(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 federation 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 authorized in such manner as may be prescribed."

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceeding 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 proceedings and with the leave of the labour court, tribunal or national tribunal, as the case may be."

5. In the present case we are not concerned with Sub-section (4) as the workmen do not consent to the appearance of a legal practitioner. It is also on record that when Sri Apte sought the permission of the labour court to appear in both the cases as an advocate, he was not permitted to appear by the labour court as the workmen in both the cases objected to his appearance. The provisions contained in Sub-section (3) are not also relevant. That sub-section bars a legal practitioner from appearing in any conciliation proceeding under the Act or "before a Court." The word "Court" seems to have been used in a restricted sense. It has been defined in Sub-section (2)(f) of the Act as meaning "the Court of inquiry constituted under this Act." That the Court defined in this clause is different from the labour court is obvious from the fact that "labour court" is defined separately in S. 2(kka) as meaning a Court constituted under S. 7 of the Act. So the absolute bar the appearance of a legal practitioner imposed by Sub-section (3) is confined to appearance in any conciliation proceedings under the Act or in any proceeding before a Court of inquiry. It is thus obvious that while the bar imposed on the appearance of a legal practitioner by Sub-section (3) is absolute, that imposed by Sub-section (4) is qualified dependent upon the consent of the opposite party and the leave of the Court, tribunal or national tribunal, as the case may be.

6. In the present case, we are concerned with Clause (a) of sub-section (2) of S. 36 as the Gokak Mills and the Darbar Ginning and Pressing Factory claim to be represented by Sri Apte who, according to them, is an officer of the Chamber of Commerce and Industry, Hubli. The only document that was produced before the labour court in support of the claim that Sri Apte was an officer of the Chamber of Commerce and Industry is a copy of the resolution said to have been passed by the chamber on 27 July, 1963. It reads :

". . . It is hereby resolved that Sri V. N. Apte, advocate, Hubli, be and is hereby appointed as the labour and law officer of the Karnatak Chamber of Commerce and Industry, with effect from 1 August, 1963, to give information from time to time to the Karnatak Chamber of Commerce and Industry, relating to legislative changes of importance pertaining to industries and to give guidance and advice sought of him, in respect of the general or individual problems of the member industrial concerns involving questions of law and if necessary represent the case of the chamber and/or the individual industrial concerns before all or any of the Government authorities such as Factories Act authorities, Government labour officers and conciliation officers and courts, industrial tribunals and other civil, and revenue courts and tribunals in the State of Mysore. He is however permitted to charge individual industrial concerns fees for the services rendered to them."

7. It appears from the order of the labour court that Sri Apte stated before that Court that he had accepted the appointment made by the chamber and had been functioning since the date of appointment.

8. Sri Jagannath appearing for the petitioner has contended that Sri Apte is not

an officer of the Karnatak Chamber of Commerce and Industry and that the resolution merely indicated that he was to be approached for legal advice or representation by the chamber or

any individual concerned whenever necessary on payment of his fees. The word "officer" has not been defined in the Act. The learned advocate drew our attention to the definition of that term in the Shorter Oxford English Dictionary. It reads :

"One to whom a charge is committed, or who performs a function; . . . one who holds an office, post or place . . . a functionary authoritatively appointed or elected to exercise some public, municipal or corporate function; . . . an office-bearer."

9. He also drew our attention to the observations of Cockburn, C.J., in *Hartley v. Banks* [(1858) 5 C.B.N.S. 55] to the effect that "an officer necessarily implies that there is some duty to be performed." He submitted that the essential thing is that an officer should be a functionary having duties to perform and powers which he could exercise individually. The labour court has relied upon the view expressed by Tendolkar, J. in *Alembic Chemical Works Company, Ltd., and another v. Vyas (P. D.) and another* [1954 II L.L.J. 148]. After referring to the two extreme views that can possibly be expressed in so far as S. 36(a) is concerned, his lordship observed that an officer contemplated by Sub-section (1) or (2) of S. 36 "is a regular officer either of the trade union or the association . . ." This decision is of little assistance in determining the instant issue.

