

R. Rajamani Vs. the Presiding Officer, li Additional Labour Court and P.V. Sundaram (Director), Addisons Paints and Chemical Limited

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Court : Chennai

Decided On : Feb-20-2007

Reported in : [2007(114)FLR466]; (2007)IILLJ704Mad; (2007)3MLJ53

Judge : A.P. Shah, C.J. and ;K. Chandru, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2A, 33, 36, 36(1), 36(2) and 36(4);
[Constitution of India](#) - Article 14

Appeal No. : W.A. No. 49/2007 and M.P. No. 1 and 2 of 2007

Appellant : R. Rajamani

Respondent : The Presiding Officer, li Additional Labour Court and P.V. Sundaram (Director), Addisons Paints and

Advocate for Def. : M.R. Ragavan, Adv. for ;N. Balasubramanian, Adv. for 2nd Respondent

Advocate for Pet/Ap. : Uma Shankari, Adv.

Disposition : Appeal dismissed

Judgement :

A.P. Shah, C.J.

1. In this writ appeal, we are concerned with the scope of Section 36(2) of the [Industrial Disputes Act, 1947](#) (hereinafter referred to as 'I.D. Act'), on the question as to whether in an industrial adjudication, an employer can be represented by an office bearer of an association of employers when such office bearer is also a legal practitioner.

2. The appellant has raised a dispute under Section 2A(ii) of the I.D. Act in I.D. No. 256/2002 for reinstatement with backwages, continuity of service and all other attendant benefits as against the management of the 2nd respondent-Company. The appellant has also filed Complaint No. 4/2002 as against Mr. R. Viswanathan, (IRO of the respondent-company) under Section 33(a) of the I.D. Act and I.A. No. 88/2004 is filed to implead Mr. P.V. Sundaram, Director to the Complaint No. 4/2002 as a respondent in the place of deceased R. Viswanathan. In all the above three proceedings, on behalf of the respondent Mr. R. Ganesan, Company Secretary of the respondent has authorised Mr. N. Balasubramanian, a practising advocate and a member of the Managing Committee of the Employers' Association, namely, All India Manufacturers Organisation to represent the respondent.

3. The appellant-workman objected to the appearance of Mr. N. Balasubramanian admittedly a qualified advocate, on the ground that he is a legal practitioner and consequently, not entitled to represent the respondent-company in view of the provisions of Section 36(2) of the I.D. Act. The appellant has not disputed the position that Mr. N. Balasubramanian is a member of the Managing Committee of an Employer's Association i.e. All India Manufacturers Organisation and that he intends to represent the respondent-company in that capacity. However, according to the appellant Mr. N. Balasubramanian is not on the pay-roll of any of the member establishment and not in the respondent-company either, hence, he is disentitled to appear in his capacity as a member of the Employers' Association. By common order dated 03.01.2005 passed in all the three proceedings, the Labour Court has upheld the right of Mr. N. Balasubramanian to represent the respondent-company under Section 36(2) of the I.D. Act.

4. Aggrieved by the order of the Labour Court, the appellant filed the present writ petition questioning the entitlement of Mr.N. Balasubramanian to appear on behalf of the respondent-company. The learned single Judge disposed of the writ petition with the following order.

The common order dated 03.01.2005 giving the numbers as I.A. No. 88/2004, Complaint No. 4/2002 and I.D. No. 256/2002 stands confirmed so far as it relates to the relief prayed for in I.A. No. 88/2004 alone. In other words, Complaint No. 4/2002 and I.D. No. 256/2002 are not disposed of by the impugned order. The Labour Court is directed to first take up the complaint bearing No. 4/2002 for disposal in accordance with law and then take up I.D. No. 256/2002 for disposal.

5. Learned Counsel appearing for both the parties agreed that the above order of the learned single Judge is clearly erroneous. The Labour Court has not decided I.A. No. 88 of 2004 and the common order passed by the Labour Court pertains only to the question of the right of Mr. N. Balasubramanian to represent the respondent-company.

6. Thus, the short question that calls for our consideration is whether the provisions of Section 36 of the I.D. Act bars the appearance of a legal practitioner even though he is a member of the Managing Committee of the Employers' Association.

7. Section 36 of I.D. Act which provides for representation of parties is as follows:

36.(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 the federation of trade unions to which the trade union referred to in Cl.(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 association of employers to which the association referred to Cl.(a) is affiliated;

(c) where the employer is not member of any association of employers, by an officer of any association or 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 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 the proceedings and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be

8. Applying Section 2(a) of Section 36 to this case, it appears that Mr.N. Balasubramanian would be entitled to represent the respondent-company before the labour Court since that Section provides an officer of an association of employers of which he is a member to represent the employer.

9. Learned Counsel appearing for the appellant, however, urged before us that Mr. N. Balasubramanian cannot be said to be an officer of any of the categories mentioned in Clause (a) (b) (c) of Sub-section 2 of Section 36 of the I.D. Act in view of the fact that since he is basically practising lawyer and not a paid officer, not entitled to represent the employer or Employers' Association. He placed reliance on the decision of the learned single Judge of this Court in R.M.

Duraisamy v. Labour Court and Ors. 1998 (1) LLN 712 wherein it was held that the Legislature has permitted any member of the executive or other office-bearer of a registered trade union or other office-bearer of federation of trade unions to which trade union referred to clause (a) is affiliated but as far as the employer is concerned, the Legislature specifically used the word officer of an association of employer section. It was held that the authorised representative was only an 'executive' and not an 'officer' of an association of employers and thus not entitled to represent the employer. In other words, only a paid officer of the Association or its member can be permitted to represent the employer under Section 36(2) of the I.D. Act.

