

**Siemens Limited Vs. K.K. Gupta and anr.**

**Siemens Limited Vs. K.K. Gupta and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/709233](http://sooperkanoon.com/709233)

**Court :** Delhi

**Decided On :** Oct-21-2005

**Reported in :** 125(2005)DLT85; 2005(85)DRJ214; 2006(108)ELT899(Del); (2006)IILLJ66Del; 2006(2)SLJ503(Delhi)

**Judge :** Mukul Mudgal, J.

**Acts :** [Industrial Disputes Act, 1947](#) - Sections 2, 24(1), 28(2), 36, 36(1), 36(2) and 36(4); [Companies Act, 1956](#) - Sections 2(30); Bar Council Rules - Rule 49

**Appeal No. :** W.P. (C) No. 6220/2001

**Appellant :** Siemens Limited

**Respondent :** K.K. Gupta and anr.

**Advocate for Def. :** Party-in-person

**Advocate for Pet/Ap. :** Sudhir Chandra, Sr. Adv. and; Rajendra Dhawan, Adv

**Disposition :** Petition dismissed

**Judgement :**

**Mukul Mudgal, J.**

1. This writ petition filed by the petitioner company/employer challenges the order dated 28th May, 2001 passed by the learned Labour Court upholding the

objections of the respondent that the petitioner management should not be allowed to be represented through legal practitioners/lawyers and S/Shri G.D. Maheshwari, P.K. Sharma and R.K. Joshi who claimed to be officers of the PHD Chambers of Commerce and Industry (PHDCCI), on the ground that they were not entitled to represent the said management in view of the specific bar contained in Section 36 of the Industrial Disputes Act (hereinafter referred to as the 'Act'). Shri G.D. Maheshwari retired from the service of PHDCCI and had stopped appearing on its behalf. In doing so, the impugned order followed the judgment of Hon'ble Andhra Pradesh High Court in Andhra Pradesh Power Diploma Engineer's Association v. Andhra Pradesh State Electricity Board and Anr., 1995 LAB I.C. 2654, wherein it was held that the employer defined in Section 36 of the Act means an industrial employer and the term 'association of employers' used in Section 36(2) envisaged the status of the members of the association to be that of employers. Following the above judgment, the learned Labour Court held that some times the industrialists employed qualified Advocates under the garb of Section 36(2) of the Act to circumvent the mandate of Section 36(2) of the Act. Accordingly, upon finding that Mr. R.K. Sharma and Mr. R.K. Joshi are not officers of PHDCCI as defined under Section 36(2), the impugned order was passed.

2. Section 36 of the Act reads as follows:-

'36. Representation of parties-(1) A workman who is a party to dispute shall be entitled to be represented in any proceedings under this Act by-

(a) [any member of the executive or other office bearer] of a registered trade union of which he is a member,'

(b) [any member of the executive or other office bearer] of a federation of trade unions to which the trade union referred to in clause (a) is affiliated.

(c) where the worker is not a member of any trade union, by [any member of the executive or other offer bearer] of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed.

(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 association 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 authorised 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 proceedings 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 proceeding and [with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be].'

3. The pending industrial dispute arose in view of the termination of the services of the respondent by the petitioner company on 14th August, 1997. However, in spite of opposition of the petitioner company based inter alia on the plea that the respondent was not a workman and in fact working in the managerial cadre, the dispute was thereafter referred for adjudication by the order of reference dated 1st June, 1998.

4. The terms of reference read as follows:-

#### 'SCHEDULE TERMS OF REFERENCE

'Whether the services of Ms. K.K. Gupta have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is she entitled and what directions are necessary in this respect?'

5. The sum and substance of the case set up by the petitioner company in challenging the impugned order of the Labour Court is based upon the reliance on the judgment of Hon'ble Supreme Court in Paradip Port Trust, Paradip v. Their Workmen, : AIR 1997 SC1730 . The position of law laid down in the said judgment which is relied upon by Shri Sudhir Chandra, the learned senior counsel for the petitioner, is as follows:-

'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 officer bearers of the trade unions or as officers of the employer's association. When law provides for a requisite qualification for exercising a right, fulfillment of the qualification in an 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 the 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) are 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.'

