SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

B. Yellappa Vs. Steel Authority of India Ltd. Represented by Its Junior Manager (Law)/Sr, Mr. E.V. Ramana

B. Yellappa Vs. Steel Authority of India Ltd. Represented by Its Junior Manager (Law)/Sr, Mr. E.V. Ramana

SooperKanoon Citation : sooperkanoon.com/371327

Court : Karnataka

Decided On : Jan-25-2008

Reported in : ILR2008KAR1228; (2008)IILLJ612Kant; 2008(5)KLJ340; 2008(2)KCCRSN89; 2008(3)AIRKarR37; 2008LabIC(NOC)686(Kar)

Judge : Manjula Chellur and ;A.N. Venugopala Gowda, JJ.

Acts : Industrial Disputes Act, 1947 - Sections 10(1), 33, 36, 36(1), 36(2), 36(3) and 36(4); Advocates Act, 1961 - Sections 30(1) and 30(2)

Appeal No. : Writ Appeal No. 942 of 2007

Appellant : B. Yellappa

Respondent : Steel Authority of India Ltd. Represented by Its Junior Manager (Law)/Sr, Mr. E.V. Ramana

Advocate for Def. : K. Kasturi, Sr. Adv.

Advocate for Pet/Ap. : Party-in-Person

Disposition : Appeal dismissed

Judgement :

1. Appellant is the workman under the respondent-employer/management The workman has filed an application under Section 33(c)(2) of the Industrial Disputes Act (for short 'the Act'), claiming certain amount. The workman had also filed an application under Section 36 of the Act, inter alia, objecting the management from engaging the services of an advocate In the proceedings. The application was contested by the management by filing its statement of objections. The Labour Court on consideration, by its order dated 1.7.2005, has allowed the application filed by the workman and has rejected the request of the management for engaging the services of in advocate to represent it, in the proceedings. The officers of the Industrial and Commercial Employers' Association (for short 'ICEA') had filed an application. inter alia, seeking permission to represent the management The Labour Court, by an order 4.8.2005, has rejected the said application on the ground that the respondent is not represented by a Union or an advocate and hence the management cannot engage the services of the advocate or officers of the association. Management has subsequently filed another application, inter alia, seeking permission to be represented by the officers of the ICEA. Labour Court on consideration of the application, by its order dated 2.1.2007, has rejected the application as not maintainable, in view of the earlier orders dated 1.7.2005 and 4.8.2005.

2. Management had questioned the said three orders passed by the Labour Court in the writ petition. Writ petition was contested by the workman. On consideration of the record, learned Single Judge has allowed the writ petition and has quashed the impugned orders therein and has directed the Labour Court to permit the management to engage the services of the office bearers of ICEA, also granting liberty to the workman to engage the services of an advocate, if he choses so. The workmen has challenged in this appeal the order passed allowing the writ petition.

3. The appellant, party-in-person, submitted that the person whose service is sought to be taken by the management, is an advocate and as such, the request was rejected, as there was no consent by him to engage the services of an advocate. He also referred to Sub-section (4) of Section 36 of the Act and contended that there is clear bar for engaging of the services of an advocate before the Labour Court without the consent of the other side. The appellant

contended that the Act being a special enactment, it is not proper to permit the engaging of the services of an advocate and he relied upon the decision in the case of Pradeep Port Trust v. Their Workmen reported in 1976-II-LLJ-52 and submitted that the employer which is Government company, is not entitled to engage the services of an advocate. The appellant contended that, the provisions of the Act, prevail over Sections 30(1) and (2) of the Advocates Act, 1961 and as such, the restriction placed under Sub-section (4) of Section 36 of the Act should prevail. He relied upon the decision reported in 1969 (2) LLJ 25 and submitted that the persons whose service, is sought to be availed by the petitioner, is not the office bearer nor the employee of the management and he is not holding any office in the association and has no responsibility at law advisor nor is paid any remuneration and hence cannot be treated as office bearer of the association. The appellant relying upon certain other case law, submitted that the learned Single Judge has erred in allowing the writ petition. It was submitted by the appellant that the order passed by the learned Single Judge is contrary to the statutory provisions applicable to the matter and hence is liable to be set aside.

