

Laxmi Engineering Industries Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jul-19-2002

Reported in : [2003(97)FLR703]; RLW2003(3)Raj1735; 2003(1)WLC713

Judge : Sunil Kumar Garg, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 36 and 36(4); Bar Councils Act - Sections 14(1); [Constitution of India](#) - Article 14

Appeal No. : S.B. Civil Writ Petition No. 475 of 2001

Appellant : Laxmi Engineering Industries

Respondent : State of Rajasthan and ors.

Advocate for Def. : Sanjeet Purohit, Adv. for; Govind Mathur, Adv. for Respondent Nos. 2 and 3 and;

Advocate for Pet/Ap. : Tribhuvan Gupta, Adv.

Disposition : Writ petition dismissed

Judgement :

Garg, J.

1. This writ petition under Article 226 & 227 of the [Constitution of India](#) has been filed by the petitioner on 30.1.2001 against the respondents with the prayer that by

an appropriate writ, order or direction, the order dated 17.8.2000 (Annex.P/4) passed by the learned Judge, Industrial Tribunal & Labour Court, Udaipur (respondent No. 4) by which he, on the application of the respondent No. 2 Union through its President P.L. Srimali (respondent No. 3) filed under Section 36 of the [Industrial Disputes Act, 1947](#) (hereinafter referred to as 'the Act of 1947'), did not permit the petitioner employer) to be represented by a lawyer before the Industrial Tribunal, be quashed and set aside.

2. It arises in the following circumstances:

The respondent No. 1 State of Rajasthan through its Notification dated 26.2.2000 (Annex.P/1) made a reference under Section 10 of the Act of 1947 to the respondent No. 4 Industrial Tribunal stating whether retrenchment of some workmen on 14.1.1.1998 was justified or not and on that reference, a case being industrial dispute case No. 16/2000 was registered by the respondent No. 4 Industrial Tribunal.

After submitting the claim petition, the respondent No. 2 Laghu Udhog Mazdoor Union, Udaipur through its President P.L. Srimali (respondent No. 3) filed an application under Section 36 of the Act of 1947 before the respondent No. 4 Industrial Tribunal stating inter alia that the applicant-respondent No. 2-Union would be represented by P.L. Srimali, who apart from Advocate, is also President of the respondent No. 2 Union. It was further stated in that application that the petitioner (employer) should not be allowed to be represented by a lawyer, as it was against the provisions of Section 36 of the Act of 1947. A copy of the said application filed by the respondent No. 2-Union before the respondent No. 4 Industrial Tribunal is marked as Annex.P/2.

A detailed reply to the said application of the respondent No. 2 Union was filed by the petitioner and in that reply, it was submitted by the petitioner that when one side is being represented by a lawyer, therefore, on the ground of principle of natural justice, the present petitioner should also be allowed to be represented by the lawyer before the Industrial Tribunal, A copy of the said reply filed by the petitioner to the application of the respondent No. 2 Union is marked as Annex.P/3.

The respondent No. 4 Industrial Tribunal through impugned order dated 17.8.2000 (Annex.P/4) did not permit the present petitioner to be represented by a lawyer before the Industrial Tribunal meaning thereby impliedly the application of the respondent No. 2 Union dated 13.6.2000 (Annex.P/2) was accepted.

Aggrieved from the said order dated 17.8.2000 (Annex.P/4) passed by the respondent No. 4 Industrial Tribunal, Udaipur, this writ petition has been filed by the petitioner.

3. In this writ petition, the following submissions have been made by the learned counsel appearing for the petitioner: -

(1) That the petitioner is denied equal opportunity before law by the impugned order Annex.P/4 and that is also violative of Article 14 of the [Constitution of India](#) and, therefore, the impugned order Annex.P/4 passed by the respondent No. 4 Industrial Tribunal should be set aside.

(2) That even in domestic enquiry where employer appoints legally trained personnel for presenting and prosecuting the case, in such a situation, permission to the delinquent employee to engage legal practitioner is also given and, therefore, from this point of view also, the petitioner should be allowed to be represented by a lawyer before the Industrial Tribunal as the respondent No. 2 is being represented by the Advocate before the Industrial Tribunal.

(3) That the impugned order Annex.4 is not a speaking order and no reasons have been assigned in it and, therefore, it should be set aside on this ground alone.

Hence, it was prayed that this writ petition be allowed and the impugned order of the respondent No. 4 Industrial Tribunal, Udaipur dt. 17.8.2000 (Annex.P/4) be quashed and set aside and the petitioner be allowed to be represented before the Industrial Tribunal by a lawyer.

4. On the other hand, the learned counsel for the respondent No. 2 & 3 has argued that the controversy involved in this writ petition is squarely covered by the decision of the Hon'ble Supreme Court in Paradip Port Trust, Paradip v. Their Workmen (1) and the impugned order Annex.R/4 dated 17.8.2000 passed by the

Industrial Tribunal is perfect in law and, therefore, this writ petition filed by the petitioner be dismissed.

5. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent No. 2 and 3 and gone through the materials available on record.

6. To appreciate the controversy involved in this writ petition, for convenience, Section 36 of the Act of 1947 is being quoted here:-

'36. Representation of parties.--(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding 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 office-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 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 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.'