10. The other decision cited at the bar afford little guidance in deciding this question. The decision of the Patna High Court in *The Behar Journals Ltd. Vs. H.K. Chaudhuri and Another*, is to the effect that a person who was a legal practitioner and had been appointed as vice-president of the union, though after the dispute had arisen, was an officer of the employees' union and as such entitled to represent them under S. 36(1)(a) of the Act. In *Duduwalla and Co. and Others Vs. Industrial Tribunal and Another*, the Rajasthan High Court laid down that if the appointment of an officer is legally made whether under Sub-section (1) or (2) of S. 36, he is entitled to represent the employee or the employer and that it would be wrong to go into the question as to whether the appointment was bona fide or otherwise. We do not desire to express any opinion on the latter part of the view taken, namely, whether the Court could go into the question of bona fide or otherwise of the appointment of a legal practitioner by the union of workers or an association of employers. Following this decision, the Punjab High Court laid down in *Delite Cinema and Others Vs. Rameshwar Dyal and Another*, , that a practising lawyer who holds any of the capacities mentioned in S. 36, Sub-section (1) or (2), is entitled to represent the workmen or the employers, as the case may be, before an industrial tribunal. A lawyer who is a wholetime employee of the company and not a legal adviser was held to be entitled to represent the company, in *Simpson and Co. Ltd. Vs. State of Andhra*

Pradesh and Others, . The decision of this Court in *Printers (Mysore) (Private) Ltd. Vs. Labour Court, Bangalore and Others*, discussed the scope of S. 36 generally and laid down that the representation dealt with in S. 36 is the representation which indicate the authorization by one person for another to act for him. In all these cases the material produced before the Court disclosed that an advocate or a practising lawyer had in fact been appointed as an officer answering the requirement of S. 36(2) of the Act. There is therefore no discussion in any of them about the meaning of the term "officer" and the tests to be applied for holding a person to be an officer.

11. Some assistance can be derived from the decisions of the Supreme Court in *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, and *Gurugobinda Basu Vs. Sankari Prasad Ghosal and Others*, . The question raised in the former case was as to whether the office of the village munsif under the Madras Hereditary Village Officer Act, 1895, was an "officer under the State" within the meaning of that term in Arts. 16(1) and 16(2) of the Constitution of India. In answering the question in the affirmative, their lord-ships referred to the scheme of the Act and observed :

"The appointment is made by the Collector, the emoluments are granted or continued by the State, the Collector has disciplinary powers over the village munsif including the power to remove, suspend or dismiss him, the qualifications for appointment can be laid down by the Board of Revenue - all these show that the office is not a private office under a private employer but is an office under the State. The nature of the duties to be performed by the village munsif under different provisions of the law empowering him in that behalf also shows that he holds a public office. He not only aids in collecting the revenue but exercises power of a Magistrate and of a Civil Judge in petty cases. He has also certain police duties as to repressing and informing about crime, etc."

12. In the latter decision the Supreme Court was called upon to decide whether the person appointed auditor of the Durgapur Project, held an office of profit under Art. 102(1) of the Constitution. After discussing the various matters relating to the appointment and the relevant provisions of the Constitution, their lordships referred to the main features which enabled them to answer the question in the affirmative. They said :

". . . However, we have no hesitation in power that when the several elements, the power to appoint, the power to dismiss, the power to control and give directions as to the manner in which the duties of the office are to be performed, and the power to determine the question of remuneration are all present in a given case, then the officer in question holds the office under the authority so empowered."

13. These two decisions give us certain indications. Besides the power to appoint, the employer should have the power to control and give directions as to the manner in which the discharge of the duties ought to be performed. The

employer should have powers of discipline and dismissal over the employee. The question of remuneration may be one of the matters to be taken into account. Though it is difficult to define the term "officer," the aforesaid elements may be decisive of the question.