4. Per contra, Sri K. Kasturi, learned Sr. counsel appearing for the management, submitted that, Sub-section

(2) of Section 36 of the Act provides for an officer of an association of employers and the management being a member of ICEA, is entitled to be represented by the officers of ICEA. The learned Sr. counsel referring to the decision reported in 1976-II-LLJ-52, pointed out that, an advocate simplicitor, cannot appear before the Tribunal without the consent of the opposite party. However, an advocate can appear as an office bearer of a Trade Union or an officer of the association of the employers and in such a case, the consent of the opposite party and the leave of the Tribunal/Labour Court, is not necessary. It was submitted by the learned Sr. counsel that a legal practitioner when appointed as an officer of the company or Corporation and he is paid and he is under the control of the company or Corporation and the fact that he was earlier a legal practitioner or has a law degree, will not stand in the way of the management being represented by such officer. Leaned Sr. counsel submitted that no permission is required, to engage the services of an officer, who incidentally holds a law degree. It was submitted by the

learned Sr. counsel that the Tribunal/Labour Court cannot 90 into the question of motive for appointment of such legal practitioners as office bearers of the trade union or the officers of the employers' association, when law clearly provides for engaging services of an officer or office bearers of the association, whether he is a legal practitioner or not, is not the scope of Section 36 of the Act. Learned Sr. counsel would contend that once a person whose service is sought to be engaged under Sub-section

(1) or

(2) of Section 36 of the Act;, he is entitled to represent the management and similarly the workman is also entitled to avail the services of an advocate. Learned Sr. counsel would submit that, an advocate simplicitor cannot be engaged by the management, without the consent of the workman/opposite party, as contemplated under Sub-section

(4) of Section 36 of the Act. Learned Sr. counsel referred to the decision in the case of Hotel Ashok v. Additional Labour Court Bangalore and Anr. reported in 1984-FJR Vol. 64 page 1, wherein it hes been held that a person who is an officer of an association of employers or federation of such association, notwithstanding that he is a legal practitioner, is entitled to represent the company. It was contended that it Is not open to the Tribunal or the Labour Court to go into the question as to how and with whose permission, the respondent became the member of the ICEA and such matters are inter se between the association and the respondent and not a matter for a enquiry before the Tribunal/Labour Court. Learned Sr. Counsel relied upon decision reported in 2005

(3) LLN-644, in the matter of Katwa Infotech, Ltd., Belgaum v. Baskar Laxamanrao Patil wherein it has been held that Sub-section

(4) of Section 36 of the Act, does not prevent the officers of a federation or association from appearing, for a member of the federation or the association. Learned Sr. Counsel would submit that, the order passed by the learned Single Judge allowing the writ petition, being in accordance with law, does not call for interference and is sustainable either for the reasons assigned therein or

otherwise also, taking into consideration the relevant statutory provisions applicable to the matter as well as on the facts and circumstances of the case.

5. Having heard the appellant, party-in-person and the learned Sr. Counsel on behalf of the respondent, the point that arises for our consideration is:

Whether the learned Single Judge is Justified in allowing the writ petition and permitting the management to engage the services of the office bearers of ICEA to represent it in the proceedings initiated by the appellant under Section 33(c)(2) of the Act, pending before the Labour Court?

6. Learned Single Judge has raised the following two points for his consideration, viz.,

i) Whether legal practitioners who are office bearers of a federation or association of employers are entitled to represent the petitioner, member of the association under Section 36(2) of the I.D. Act?

ii) Whether the Labour Court can go into the question as to the motive as to why petitioner has become member of the association?