10. We are unable to agree with the view taken by the learned single Judge in Duraiswamy's case cited supra. There is no doubt that a legal practitioner is prohibited from representing a party to a dispute under the Industrial Disputes Act in conciliation proceedings or any proceeding before a Court. That, however, does not mean that any person who has obtained a LL.B. Degree or has practised an advocate is debarred from representing an employer, even though, he is gainfully employed and has become an officer of an association of employers. 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.

11. In this connection, it must be relevant to mention that Section 36 of the I.D. Act had come up for interpretation before the Supreme Court in the case of Paradip Port Trust v. Their Workmen 1977 (I) LLN 5 wherein it was observed in para 16 at

page 11 as follows:

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. 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 capacity of an officer of the association in the case of 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 a legal practitioner will not affect the position if the qualifications specified in Section 36(1) and Section 36(2) are fulfilled by him.

12. Therefore, it is evident that any office-bearer of a trade union though he is a legal practitioner can represent workmen likewise a legal practitioner if he is an officer of an association of the employers can also appear before the Tribunal. The Supreme Court has interpreted the provisions of Section 36(1) and 36(2) and has taken the view that irrespective of fact that incumbent is a legal practitioner will not affect his position if the qualifications specified in Sections 36(1) and 36(2) are fulfilled.

13. In the present case, the question is whether Mr.N.Balasubramanian, who is the member of the managing committee of the association is an 'officer' or not. The argument of the appellant is that the 'officer' does not include the member of the managing committee. This does not appear to be correct interpretation because the dictionary meaning of the word 'officer' includes any person who holds the office. The expression 'Officer' has been defined in Concise Oxford Dictionary to mean 'holder of public, civil or ecclesiastical office, sovereign's servant or minister appointed or elected functionary'. Similarly in Webster's New World Dictionary

(2nd Concise Edition) 'officer' means 'any one holding an office or position of authority in a government, business, society etc.,' Therefore, any person who is holding the office of any society or association or authority can be included in the expression 'officer'.

14. The word 'officer' is of a wider import in that it includes not only those, who are appointed to a post of responsibility, but it includes persons elected or nominated to a governing body or executive or managing committee in accordance with the constitution or bye-law of the concerned institution or body.

15. In *Associated Cement Staff Union v. Associated Cement Companies Limited and Ors.* 2002 (2) LLN 527 Division Bench of Bombay High Court to which one of us (Shri A.P. Shah, CJ) is a party, following the Supreme Court decision, upheld the right of the employer to be represented by one Pavaskar, who was a member of the executive committee of the Employers' Federation of India which represented the company before the Tribunal. After referring to the judgment in case of *Paradip Port Trust* case, cited *supra*, the Division Bench observed in para 10 as follows:

In our view it is clear that the word 'Officer' was substituted as aforesaid so as to include, in relation to workmen, any member of the executive committee of other office-bearer, probably having regard to the structure of trade unions. It does not, however, follow that because the word 'Officer' in relation to representative of employer has not been amended, it excludes a mere member of the executive committee of the association of the employers. The word 'officer' must be given its plain meaning, that is any person who holds an office or an appointed or elected functionary. We are, therefore, of the view that a member of the executive committee of an association of employers must be taken to be an officer of the employers association.

16. Similarly in the case of *Infar (India) Limited v. Madam Mohan Ghosh and Ors.* 2001 (10 LLN 1140 the Calcutta High Court upheld the right of the employer to be represented by one Sri Amar Roy, an advocate, who was the President of the Employers' Association who represented the employer company before the Tribunal. The Calcutta High Court after referring to the several meanings of the term Officer from the dictionary held that what is required is that one has to find

out whether the incumbent representative is member of an association or not.

17. Similar view has been taken by the Karnataka High Court in the case of Hotel Ashoka v. Presiding Officer, Additional Labour Court and Anr. 1984 (1) LLN 332 and Delhi High Court in the case of Management of Associated Cement Companies Limited v. Workman Saroj Arora 2001(2) LLN 726.

18. In Management H.M.E.M. Equipment Division Limited v. P.O. 2007(1) MLJ 749 one of us (K. CHANDRU, J.) while dealing with Section 36(4) of I.D. Act has held that though the workmen were technically represented by a leader of the Trade Union to which they belong, but the said representative is an advocate practising before the High Court and the other Subordinate Courts and who has rich experience in dealing with labour laws for over 30 years. If the same benefit is denied to the Management on the basis of the workmen not giving consent in terms of Section 36(4) of the I.D. Act, certainly it will result in an imbalance being created in defending the case before a quasi-judicial body and it will violate Article 14 of the [Constitution of India](#). It has been further held that when once the workman gives up his right to object to the appearance of the counsel at the earliest stage should not be allowed to raise such objection at the later stage of the trial.

19. In the result, we hold that Mr. N. Balasubramanian is entitled to represent the respondent in his capacity as member of the Managing Committee of the Employer's Association. Consequently, the appeal is dismissed. The Labour Court is directed to first decide the Complaint bearing No. 4/2002 within a period of four weeks and thereafter take up I.D. No. 256/2002 and Complaint No. 4/2002 and dispose of the same as expeditiously as possible, preferably within a period of four months thereafter. No costs. Consequently, all connected Miscellaneous Petitions are closed.