6. It is submitted by the petitioner that the learned Labour Court has erred in holding that qualified Advocates are employed under the garb of Section 36(2) of the Act to circumvent the mandate of Section 36(2) of the Act. It was submitted on behalf of the petitioner that in view of the judgment of the Hon'ble Supreme Court in Paradip Port Trust (supra), it was not open for the Labour Court to have held that qualified Advocates have been appointed contrary to the mandate of Section 36(2) of the Act, because it has been clearly held by the Hon'ble Supreme Court that the motive of appointment cannot be made an issue before the Tribunal.

7. The respondent No. 1, who is appearing in person, however, submitted, inter alia, as follows:

a) PHDCCI is not an association of employers, within the meaning of Section 36(2) of the [Industrial Disputes Act, 1947](#) because:

(i) It is not an association exclusively of industrial employers. The respondent relied on the extract of following judgments to support the above plea:

'(i) 1995 LAB I.C. 2654 Andhra Pradesh Power Diploma Engineers Association v. Andhra Pradesh State Electricity Board (FB) of the Andhra Pradesh High Court:

'(A) Industrial Disputes Act (14 of 1947), Section 2(g), 36(2) - 'Employer' -- Word is mentioned in Act only in context of being an industrial employer Phrase 'association of employers' used in Section 36(2)-- 'Association viz. Federation of Chamber of Commerce and Industry consisting of not only 'employers as its members but is conglomeration of outsiders - such as advocates etc. - Is not an association of employers under Section 36(2).'

'It is of importance to note that Section 2(g) does not purport to give an exhaustive definition of the word 'employer' which evidently means that the Parliament deliberately intended and defined the word only with relation to industries as being sufficient for the purpose of the Act. Hence both the preamble of the Act and the definition of 'employer' in the Act rather show the legislative intendment of the word being used in the context of industrial employers alone.'

'The phrase 'association of employers' used in Section 36(2) in the plain sense would mean the status of the members of the association to be that of employers. The use of the words being specific and there being no ambiguity, the words are to be understood in their natural sense and are susceptible tot he only meaning that the association must be of persons who are employers and have formed themselves into an association because of their status as such. In other words, the membership of the association must be qua employers and not otherwise viz., it is not meant to be an association of persons enjoying different and varieties of status of which some accidentally happen to be employers. The qualification for becoming members of the association must be that of as employers.'

'Therefore where a resume of the different provisions of the Memorandum of Articles of Association of Federation of Chamber of Commerce shows membership to consist of not only employers but also of individuals and others i.e. non-employers such as practicing advocates etc. it cannot be said that said

federation is an association of employers under the provisions of Section 36(2)(a) of the Act.'

(ii) : (1969)IILLJ25Kant Workman of B.R.Darbar Ginning & Pressing Factory & another (DB) of the Mysore High Court:

'It is true that the word 'exclusively' is not there in any of the clauses of Section 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. 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 vide Section 36(2) of the Act.'(iii) : (1994)IILLJ326Guj H.A.Ichhaporiya v. M.G.Hospital, Surat and Anr. of the Gujarat High Court:

'An Association of Employers would be an Association of persons having only such persons having common interest as employers and where membership is restricted to such persons.'(ii) The objects of PHDCCI a company registered under the [Companies Act, 1956](#) as shown in its Memorandum of Association indicate clearly that PHDCCI is formed for the purpose of business and acquisition of gain by individual members thereof.

b) Shri P.K. Sharma and Shri R.K. Joshi are not the officers of the association of employers as contemplated by the [Industrial Disputes Act, 1947](#) because:

(i) Shri P.K. Sharma and Shri R.K. Joshi are not regular officers of the employers association. The respondent relied on the extract of the following judgments in support of the above plea.