7. Learned Single Judge taking into consideration the decision of the Apex Court in Paradip Fort Trust's case and the decision of Katwa Infotech, Ltd., Belgaum's case (supra), has held that the management having been shown to be a member of ICEA and the person sought to be represented being office bearer of the said association, Sub-section (4) of Section 36 does not prevent the office bearers of ICEA from representing the management, notwithstanding that they are legal practitioners.

8. The issue, whether the legal practitioners, who are the office bearers of a federation or association of employers, are entitled to represent the management, who is a member of the federation or the association, has been decided by the learned Single Judges of this Court.

9. In the case of Hotel Ashok (supra), the facts were that, Hotel Ashok was a member of the Employers' Federation of Southern India, which was an association

of employers and Sri Kasturi was an office bearer, in that he was a member of the executive committer of the federation. Sri Kasturi had filed appearance on behalf of the management of Hotel Ashok, in the proceedings initiated by the workman. The workman, disputed the claim of the management to be represented by Sri Kasturi, on the ground that neither the management can be regarded as a member of the federation nor Sri Kasturi was an office bearer The Industrial Tribunal upheld the objection of the workman and held that Sri Kasturi was not entitled to appear for the management. The order passed by the Industrial Tribunal was questioned in the writ petition by the management of Hotel Ashok. Considering the issue, while allowing the writ petition, learned Single Judge of this Court has held as follows:

The summary of my conclusion is-

(1) Under Section 36(2) of the Act, an employer, who is a party to a dispute under the Act is entitled to nominate-

(i) a person, who is an employee of Employers' Federation of which such association is a member-who holds a post of responsibility i.e., who is regarded as an officer by the association or federation notwithstanding the fact he was a legal practitioner prior to his appointment; and

(ii) a person, who is an office-bearer, either as an ordinary member of an Executive or managing Committee or as President, Vice-President, Secretary, Treasurer, as the case may be, in which the management of the affairs of the association is vested notwithstanding the fact such person is a legal practitioner.

(2) A legal practitioner, who appears before the Tribunal representing an employer, as an officer-bearer, appears as the authorised representative of the employer and not as a member of the legal profession.

(3) (i) In the present case, it is established that Hotel Ashok, Bangalore, is a member of the Employers' Federation of Southern India and the Federation is an association of employers.

(ii) Mr. Kasturi, Advocate, being a member of the Executive Committee of the Federation in which the management of the affairs of the Federation is vested, he is an officer-bearer of the Federation and falls within the meaning of the expression 'officer' used in Section 36(2) of the Act.

(iii) The petitioner has the right to be represented by Mr. Kasturi, so long he continues to be an office-bearer of the Federation and the petitioner continues to be its member, before the Tribunal in any of the dispute to which it is a party notwithstanding the fact that Mr. Kasturi is a legal practitioner.

10. In the case of Katwa Infotech, Ltd., Belguam (supra), the facts were that Katwa Infotech Ltd., a company engaged in the business of medical transcription, had terminated Sri B.L. Petil from service, who raised a dispute in terms of the provisions of the I.D. Act and the matter was referred to the Industrial Tribunal. One Sri Hansi, filed authorisation in his capacity as an executive member of Indian Employers Federation to represent the company, which was objected to, by the workman and upon consideration, the Industrial Tribunal rejected the appearance of Sri Hansi in the matter, which order was questioned in the writ petition. Industrial Tribunal held that the word 'officer' denotes that he should be on the pay-roll of the federation of the employers and Sri Hansi was held to be not qualified to represent the management. Considering the issue, learned Single Judge of this Court did not find merit in the view taken by the industrial tribunal and has held as follows:

9. The said judgment does not in any way would say that a lawyer has to be on the pay-roll in the event of authorisation as an office-bearer as held by the learned Judge. In Paradip Port Trust case 1977 (1) L.L.N. 5 (vide supra), on the facts of that case, the Supreme Court ruled that Sri T. Misra must be on the pay-roll of the trust. The same yardstick cannot be applied in all cases as held by the Labour Court. In fact in the very small judgment, in Para 15, the Supreme Court has chosen to say in unmistakable terms that if a legal practitioner is an officer of an association of employers or of a federation of such associations, there is nothing in Section 36(4) to prevent him from appearing before the Tribunal under the provisions of 536(2) of the Act. Hence, the finding of the Labour Court in the

present case requires my interference.