14. Considered in this light, it is difficult to hold that Sri Apte is an officer of the Chamber of Commerce and Industry, Hubli. The learned advocate for the petitioner drew our attention to the articles of association of the chamber which expressly mention as to who are the office-bearers of the chamber. It was pointed out that according to Art. 54(ix) it was the duty of the honorary secretary to institute, prosecute and defend suits or other proceeding in which the chamber may be concerned. It was submitted that there was no reference to the office of labour and law officer amongst the category of officers mentioned in the articles and that the mere passing of a resolution (extracted above) would not make Sri Apte an officer of the chamber. The mere omission to mention the office of labour and law officer in the articles of association may not be decisive since it is open to the chamber to create such office and appoint a person to hold it. The chamber has been registered under the Companies Act, 1913. But the term "officer" defined therein merely includes any director, managing agent, secretary, treasurer, manager, etc. Sri T. Krishna Rao, the learned Advocate-General appearing for respondent 2, contended that as certain obligatory duties had been cast upon Sri Apte by the resolution by which he was appointed, he should be considered to be an officer of the chamber. The resolution specifies that Sri Apte is to give information from time to time to the chamber relating to the legislative changes of importance pertaining to the industry, to give guidance and sought of him in respect of general or individual problems of the members of the industry in question involving questions of law and if necessary, to represent the case of the chamber and/or the individual industrial concerns before any of the authorities or the Courts mentioned therein. The resolution gives no indication as to whether Sri Apte was to work under the control and supervision of any officer of the chamber, whether the chamber had any power to compel him to perform all or any of the duties and whether any legal obligation had been cast on Sri Apte to perform any of the duties or functions mentioned above. It appears from the terms of the resolution that everything was left to the volition or sweet will of Sri Apte. There is no indication as to whether he was he liable to any penalty or disciplinary action for failure to perform any of the duties or functions mentioned therein. There is no evidence also to show as to whether any terms were stipulated between the chamber and Sri Apte either as regards the term of his employment, amount of remuneration, hours or period of work and the authority under whose control or supervision he was to work. The last sentence in the resolution that Sri Apte was permitted to charge individual industrial concerns fees for service rendered to them to give recognition to Sri Apte as one eligible for consultation or assistance by the chamber or its members on payment of the fees to be charged by him. The duties or functions referred to therein appear as if they are casual in nature. There is no doubt that the last two

duties, viz., giving advice and representing the chamber or the industrial concern were not matters of obligatory function but voluntary functions. Sri Apte is to give advice if anybody were to seek for such advice in regard to the general or individual problems. Similarly, he is to represent the chamber or individual concern before any of the authorities if his services were engaged, on payment of the fees. The first duty of giving information relating to the legislative changes of importance pertaining to the industry seems to have been left entirely to Sri Apte's discretion and volition. There is no affidavit of any officer on behalf of the chamber disclosing the terms of his appointment, its duration his subordination, disciplinary control and enforcement of the alleged obligations cast on him. The material on record does not at all establish that Sri Apte is an officer of the chamber.

15. In this connexion, reference may be made to the decision of the Assam High Court in *Sarkeswar Bardoloi v. Industrial Tribunal* [A.I.R. 1955 Gau 148]. The question for consideration in that case was whether one Sri Goswami was an officer of an association of employers. In deciding this question, Ram Labhya, J., observed :

16. As to what are the qualifications or distinguishing marks of an officer of an association of employers, the matter is not free from difficulty . . . The expression "officer" in the dictionary sense means one who holds an office. In relation to companies or societies, it is a person who holds and takes part in the management or direction of a society or institution, for instance, one who is holding the office of president, treasurer or secretary. Associations and corporate bodies have normally these officers. But the list is not exhaustive. A practising lawyer may conceivably be an officer, but the description as legal adviser without reference to the terms of the appointment and the duties of his office would not be enough for a finding that he is an officer of the company. The statement is no doubt negative in character. But a positive rule covering all cases is not at all easy to formulate and each case has to be decided on its own facts after examining the terms of the relationship between the legal practitioner concerned and the association or the company, of which he claims to be a member. What is necessary is that the legal practitioner concerned must be a regular officer of the employers association . . ."

