

(1959) 07 KAR CK 0003

In the Karnataka High Court

Case No : Income Tax No's. 24 of 1958 and 13, 17 and 21 of 1959

Workmen of Commonwealth Hosiery Factory, Mangalore and
Others

APPELLANT

Vs

Commonwealth Hosiery Factory, Mangalore and Others

RESPONDENT

Date of Decision : 23-07-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 2 (30), 36, 36 (2), 36 (3), 36 (4)

Citation : (1958) ILR (Kar) 206 : (1960) 1 LLJ 143

Hon'ble Judges : V. Venugopal Mudaliar, J

Bench : Single Bench

Judgement

1. This common order relates to the question whether Sri V. K. Krishna Menon, Barrister-at-law, and a legal practitioner in Kerala State, may or may not be permitted to represent the second party management in all these cases. On behalf of the workmen in I.T. No. 24 of 1958 and I.T. Nos. 17 and 21 of 1959, Sri D. Mohan Rao, President of the South Kanara General Labour Union and also a practising advocate, has opposed the request of the management; and on behalf of the workmen in I.T. No. 13 of 1959 Sri A. Shantharam Pai, President of the South Kanara Trade Union Congress, has opposed the representation by Sri Krishna Menon.

2. In all the authorizations issued by the management to Sri V. K. Krishna Menon, the latter is described as the honorary legal adviser to the Calicut Chambers of Commerce of which the Commonwealth Trust, Ltd., is a member. The fact that he is an honorary legal adviser to the Calicut Chambers of Commerce has not been disputed for the workers. Sri Shantharam Pai is not a practising advocate. Ordinarily, Sri Mohan Rao, himself a practising advocate, may not be expected to have raised such an objection who himself is representing the workers as president of the labour union. He has opposed the appearance of Sri Menon.

3. The main grounds on which the management rest their case are that they are

entitled under S. 36(2)(a) of the Industrial Disputes Act to be represented by Sri Menon who is an officer of the association, and who is as much an officer as president or secretary of the Chambers of Commerce. It is also contended by the management that if Sri Menon is held to be disqualified, then a president of a trade union or its secretary, who is a practising advocate, as in the case of Sri Mohan Rao, should also be disqualified. This latter ground on the part of the management does not apply to Sri Shantharam Pai who is not an advocate.

4. The objections raised by the labour union representing the workers in I.T. Nos. 17 and 21 of 1959 and 24 of 1958 are to the effect that Sri Menon can never be said to be an officer of the said Chambers of Commerce, that a legal adviser cannot be termed as an officer of any company or association, and that the definition of an officer as per S. 2, Clause (30), of the Companies Act, by implication, excludes a mere legal adviser from the category of an officer.

5. The objections raised by the union representing the workers in I.T. No. 13 of 1959 are to the effect that it is not correct to say that merely because Sri Menon is a legal adviser of the Chambers of Commerce, he is a member of an officer of the Chambers of Commerce, that a person becomes an officer only if he is alleged as such according to the constitution of that body, and that a law officer cannot be an officer as much as (in the same way) as the president or the secretary.

6. The management filed statements at Mangalore embodying their arguments and quoted certain decision in support of their case. Sri Mohan Rao and Sri Shantharam Pai addressed arguments and have also filed statements of objection quoting certain authorities. This office received by post on 19 June, 1959 a further statement in which case-law was also referred to. On 15 July, 1959 a counter to the above was received by post from Sri Mohan Rao.

7. Section 36(2) of the Industrial Disputes Act provides for the right of the employer to be represented by certain persons. The employer in these cases happens to be a corporate body styled as "The Commonwealth Trust, Ltd. (incorporated in England)." The latter is a member of the Calicut Chambers of Commerce of which Sri Mohan Rao is the honorary legal adviser. The management's case is that the present question comes under Clause (a) of Sub-section (2) of S. 36 of the Act. In the statement received by post on 19 June, 1959, the management further described Sri Menon as having been appointed as honorary law officer of the Malabar Tile Manufacturers' Association of which also they are members. In effect, the management also oppose to the representation of workers in I.T. No. 24 of 1958 and I.T. Nos. 17 and 21 of 1959 by Sri Mohan Rao. The management have filed a copy of a letter dated 16 December, 1958 addressed by the Calicut Chambers of Commerce to Sri Menon in which he is described as the honorary legal adviser to the chamber. And it is further alleged that he has accepted that position. They have also filed another copy of another letter addressed by the Malabar Tile Manufacturers' Association dated 30 May, 1959 "to whom it may concern" that Sri Menon has been appointed as an

honorary law officer to this association as from 8 May, 1957. Hence it may be taken that both these bodies have appointed Sri Menon as described in the two letters.