11. In the case of Rajamani R v. Presiding Officer, II Additional Labour Court, Chennai and Anr. reported in 2007-II-LLJ-704 Division Bench of the High Court of Madras, while considering the scope of Section 36(2) of the I.D. Act, 1947, on the question as to whether in an industrial adjudication, an employer can be represented by office bearer of an association of employers, when such office bearer is also a legal practitioner, has held as follows:

10. ...The object of Section 36 of the I.D. Act is to enable an employee or an employer to be represented by persons who can effectively espouse their cause, barring legal practitioners in conciliation proceedings or proceedings before a Court. The purpose is not to disable representatives who have knowledge of law or who have practised law. The purpose, is to enable employee and employer to appoint representative who understands the position of those whom he represents. In our opinion, though the word 'officer' was substituted in Sub-section (1) of Section 36 with the phrase 'any member of the executive or other office-bearer and the word 'officer' was not so substituted in Sub-section 2, they must be taken to carry the same meaning for the purpose of representation. An office-bearer of the trade union of workers cannot be said to constitute a class that bears distinct characteristics from office-bearer of a trade union of employers.

12. Hon'ble Supreme Court in the case of Pradeep Port Trust (supra), interpreting the provisions contained under Section 36 of the Act, has held as follows:

It is not intended under the Act that companies and corporations are confined to representation of their cases only through the officers specified in Section 36(2) of the Act. They can be represented by their directors or their own officers authorised to act in that behalf in a lawful manner provided it is not contrary to any provision of the Act. This would not. however, mean that the companies and corporations, and for the matter of that any party, are free to engage legal practitioners by means of a special power of attorney to represent their interests before the Tribunals without consent of the opposite party and leave of the Tribunal.

13. Again, although under Section 36(2)(c) there is provision for the contingency of any employer not being a member of an association of employers, the device of representation provided therein would not fit in the case of a Government department or a public corporation as an employer. These categories of employers, known to the Act, will be put to the most unnatural exercise of enlisting the aid of an outside association, albeit connected with the same type of industry, to defend their cases before Tribunals. Such an absurd intent cannot be attributed to the Legislature in enacting Section 36, which will be, if that section is the be all and end all of the types of representations envisaged under the Act. The impossibility of the position indicated above in a crucial pointer to Section 36 being not exhaustive but only supplemental to any other lawful mode of representation of parties.

14. 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.

15. If, however, a legal practitioner is appointed as an officer of a company or corporation and is in their pay and under their control and is not a practicing advocate, the fact that he was earlier a legal practitioner or has a legal degree will not stand in the way of the company or the corporation being represented by him. Similarly, if a legal practitioner is an officer of an association of employers or of a federation of such associations, there is nothing in Section 36(4) to prevent him from appearing before the Tribunal under the provisions of Section 36(2) of the Act. Again, an office-bearer of a trade union or a member of its executive, even though he is a legal practitioner, will be entitled to represent the workmen before the Tribunal under Section 36(1) in the former capacity. The legal practitioner in the above two cases will appear in the case of an employer and in the capacity of an office-bearer of the union in the case of workman and not in the capacity of a legal practitioner. The fact that a parson is a legal practitioner will not affect the position if the qualifications specified in Section 36(1) and Section 36(2) are

fulfilled by him.