'(i) : (1969)IILLJ25Kant Workman of B.R. Darbar Ginning & Pressing Factory Hubli v. B.R.Darbar Ginning & Pressing Factory and Anr., (DB) of the Mysore High Court:

'Sri Apte was permitted to charge individual industrial concerns fees for service rendered to them indicates that the resolution was merely 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 function 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 such advice in regard to the general or individual problems. Similarly, he is to represent the chamber or individual concerns 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 the chamber.'

'A practicing lawyer may conceivably be an officer, but the description as legal adviser without reference to the terms of his appointment and the duties of his office would not be enough for a finding that he is an officer of the company. What is necessary is that the legal practitioner concerned must be a regular officer of the employers association.'

(ii) In 1995 Lab I.C. 2654 Andhra Pradesh Power Diploma Engineers Association v. Andhra Pradesh State Electricity Board (FB), of the Andhra Pradesh High Court:

'He also admitted that advocates are enrolled as members in individual category and the purpose of the admission of such members is to represent the cases of its members for which purpose a panel of advocates called Honorary Secretaries is maintained. Mr. Sreenivasamurthy explained to us that the advocates in panel are directly contacted by the members, who are parties before the Tribunal or the Labour Court, for availing of their services and that the advocates lend their services at their own stipulated fees over which the respondent No. 2 has no control.'

(ii) There was no mention in the above mentioned authority letter that petitioners are member of PHDCCI.

(iii) Shri P.K. Sharma and Shri R.K, Joshi accepted the authority letter by signing in their individual capacity.

(iv) The above named persons were free to sign or not to sign (as Shri G.D. Maheshwari never signed it as per records).

(v) There is no nexus between the petitioner company and Shri G.D. Maheshwari, Shri P.K. Sharma and Shri R.K. Joshi.

(vi) According to the judgment of the Supreme Court in Paradip Port Trust (supra), para 14 'Section 36 being not exhaustive but only supplemental to any other lawful mode of representation of the parties. Thus normal lawful mode of representation of both the parties in the present case is representation in person. Representation under Section 36 is only supplementary to the normal mode.

8. It was submitted by the respondent that the law laid down in the above decisions very clearly held that such appointments did not fulfill the requirement of Section 36 of the Act and consequently such persons could not represent the management.

9. The respondent has also submitted that the appointments were sham, and in fact all these officers are qualified Advocates who have no other function in the association except to represent the various employers before the Labour Court so as to circumvent the motive and purpose underlying Section 36 of the Act.

10. The respondent further submitted that the two officers of the association in question namely Mr. P.K. Sharma and Mr. R.K. Joshi had not surrendered their licenses and this fact has been averred by her in the application in the following terms before the Labour Court.

'4. That the representatives S/Shri G.D. Maheshwari, P.K. Sharma and R.K. Joshi should give an affidavit that they are not practicing Advocates and not enrolled with any Bar Council of India or State Bar Council.'

The reply to to the said application by the petitioner reads as follows:-

'4. The contents of para 4 of the application are incorrect, vague and misconceived, hence denied. It is submitted that S/Shri G.D. Maheshwari, P.K. Sharma and R.K. Joshi are not practicing Advocate but are the officers employed by the PHDCCI, which is an association of employers.'

11. The petitioner's reply to the respondent's application does not specifically deal with the averment in para 4 whether the aforesaid two officers appearing for the petitioner company still retained their licenses of the respective Bar Council. There is no positive averment in the reply about surrendering of the licenses to the relevant Bar Council by the above mentioned officers of PHDCCI.

12. The respondent further submits that Section 36(2) of the Industrial Disputes Act clearly stipulates that in any case there cannot be plural representation by more than one representatives on behalf of the petitioner company. The wording of Section 36(2) reads as follows:-

'36. Representation of parties -.

(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 an association of employers to which the association referred to in clause (a) 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 authorised in such manner as may be prescribed.

The appointment of 2 or more representatives by PHDCCI is contrary to the mandate of and defeats the object behind Section 36(2) of the Act.

