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Court : Andhra Pradesh

Decided On : Jun-10-2008

Reported in : 2008(4)ALD754; 2008(5)ALT34; [2008(119)FLR336]

Judge : L. Narasimha Reddy, J.

Acts : Industrial Disputes Act - Sections 36(4)

Appeal No. : Writ Petition No. 6421 of 2007

Appellant : B.M. Jambunathan

Respondent : United News of India (Uni) Rep. by Its General Manager and anr.

Advocate for Def. : Koka Srinivas Kumar, Adv.

Advocate for Pet/Ap. : K.S. Murthy, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

L. Narasimha Reddy, J.

1. The petitioner filed I.D. No. 39 of 2006, before the Industrial Tribunal- cum-Labour Court, Visakhapatnam, against the 1strespondent herein, claiming certain relief. On receipt of notice, the 1st respondent entered appearance. A memo, dated 10.4.2006, was filed by the 1st respondent, authorizing Sri A.K. Seth and G.S. Ravishanker, to represent them in the matter. Petitioner filed I.A. No. 38 of 2006, with a prayer that the Tribunal be pleased to disallow any request that may be made by the 1st respondent, to engage an Advocate or Legal Practitioner, to represent them in the case. The 1st respondent, in turn, filed a counter affidavit, opposing the application. It was mentioned that the petitioner is an enrolled Advocate, and in that view of the matter, they are also entitled to engage an Advocate in the I.D. Elaborate arguments were addressed before the Tribunal, on this aspect. Through a detailed order, dated 22.11.2006, the Tribunal dismissed the I.A., according permission to the 1st respondent to avail the service of an Advocate. The same is challenged in this writ petition.

2. Sri K.S. Murthy, learned Counsel for the petitioner, submits that Sub-section (4) of Section 36 of the Industrial Disputes Act (for short 'the Act') is clear in its mandate, and except where the other party gives his consent and the Industrial Tribunal grants leave, a party to the proceedings under the Act, cannot engage a practicing Advocate, on its behalf. He submits that the view taken by the Tribunal, in the order under challenge, is contrary to specific provisions of law, as well as the judgments rendered by the Supreme Court and other High Courts.

3. Sri Koka Srinivas Kumar, learned Counsel for the 1st respondent, on the other hand, submits that the I.A. was untenable, inasmuch as it is not referable to any provision of law. He contends that equity and fair treatment demand that once a party had the benefit of availing service of a skilled and trained Advocate, the other party cannot be denied such a facility.

4. Though the question that arises for consideration in this case is very short, viz; the entitlement of a party to the proceedings under the Act to avail the service of Legal Practitioner, and though Section 36 of the Act is clear in its purport, opinion of the courts in this regard was not uniform. In fact, the Allahabad High Court in ICI India Ltd. v. Presiding Officer, Labour Court 1992 LLR 477 (All), held that Section

36(4) of the Act is ultra vires to the Constitution of India. This, in a way, was opposed to the view taken by the Supreme Court in Paradeep Port Trust v. Their Workmen. 1976 II LLJ 409. The Kerala High Court, on the other hand, upheld the validity of the said provision. Difference of opinion persisted, even as to the circumstances under which permission can be accorded to a party to avail the service of a legal professional. The provision is very precise and it reads as under:

In any proceedings 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 proceedings and with the leave of the Labour Court, Tribunal or National Tribunals, as the case may be.

5. A Full Bench of this Court in A.P. Power Diploma Engineers' Association v. Apseb : (1996)ILLJ 1082 AP , took the view that with the advent of the concept of providing legal aid to the poor and weaker sections, a different approach is needed, while interpreting Section 36(4) of the Act. It does not appear that whether the twin requirements under the provision; viz, a) the consent of the other party; and b) the permission of the Court, are concurrent, or mutually exclusive; was dealt with by any court. In the realm of interpretation of statutes, instances are not lacking, where the courts have read the conjunction 'and as or, and vice- versa'. If this is resorted to, even where a party withholds the consent, court would be competent to accord permission, on being satisfied about the necessity. It is not as if that in such an event, the 1st requirement would become redundant. If the other party consents, then the permission of the court may not be necessary. This, however, is a loud thinking and not a clear opinion on the issue.

6. A question, identical to the one that is arising for consideration in this very matter, felt for consideration before this Court, in an unreported judgment in T. Sudhakar Rao v. Management of Eenadu Telugu Daily, in W.P. Nos. 3935 of 2003 & Batch. The facts are also identical. The only difference is that while in the other case, the petitioner before the Industrial Tribunal i.e. the union, was represented by its President, who was a legal practitioner, here, the petitioner who approached the Tribunal in his individual capacity by himself, is a legal practitioner. This Court took the view that once the workman had the benefit of availing the service of a

legal practitioner, the management cannot be driven to a disadvantageous position. The Tribunal followed the said judgment and overruled the objection raised by the petitioner. Apart from applying the said precedent, the Tribunal had undertaken extensive discussion, on the development of law on this branch. Though the I.A. filed by the petitioner is not referable to any particular provision, the Tribunal had examined the core of the issue and gave its verdict. This court is of the view that the conclusions arrived at by the Tribunal are correct and based on thorough analysis of facts and law.

7. The writ petition is, accordingly, dismissed. There shall be no order as to costs.

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