16. It must be made clear that there is no scope for enquiry by the Tribunal into the motive for appointment of such legal practitioners as office-bearers of the trade unions or as officers of the employers' associations. When law provides for a requisite qualification for exercising a right, fulfillment of the qualification in a given case will entitle the party to be represented before the Tribunal by such a person with that qualification. How and under what circumstances these qualifications have been obtained will not be relevant matters for consideration by the Tribunal in considering an application for representation under Section 36(1) and Section 36(2) of the Act. Once the qualifications under Section 36(1) and Section 36(2) art fulfilled prior to appearance before Tribunals, there is no need under the law to pursue the matter in order to find out whether the appointments are in circumvention of Section 36(4) of the Act. Motive of the appointment cannot be made an issue before the Tribunal.

13. Thus, it is clear that a member of an association of employers, even if, is a legal practitioner, can represent the parties in the industrial adjudication in the capacity as office bearer of employers' association. There will not be any violation of the provisions contained under Section 36(2) of the Act by permitting such appearance and the consent of the workman required under Section 36(4) of the Act, is unnecessary, if it is made out that the authorised person It a member of the association of employers. Merely because such an authorised person is a legal practitioner, does not debar the appearance as long as the appearance before the industrial Court, is in the capacity as member or office bearer of the employers' association.

14. The appellant relied upon the decision of the Hon'ble Supreme Court in the case of Madan Mohan Ghosh v. Infar (India) Ltd., and Anr. reported in 2001 (91) FLR 816. The facts in the said case were relating to the eligibility of one Sri. Amar Roy to represent the management before the industrial tribunal as the president of the employers' association, of which, the management was a member. Objection was raised by the workman against the request for representation of the management by the said person, he being a legal practitioner. The objection was

raised on the basis of the provisions contained under Sections 36(2), (3) and (4) of the I.D. Act. It was also alleged that Sri Amar Roy was not the president of the association, of which the management was a member and that he was ineligible to represent the management on that ground also. The workman filed the petition in the industrial tribunal, to call upon the management to produce certain documents which were necessary for adjudication of the matter, as claimed by him. The management did not file any objection nor produced the documents demanded by the workman. The tribunal having found the objections raised by the workman to be untenable, passed an order permitting the appearance, which was assailed by the workman by filing a writ petition. Learned Single Judge held that Sri Amar Roy was not eligible to represent the workman in terms of the relevant provisions of the Act, which was questioned in the writ appeal by the management before the Division Bench and the writ appeal was allowed, permitting Amar Roy to represent the management. The workman, having approached the Hon'ble Supreme Court, it was held that the management had not produced any material in support of its case under the relevant provisions of the I.D. Act to establish that Sri Amar Roy was eligible to represent it, except furnishing Register No. of the association of which, Sri Amar Roy was said to be the president and found that the finding recorded by the industrial tribunal without making any attempt to get the documents demanded and the finding of tribunal was based on no evidence in view of which, the appeal was allowed and the matter was remanded to the tribunal to dispose of by passing a reasoned order. In view of the said factual matrix and the order passed by the Hon'ble Supreme Court, the case is of no assistance to the appellant. We do not find any ratio decidendi having been laid down therein, to be applied to the case on hand.

15. The appellant relied upon a decision in the case of Workmen of B.R. Darbar Ginning and Pressing Factory, Hubli v. B.R. Darbar Ginning and Pressing Factory and Ors. reported in 1969-II-LLJ 25 in support of his plea. The facts in that case were, in the reference made under Section 10(1)(c) of I.D. Act, one Sri V.N. Apte, an advocate, sought permission to appear in the reference as an advocate, which was objected to, by the workmen. The request was rejected. Later on, Sri Apte, sought to appear as the Labour and Law Officer of Karnataka Chamber of Commerce and Industry, Hubli (for short 'Chamber'), on the ground that the