8. Sri C. Govindan is the secretary of the South Kanara General Labour Union of which Sri Mohan Rao is the president. Sri H. Umanath Nayak is the general secretary of the Mangalore Tile Workers' Union of which the workers in I.T. No. 13 of 1959 are members.

9. The points for decision are :

(1) whether Sri Menon may or may not be permitted to represent the managements in all the four cases, and

(2) whether Sri Mohan Rao may or may not be permitted to appear for the workers in I.T. No. 24 of 1958 and I.Ts. 17 and 21 of 1959.

The later point urged by the management can be decided first. In the statement filed by the management on 2 June, 1959, it is alleged thus :-

"If Mr. Menon is held to be disqualified, it is submitted that a president of the trade union or its secretary would be disqualified if the person concerned is a practising advocate - see decision in 1954 II Ilj 148."

This decision, in my view, is not helpful to the management on the above point. It can by no means be said that Sri Mohan Rao has become the president of this union to overcome the prohibition that a practising lawyer cannot be permitted to appear unless it can be with the consent of the other side. So far as Sri Menon is concerned, it is also clear from the two letters that he had been appointed honorary legal adviser to the Chamber and honorary law officer of the Malabar Tile Manufacturers' Association long prior to these references. Hence I have to examine the question about the right of the managements to be represented by Sri Menon irrespective of the fact that Sri Mohan Rao can represent the union as its president in I.T. No. 24 of 1958 and I.Ts. 17 and 21 of 1959. It is a matter for the legislature to consider the question whether, if a practising advocate if he happens to be an office-bearer of a union or association should not at all be permitted to appear before the tribunal. Both sides have relied upon a number of authorities. I will refer to them in order of time.

10. Reference is made by the management to the decision of the Appellate Tribunal reported in 1951 I Ilj 184 (Elgin Mills Co., Ltd., Kanpur, and Suti Mills Mazdoor Union, Kanpur]. At p. 186, Col. 1, it is observed this :

"A corporation being an artificial person must, of necessity, appear through a human being. It can, therefore, appear through an agent or by any other authorized person, the only limitation being that when that person is a lawyer and appears in his capacity as lawyer, he can appear only if the conditions of Sub-section (2) are fulfilled. A director of a company, we hold, has authority by reason of his position to appear for the company."

In view of the person being a director, there can be no dispute by the first party so far as this question is concerned. It is not also clear whether the objection raised in that case was that a director happened to be a practising advocate. This decision lays down the principle that a director, whether he be a lawyer or not, can appear in that capacity for the management.

11. The next case is 1952 I Ilj 583 of the Industrial Tribunal, Hyderabad [Gajanand Oil Mills, Hyderabad, and their workmen] cited by the management and pointed out for the workmen as not being applicable. In that case, the management wanted to be represented by a pleader but the workers did not give their consent. It so happened that the workers were represented by a legal practitioner who claimed to appear in his capacity as an office-bearer of the Indian National Trade Union Companies. The point considered there was whether it was open to a legal practitioner appearing for the workers in his capacity as an office-bearer could (sic) raise the objection that a legal practitioner should not appear on the other side. At the conclusion of the decision, it is observed thus :

"I am of opinion, as previously stated, it would not be a reasonable restriction to require the consent of one party who is appearing by an officer who is in fact a legal practitioner to the other party appearing by legal practitioner."

Reference is made in this decision to a decision of the Labour Appellate Tribunal of Bombay. The decision itself is not referred to. Relying on that decision, the management have thus stated :-

"Therefore, in the case the consent of the South Kanara General Labour Union is not called for since that union is being represented by a legal practitioner in any other capacity. I am not now concerned with the question of any restriction against a lawyer who wants to appear for a party. In view of later decisions, as pointed out for the union, the above decision cannot be taken as an authority for the management, even for the position that the consent of the union is not called for to enable the management to be represented by Sri Menon."

12. Sri Shantharam Pai has relied upon the decision of the High Court, Ernakulam, reported in 1952 II Ilj 9. The management have stated that they are not disputing the principle laid down in this decision but that this decision is not relevant for the present purpose. In that case, the tribunal refused permission to the petitioner to be represented by a legal practitioner since objection was raised to his appearance by the opposite party. It was contended for the petitioner that Sub-section (4) denied the petitioner's fundamental right to be represented by a legal practitioner; but it was held that the restrictions imposed by Sub-secs. (3) and (4) cannot be said to be void or inoperative. I am of the opinion that the management are right in stating that this decision is not relevant for our present purpose.