7. In the case of Paradip Port Trust (supra), the Hon'ble Supreme Court discussed the various provisions of Section 36 of the Act of 1947 and came to the following conclusions:-

'(1) It is necessary 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.

(2) 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 practising 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.

(3) Also the fact that a person 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. So that there is no need under the law to pursue the matter in order it find out whether the appointments are in the circumvention of Section 36(4) of the Act. Motive of the appointment cannot be made an issue before the Tribunal.

(4) Consent of the opposite party is not an idle alternative but a ruling factor in Section 36(4). Hence, one cannot hold that 'and' in Section 36(4) can be read as 'or'.

(5) Nor can the fact that under the Advocates Act, 1961 an advocate can appear before all courts and tribunals matter much, for the Industrial Disputes act is a

special statute. This special act will prevail over the Advocates Act which is a general piece of legislation with regard to the subject-matter of appearance of lawyers before all courts, tribunals and other authorities. Generalia specialibus non derogant. Secondly, the matter is not to be viewed from the point of view of legal practitioners but from that of the employer and workmen who are the principal contestants in an industrial dispute.

(6) Hence a lawyer, simpliciter, cannot appear before an Industrial Tribunal without the consent of the opposite party and leave of the Tribunal merely by virtue of a power of attorney executed by a party. A lawyer can appear before the Tribunal in the capacity of an office bearer of a registered trade union or an officer or association of employers and no consent of the other side and leave of the tribunal will, then, be necessary.'

8. So far as the argument that since the respondent No. 2 Union is being represented by P.L. Srimali, Advocate, therefore, the petitioner should also be allowed to be represented by a lawyer before the Industrial Tribunal is concerned, the same carries no weight, in view of the decision of the Hon'ble Supreme court in the case of Paradip Port Trust (supra), as P.L. Srimali apart from Advocate he is also President of the Laghu Udhog Mazdoor Union, Udaipur (respondent No. 2) and, therefore, such person can represent the case on behalf of the Union. However, it does not mean that by this proposition, other party would also get the same right.

9. Clause (4) of Section 36 of the Act of 1957 is very much clear on the point that before the Labour Court or Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties and with the leave of the Labour Court or Tribunal, as the case may be.

10. In the present case, in the application (Annex.P/2) dated 13.6.2000 filed by the respondent No. 2-Union through its President P.L. Srimali (respondent No. 3), there is a clear mention of the fact that no consent was given by the respondent No. 3 P.L. Srimali, President of the respondent No. 2 Union to the present petitioner to be represented by a lawyer before the Industrial Tribunal.

11. When this being the position, as a lawyer simplicitor cannot appear before the Industrial Tribunal without the consent of the opposite party and the same is missing in the present case, therefore, in these circumstances, the petitioner is not entitled to be represented by a lawyer before the Industrial Tribunal. .

12. Apart from this Section 14(1)(b) of the Bar Councils Act is limited by a saving clause 'save as otherwise provided by or under any other law for the time being in force'. That saving clause is sufficient to take in the provision which is found in Section 36 of the Act of 1947, which makes the consent of the other party and the leave of the Court, pre-requisite before an advocate can represent a party in the Labour Court.

13. In my considered opinion, Section 36 of the Act of 1947 is not violative of Articles 14 of the [Constitution of India](#) or principles of natural justice.

14. Therefore, when Section 36 of the Act of 1947 is not violative of Article 14 of the [Constitution of India](#) or principles of natural justice, the argument that since one party is being represented by a lawyer, the other party should also be permitted to be represented by a lawyer, is not at all tenable.

15. In support of the above views, the judgment of the Orissa High Court in Kalinga Studios Ltd. v. Presiding Officer, Industrial Tribunal and Ors. (2) and the judgment of the Bombay High Court in Punjabi Ghasitaram Halwai Karanchiwala v. Sahadeo Shivram Pawar and Ors. (3) may be referred to.

16. So far as the argument that even in domestic enquiry where employer appoints legally trained personnel for presenting and prosecuting the case in the enquiry, in such a situation, permission to the delinquent employee is also given to engage a lawyer and, therefore, from this point of view also, the petitioner should also be allowed to be represented by a lawyer before the Industrial Tribunal, is concerned, the same also carries no weight because of the simple reason that this argument pertains to departmental enquiry, while there is a specific law embodied in Section 36 of the act of 1947 and the same has been found to be constitutionally valid. Therefore, the present petition is answered in the background of Section 36 of the Act of 1947 and when the present petition is examined under the provisions of

Section 36 of the Act of 1947, it stands nowhere and in these circumstances, the impugned order Annex.P/4 of the Industrial Tribunal does not call for any interference by this Court.

17. So far as the argument that since the impugned order Annex.P/4 is not a speaking order and no reasons have been assigned in it, therefore, it should be set aside, is concerned, no doubt reasons have not been assigned by the Industrial Tribunal in the impugned order Annex.P/4, but as discussed above, when the position is very much clear, therefore, it would not be proper now to remand the matter only on this ground alone.

18. For the reasons stated above, no interference is called for with the impugned order of the respondent No. 2 Industrial Tribunal, Udaipur dated 17.8.2000 (Annex.P/4) and this writ petition is liable to be dismissed.

Accordingly, this writ petition filed by the petitioner is dismissed. No order as to costs.