managements were members of the Chamber, contending that it was an association of employers. The plea was contested by the workmen on the ground that Sri V.N. Apte is not an officer of the employers' association and that the Chamber is not an association of employers, as contemplated by law. Labour Court rejected the contentions of the workmen, holding that Sri Apte was a regular officer of the Chamber and that the Chamber is not an association of employers and on its own an association of employers need not be constituted exclusively. In view of the said conclusions, Labour Court permitted Sri Apte to represent the employers/managements which was questioned in the writ petition. Two questions were considered in the writ petition viz., Whether Sri Apte is an officer of the Chamber and whether the Chamber is an association of employers within Section 36(2) of the Act. It was held that the finding of the Labour Court that Sri Apte was the regular officer of the Chamber, entitled to represent the employer under Section 36(2) of the Act, is erroneous and on the second contention, It was held that Sub-section (2) of Section 36 contemplates, an association of employers only and if an association consists of employers and non employers, there is likelihood of conflict of interest arising in the association, may not be an effective instrument to represent the claim and safeguard the interest of all the members of the association. It was held that the Labour Court was not right in holding that the Chamber having non employers as its members, was an association of employers within the meaning of Section 36(2) of the I.D. Act In our view, factual matrix in the instant case is different from the case of Workmen of B.R. Darbar Ginning and Pressing Factory, Hubli. The contentions raised and answered therein, have no application herein. It Is not the case of the appellant that ICEA has the membership of both employers and non-employers. Hence, the said decision has no application herein.

16. The appellant relied upon the decision in the case of Duraiswamy R.M. v. Presiding Officer, Labour Court, Salem and Ors. reported in 1998-I-LLJ-176 in support of the contention that, officer of an association of employers alone is entitled to appear on behalf of the employer before the Labour Court and the executive or members of association of employer is not entitled to represent the employer. The said decision was considered by the Division Bench of the High Court of Madras in the case of Rajamani R (supra) and It was held that:

We are unable to agree with the view taken by the learned single Judge in Duraiswamy's case (supra).

Since the Division Bench of the High Court of Madras itself has not agreed with the view of the learned Single Judge in the case of Duraiswamy (supra), and in the light of the decisions of this Court in the case of Hotel Ashok and Katwa Infotech, Ltd. (supra), we are not inclined to consider the enunciation of law made in the case of Duraisway. Considering the provisions contained in Section 36(4) of the Act, the decision of the Supreme Court in Paradip Port Trust case (supra), we do not find any merit in the contention of the appellant that the motive of the respondent in taking the assistance of the office bearers of ICEA to represent it in the Labour Court, should be considered, in our view, the position has been made clear by the Hon'ble Supreme Court in the decision in the case of Paradip Port Trust case (supra), at para 16.

17. The respondent has produced material to show that the person who is authorised to represent it in the industrial tribunal, is the office bearers of ICAE and ICAE is an association of employers only. The position has also been made dear in the affidavit filed on 26.8.2006 before the learned Single Judge to the effect that in terms of the Memorandum of Association and the Rules governing the association, the management is entitled to be represented by the office bearers of the association. From the perusal of Memorandum of Articles of Association, it is clear that it is an association of employers only. Sub-section (2) of Section 36 enables the engaging of the services of the officer of the company or the office bearers of the association or of a federation, to which the management is a member, notwithstanding that the officer or office bearer is incidentally a legal practitioner. We are satisfied that the person authorised by the respondent to represent it in the industrial tribunal, is a member of ICEA and ICEA is an association of employers only.

18. In view of the above discussion, we hold that the management is entitled to be represented by a legal practitioner, who is an office bearer of an association or of. a federation of employers, notwithstanding that the authorised person is a legal practitioner and Sub-section(4) of Section 36 of the Act cannot be held to prevent

such authorised person incidentally being a legal practitioner from appearing before the industrial tribunal. Hence, we hold that the learned Single Judge was justified in quashing the orders of the industrial tribunal impugned in the writ petition and in allowing the writ petition.

19. For the foregoing reasons, we do not find any merit in this appeal. Consequently we dismiss the appeal in the facts end circumstances of the cast we direct the parties to bear their respective costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com