13. The next decision relied upon for the union is of the Appellate Tribunal in the Morvi Electricity Works, Ltd., and its workmen 1953 II Ilj 664. That case related to the appearance of a labour officer of the company who was also a legal

practitioner; permission was not accorded. The management have pointed out that in the above decision reference was made to an earlier Full Bench decision reported in 1952 I LlJ 384 in which it was ruled over that a lawyer by obtaining a power of attorney could not appear for a party. In my view, this decision is also not directly in point because I am not dealing with the case of a part-time labour officer.

14. The next decision quoted for the union is of the Madras High court in *Liberator Press and Rangaswami Vs. State of Madras and Another*, . The question was whether advocates have a right of audience before an industrial tribunal. An advocate sought to appear on behalf of the management. An objection was raised by the union and the tribunal refused to accord permission. The High Court was moved in the matter. Matter went before a single Judge who dismissed the petition. That order was appealed against and the Bench also dismissed the appeal. The principle laid down was that the restriction against appearance without the consent of the other party by a counsel was a valid and reasonable restriction so far as the tribunal was concerned. Of course, the management have pointed out that this decision is not relevant for our present purpose. I agree. Hence I hold that no question of a restriction arises in this case.

15. The next decision quoted for the management is that of the Calcutta High Court in *Hall and Anderson, Ltd. Vs. S.K. Neogi and Another*, . In that case, a practising solicitor of the High Court had been a director since about four years prior to the reference and at the time of the reference, he happened to be the chairman of the board of directors. He sought to appear not as a legal practitioner but as director of the company. The tribunal disallowed the right to appear. It was held that the managing director of the company who also happened to be a practising lawyer could represent. Of course, the other side cannot possibly have any dispute on this point since the gentleman happened to be a director of the concern long prior to the reference.

16. The next decision relied upon for the management is of the Bombay High Court in *Alembic Chemical Works Company, Ltd., and Another v. P. D. Vyas and Another* 1954 II LlJ 148. The question related to the right of a director of a company who happened to be a legal practitioner to represent the company. In that case, the trial tribunal did not dispute the right of such a director to appear, but it took into consideration the point that he was appointed director only a couple of days before the hearing to circumvent the provisions of S. 34(4) of the Industrial Disputes Act. Hence the tribunal refused to accord permission to him to represent. The High Court upheld the order. At Col. 1 of p. 151, it is observed thus :

"Therefore, it appears to me that if an officer of any trade union who is referred to in Sub-section 36(1) as qualified to represent a workman or an officer of an association of employees who is qualified to represent an employer under Sub-section (2) or an officer or director of a corporation through whom a corporation is entitled to be represented by the procedure governing the tribunal happens to

be a legal practitioner, that fact by itself cannot disqualify him from appearing before the tribunal. But this presupposes that such an officer is a regular officer either of the trade union or the association or in the case of an officer of a corporation a regular officer of the corporation, and in the case of a director that he is a bona fide director not elected a director, merely for the purposes of enabling him to appear in a pending proceeding before a tribunal."

Section 2, Clause (b), of the Trade Unions Act defines an officer as including in the case of a trade union any member of the executive staff but not an auditor. The only question to be determined is whether Sri Menon can be styled as an officer of the association of employers or an officer of a federation of associations of employers. Hence I am of the view that this decision is not also directly in point.

17. The management have also referred to the decision of the Rajasthan High Court in *Duduwala and Co. and Others Vs. Industrial Tribunal and Another*, .

In that case, the objection raised to the appearance of a legal practitioner was that he was appointed honorary secretary of the association of the employers in July 1956 after the disputes had arisen or had been referred to the tribunal; the ground urged was that he was so appointed to circumvent the law contained in Sub-secs. (3) and (4) of S. 36 of the Industrial Disputes Act. The decision of the Bombay High court reported in 1954 II Ilj 148 was referred to in this decision. The view held by the Bombay High Court was not accepted, and the concerned practising lawyer was permitted to appear. The reason pointed out by the Rajasthan High Court in Col. 2 of p. 77 is thus :

"With all respect, we find it difficult to see why Sub-section (3) or Sub-section (4) of S. 36 should be given precedence over Sub-section (1) or sub-section (2). Sub-sections (3) and (4) prevent legal practitioners from appearing before industrial courts or tribunals in certain circumstances. Sub-sections (1) and (2) allow for representation of employers and employees before such courts and tribunals. There is nothing in Sub-section (1) or (2) which lays down that if the qualifications are conferred with the idea of enabling a legal practitioner to appear before the court or tribunal, the court or tribunal will not recognize such appearance."

Of course, no difficulty would have arisen in the present case if Sri Menon was holding the office of joint honorary secretary. In my opinion, this case is not also directly in point for the present purpose.