13. Reliance has also been placed on words 'an officer of an association' and other qualifying phrases in sub section (2) to contend that there could not be more than one officer representing the petitioner as sought to be done by the petitioner in the present case and at best it could only be one officer.

14. A perusal of the above pleading thus shows that respondent's plea that the petitioner be directed to disclose whether the aforesaid three persons have surrendered their licenses to the Bar Council of India, has not been met by the petitioner. Thus, an inference has to be drawn that Shri P.K. Sharma and Shri R.K. Joshi continue to hold their bar licenses and are thus capable of practicing in Courts of law. In this view of the matter, the following wording of the judgment of Paradip Port Trust (supra) becomes significant:-

'16. 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 the 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 capacity of an officer of the association in the case of an employer and in the capacity of an office-bearer of the union in the case of workmen and not in the capacity of a legal practitioner. The fact that a person is not a legal practitioner will not affect the position if the qualifications specified in Section 36(1) and Section 36(2) are fulfilled by him.'

15. A perusal of the above extracts shows that a significant factor in the decision of the Supreme Court judgment was the fact that the person concerned was a practicing Advocate earlier, implying clearly that he had ceased to be an Advocate after becoming an officer of the Association. Similarly, the phrase 'legal practitioner' in the vitalized portion of the extract in the above mentioned judgment

would also mean that such a legal practitioner has ceased to be a practicing advocate. If the two concerned representatives of the petitioner continue to enjoy the licenses of the Bar Council, they had not ceased to be Advocates and whether or not they were borne on the record of PHDCCI they could not therefore, be officers of the Association by virtue of effective registration with the Bar Council of Delhi particularly in view of the mandate of Rule 49 of the Bar Council Rules which reads as under:-

'Rule 49. 'An advocate shall not be a full-time salaried employee of any person, Government, firm, corporation or concern, so long as he continues to practice and shall, on taking up any such employment intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practice as an Advocate so long as he continues in such employment.

Nothing in this rule shall apply to a Law Officer of the Central Government of a State or of any Public Corporation or body constituted by statute who is entitled to be enrolled under the rules of his State Bar Council made under Section 28(2)(d) read with Section 24(1)(e) of the Act despite his being full-time salaried employee.'

16. Even assuming that the above judgments of Andhra Pradesh Power Diploma Engineers Association's case (supra), Workmen of Darbar Factory's case (supra) are contrary to the law laid down in Paradip Port Trust's case (supra) as contended by the petitioner, I nevertheless find that the judgment in the Paradip Port Trust's case (supra) is predicated on the premise that the concerned 'officer of association' was no longer a practicing lawyer. In the present case, the respondents were directed by this Court vide order dated 23rd July, 2005 to file an affidavit to reply to the above mentioned averment of the petitioner that the above said representatives should give an affidavit that they are not practicing Advocates and are not enrolled with Bar Council of India or any State Bar Council. An extract of the said order is reproduced as under:-

'The learned senior counsel for the petitioner was asked to indicate in writing whether the licenses of S/Shri P.K. Sharma and R.K. Joshi were suspended while they were working for the PHD Chambers of Commerce. Such information be filed within 3 weeks from today with advance copy to respondent No. 1.'

17. In spite of the above mentioned order of this Court, the respondents have not filed such information. This leads to drawing of an adverse inference that the respondents are still practicing as Advocates since they have not specifically denied the plea of the petitioner that the respondents are practicing as advocates. Thus, according to Rule 49 of the Bar Council of India Rules, once an advocate is employed by any person, Government, firm, corporation or concern, he ceases to practice as an advocate. No such information has been shown by the petitioner to have been provided by Mr. P.K. Sharma and Mr. R.K. Joshi to the Bar Council of Delhi. This coupled with the lack of any response by the petitioner to the order of the court dated 23rd July, 2005 clearly shows that Shri P.K. Sharma and Shri R.K. Joshi had not ceased to be practicing advocates and thus, in law by virtue of Rule 49 could not have been said to be employed by the PHDCCI. Once Shri P.K. Sharma and Shri R.K. Joshi could not be said to be employees of PHDCCI then they naturally could not enjoy the representation in favor of the employer PHDCCI, a chamber of Commerce as given in Paradip Port Trust's case (supra).