17. His lordship also observed as follows with particular reference to a legal practitioner being an officer of a company or association :

"While a legal adviser of an association may possibly be an officer, it cannot be stated as a matter of law that every legal practitioner who is a legal adviser of an association, becomes an officer of the association. The appointment of a legal adviser can be of a casual nature. Where such is the case, he would generally not be an officer of the association. On the other hand duties may be assigned to a legal practitioner which may invest him with the status of the position of an officer of the company or association . . . The answer to the question whether he is an officer of the association or not must depend on the conditions or terms of

his employment . . ."

18. Deka, J., who delivered the concurring judgment, laid down that :

". . . Holding of office would primarily indicate some sort of official responsibilities than that of law adviser. Either he (the officer) must have some stake in the company or concern, some pay or remuneration attached to the office, terms of appointment or discharge, period or tenure of appointment, or some administrative responsibilities or obligation to render some explanation for his conduct in discharge of the duties . . ."

19. In the instant case, beyond the resolution which leaves everything to the volition of Sri Apte and to the sweet will of the chamber or the individual members to utilize the services of Sri Apte on payment of his fees themselves. We have no other evidence to hold that Sri Apte was holding any office (considered in the light of the criteria indicated above) under the chamber. We have therefore no doubt in holding that the labour court was error in concluding that Sri Apte was a regular officer of the chamber and was entitled to represent the Gokak Mills and the Darbar Ginning and Pressing Factory under S. 36(2) of the Act.

20. The next question raised by the learned advocate for the petitioner is that the chamber is not an association of employers. Sri Vittal Rao contended that that point had been taken expressly in the objection raised before the labour court. We are unable to accept this contention since the order of the labour court makes it manifest that both the parties to the dispute submitted their argument as to whether the chamber can be held to be an association of employers (vide Para. 18 of the labour court's order). One significant fact to be mentioned from the labour court's order is that after referring to various objects of the chamber as given in the memorandum of association and to the articles of association laying down the qualifications for different kinds of membership, the labour court stated "admittedly some non-employers also are members thereof." Article 6 lays down that

"Indians who are mainly engaged in trade, commerce, transport, banking, insurance, accountancy, mining or manufacture and/or industry and business and have their business in Karnatak shall be eligible for election as ordinary members of this chamber."

21. Article 7 enables partnership firms, joint-stock companies and other corporations engaged in trade, commerce, manufacture, industry, etc., as being eligible for membership, Article 9 makes

"Gentlemen distinguished for public service or eminent in commerce, industry or manufacture or otherwise interested in the aims and objects of the chamber may be elected as honorary by a general meeting of the chamber . . ."

22. Articles 4 to 9 which deal with the four classes of members of the chamber leave no doubt that the chamber has members who are not employers. Sri T.

Krishna Rao drew our attention to S. 2(g) of the Industrial Disputes Act which defines the term "employer." It is not helpful in the present case as the two classes of the definition are with reference to industry carried on under the authority of any department of Government (Central or State) or on behalf of the local authority. He also referred to the definitions of the words "workman" and "industry" and submitted that for the purposes of S. 36(2) it is sufficient if the association is in substance an association of employers. According to his submission, the association contemplated by that section may be of persons who are interested in the problems connected with employment. He drew our attention to the decision of the Federal Court in *Western India Automobile Association v. Industrial Tribunal, Bombay, and others* [1949 L.L.J. 245] in which their lordships rejected the contention advanced on behalf of the appellants that the scope of the Industrial Disputes Act was only limited to cases of industry or undertaking carried on by Government or local authority. This contention was rejected on the ground that the manner in which the section was drafted shows that disputes concerning all industrial concerns, whether owned by the Government or private persons, were included within the ambit of the Act. In their lordships' opinion the term "employer" included within its scope industries owned by persons other than the Government departments or local authorities. The term "employer" would necessarily mean the authority or the officer who is in charge of the industrial concern and employs workmen and other class of officials for the purpose of the industry. This necessarily implies that an association of employers must be of persons or industrial concerns which employ workmen and officials for the purpose of their respective industries. Our attention was also drawn to the decision of the Supreme Court in *Commissioner of Income Tax, Madras Vs. Andhra Chamber of Commerce*, in which the question for consideration before their lordships was whether the income of the assessee was exempt from incometax. Their lordships were mainly concerned in examining what the primary objects of the assessee were and whether those objects were of general public utility so as to remain charitable in nature. We are unable to see anything in the above decisions which is helpful or deciding the question at issue.