18. In support of the case of the management, the decision of the Assam High Court in *Sarbeswar Bardoloi v. U. K. Gohain, Judge, Industrial Tribunal, Assam, and Another* AIR 1955 gau 148 is quoted. In that case, the union objected to the representation of the employers by Mr. P. K. Goswami on the ground that he was a legal practitioner. The trial Judge found that he was an officer of the I.T.A., Assam branch, of which the managements were members. That order was appealed against before the High Court. The question was whether he was an

officer of an association of employers. He had been described in the relevant document as legal adviser of the two estates controlled by the Jorhat Tea Company. In Col. 1 at p. 151 it is observed thus :

"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 question no doubt is essentially, or at least mainly, one of fact, and its decision depends on the terms and the conditions of the employment of the legal practitioner whose status is in question. 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. Without ascertaining these conditions and without any enquiry into the nature of duties, it is not possible to say that a legal practitioner is an officer of the association merely because he is described as a legal adviser."

As regards Calicut Chamber of Commerce, its chairman has described Sri Menon in his letter of 16 December, 1958 as the honorary legal adviser to the chamber and also confirms the assignment after his reply accepting the position was received. As regards the Malabar Tile Manufacturers' Association, its honorary secretary has, by his letter dated 13 May, 1959, appointed him as honorary law officer of this association. So, on facts, as regards the appointment itself this case can be said to be distinct from the facts of the Assam case. As a matter of fact, that case was remanded to the trial tribunal to decide the question whether Sri Goswami is an officer of the employers' association. The observation is to the effect that a legal adviser of an association may possibly be an officer of the association though every legal practitioner who is a legal adviser cannot become an officer of the association. In the case on hand, Sri Mohan Rao and Sri Shantharam Pai have stated that it may be taken that Sri Menon has been appointed by the two associations as honorary legal adviser and honorary law officer. As pointed out for the management, he has not been appointed in such capacity only for the purposes of these two cases. And I accept the allegation that he has been appointed on a permanent footing. Hence, I am of the view that the case directly in point for my present purpose is the decision of the Assam High Court. I respectfully follow the principle laid down in this decision.

19. The next decision I may refer to is of the Punjab High Court in *Delite Cinema and Others Vs. Rameshwar Dyal and Another*, quoted for the management. In that case, the tribunal permitted an advocate to represent the employees on the ground that he was a member of the working committee union; it was held that he was an officer of the trade union and that he can hence appear. Of course, there can be no dispute about this ruling and further, I am now concerned with the right to represent the management and not the workmen.

20. The last decision referred to by the management is that of the Calcutta High Court reported in Bagchi (P.N.) and Co. (Private) Ltd. Vs. Judge, Second Industrial Tribunal and Others, . In that case, the concerned advocate happened to be an honorary member of the Calcutta Printing Owers" Association and a law officer of that association. It was held that he answered the description under S. 36(2)(a) and in that capacity was qualified to represent the company. The only difference in the present case is that Sri Menon is not a member but only a law officer within the ruling by the Assam High Court above quoted.

21. Section 36, Sub-section (4), provides in effect that a legal practitioner cannot be permitted to appear for a party unless it be with the consent of the other party. But under Sub-secs. (1) and (2) such a legal practitioner can be permitted to represent one of the parties if he happens to be an officer of a registered trade union or if he happens to be and officer of the association of employers of which he is a member, or an officer of the federation of associations of employers to which the association is affiliated. Following the decision of the Assam High Court, I hold that Sri Menon though styled as honorary legal adviser in re the Calicut Chamber of Commerce, and as honorary law officer in re the Malabar Tile Manufacturers" Association, is an officer as defined under Sub-section (2), Clause (a). On facts, it is not said that these two institutions have other practising advocates to represent them in the above capacity.

22. I have already referred to the definition of officer under the Trade Unions Act, but that will not be helpful as Sri Menon does not claim to represent any union. Section 2, Clause (30), of the Companies Act defines officer as including director, managing agent, secretaries and treasurers, manager of secretary. Of course, it is true that this definition does not include adviser. But as pointed out for the management, this definition is not exhaustive. In my opinion, it may be taken as illustrative. There is the possibility that if a company has several advocates to advise it, every one may claim a right to appear for the management styling himself as a legal adviser or law officer. I do not think that this is one such case. I am satisfied that the management have no other legal advisers.

23. I may also observe that Sri Shantharam Pai adopted the same arguments as were advanced by Sri Mohan Rao while opposing the representation of the management, in I.T. No. 13 of 1959.

24. In the result, I uphold the claim of the management to be represented by Sri Menon and overrule the objections raised by Sri Mohan Rao and Sri Shantharam Pai.