18. I am also of the view that the respondent's plea about representation of the petitioner company by more than one officer is supported by the provisions of Section 36(2) of the Act. The petitioner company thus cannot utilize Section 36(2) to have a representation by more than one officer in view of the clear reference to the singular in the Section 36(2) of the Act. This in my view would also lead to an inequitable situation where an employer as in the present case would be represented by more than one officer and the petitioner would be singly opposing a team.

19. However, the enquiry about the motive of the appointment as being contrary to the intention of Section 36 of the Act. is no longer open for any Court to be undertaken in view of the mandatory position of law laid down by the Hon'ble Supreme Court in Paradip Port Trust's case (supra). But, the respondent placed strong reliance on the judgment of Orissa High Court in Kalinga Studios Limited v. Presiding Officer, Industrial Tribunal and Ors. : (1994)IILLJ108Ori to contend that the enquiry as to whether two persons were officers of the association could still be undertaken though the motive of the appointment could not be gone into in view of the law laid down by the Hon'ble Supreme Court in Paradip Port Trust's

case(supra).

'9. Let us now see as to how far the observation made in Paradip Port Trust case that the motive is not to be gone into can help the petitioner. What was observed therein was that motive for appointing a legal practitioner as an officer of the employer's association cannot be gone into. This does not prevent examination of the question whether the legal practitioner is an officer and it is this examination which has led the Presiding Officer to conclude that Shri Nanda is not an officer, with which view we concur.'

20. By virtue of an order dated 28th July, 2001, the Labour Court held as follows:-

'The full bench of Andhra Pradesh High Court in 1995 Lab I.C. 2654 observed that the employer as mentioned in Section 36(2) of the I.D. Act means industrial employer and the term of association of employers used in Section 36(2) envisaged the status of members of the association to be that of employers. However, the Memorandum of Articles of Association of Federation of Commerce and Industry shows that the membership consisted of not only the employers but also of the individuals such as non employer and practicing advocates. Sometimes the industrialists, employer, qualified advocates under the garb of officers as mentioned under Section 36(2) of the I.D. Act make an attempt to circumvent the bar laid down under Section 36(2) of the I.D. Act.'

21. The above italicised portion of the judgment of the Labour Court attempts to question the motive of the appointment of Mr. P.K. Sharma and Mr. R.K. Joshi by the petitioner employer and is thus contrary to the judgment of the Hon'ble Supreme Court in Paradip Port Trust's case (supra) and, therefore, cannot be sustained.

22. However, in my view, the order of the labour court upholding the objections of the respondent with respect to the appearance of Mr. P.K. Sharma and Mr. R.K. Joshi, on the ground that they were not 'officers' of the association is correct and can be and is hereby upheld. The Hon'ble Supreme Court in the case of Paradip Trust (supra) laid down the following law:-

'...But the word 'officer' in Section 36(2) is not defined in the Act and may well have been, as done under Section 2(30) of the Companies Act. This is bound to give rise to a controversy when a particular person claims to be an officer of the association of employers. No single test nor an exhaustive test can be laid down for determination as to who is an officer in the absence of a definition in the Act. When such a question arises the Tribunal, in each individual case, will have to determine on the materials produced before it whether the claim is justified.

23. In view of the proposition of law laid down by the Hon'ble Supreme Court in the above mentioned judgment, the appropriate forum for determining whether a person is 'officer' of an association as per Section 36(2) of the Industrial Dispute Act is the Tribunal, and in the instant case the labour court after perusing all the material before it has decided that Mr. P.K. Sharma and Mr. R.K. Joshi are not the 'officers' of the association as contemplated by Section 36(2). This finding of fact by labour court does not warrant any interference by this Court under Article 226 for the aforesaid reasons.

24. The petition is accordingly dismissed with no order as to costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**