23. It was contended for the respondents employers that since S. 36(2) did not use any expression indicating that the association of employers should be of employers exclusively it would be enough if the association whose officer seeks to represent the employers, has some employers as its members. We are unable to accede to this contention. It is true that the word "exclusively" is not used in any of the clauses of S. 36(2). But, at the same time it should be mentioned that where the law mentions "an association of employers," the same cannot be read as meaning an association of employers and non-employers. Considering the fact that the three clauses of Sub-secs. (1) and (2) are identically worded, we are of opinion that just as Sub-section (1) contemplates a trade union, Sub-section (2) contemplates an association of employers only. When the law permits an association of employers to be represented through their officer, it necessarily

implies that association must be of persons interested in safeguarding and defending the claims and interests of employers. Whether such association is of workmen or of employers, the main feature of such association is collective bargaining; such association should consist of members with community of interest forming a coherent union and competent to speak or make agreement for its own side. Since the representation contemplated by S. 36(1) or 36(2) is through another, the intention of the law is to permit each side of the industry to combine under a registered union or recognized association to act with one mind in the interest of the respective union or association. If an association consists of employers, and non-employers, there is likelihood of conflict of interests arising and the association may not be an effective instrument to represent the claims and safeguard the interest of all the members of the association. Construing the words as used in Sub-section (2) in their plain and normal sense, we are of opinion that the association of employers should be a combination of employers only. In that view the labour court was not right in holding that the chamber, though having non-employers as its members, was an "association of employers" within the meaning of the term under S. 36(2) of the Act.

24. In view of these conclusions, the impugned order has to be set aside. The learned Advocate-General, however, submitted on behalf of the respondents that there was no error apparent on the face of the record in the conclusions reached by the labour court on the two points and that this Court had no jurisdiction to interfere. He further submitted with reference to the decision of the Supreme Court in *Satyanarayan v. Mallikarjun* [A.I.R. 1960 S.C. 117] that an error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be an error apparent on the face of the record. It is established that an error cannot be cured by a writ of certiorari if it has to be established by lengthy and complicated arguments. He also drew our attention to another decision of the Supreme Court in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, which has laid down that the jurisdiction of a High Court to issue a writ of certiorari is a supervisory jurisdiction, that in exercising such jurisdiction it is not entitled to act as an appellate authority and that it cannot therefore reopen a finding of fact on a fresh assessment of the evidence. Their lordships, however, affirmed that an error apparent on the face of the record can be corrected by a writ. What is an error apparent on the face of the record has been indicated as follows in Para. 8 of the judgment : "It is, of course, not easy to define or adequately describe what an error of law apparent on face of the record means. What can be corrected by a writ has to be an error of law, but it must be such an error of law as can be recorded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior court or tribunal is based as an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion

should be so plainly inconsistent with the relevant statutory provisions that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record . . ."

25. Applying these principles to the impugned conclusions recorded by the labour court, we have no doubt whatsoever that the conclusion on the second point is vitiated by an error of law which is apparent on the face of the record. On facts, the labour court has found that the chamber is an association of employers and non-employers. Yet, it has held that the chamber is an association of employers; this is plainly an obvious misinterpretation of the express provision of law. No complicated or lengthy arguments are necessary to detect this error.

26. For all these reasons, we direct that a writ of certiorari shall issue quashing the impugned order passed by the labour court. The petitioner shall get his costs from respondents 1 and 2 in equal proportion. Respondents shall bear their own costs. Advocate's fee Rs. 200.