Paradip Port Trust, Paradip

Vs

Their Workmen

Civil Appeal No. 766 Of 1976

Management of Keonjhar Central Co-Operative Bank Ltd.

Vs

Their Workmen

Special Leave Petition (Civil) Nos. 1844a And 1845 Of 1976

(Y.V. Chandrachud, P.K. Goswami, A.C. Gupta JJ)

09.09.1976

JUDGMENT

GOSWAMI, J. –

1. The appellant, the Paradip Port Trust, is a major port governed by the provisions of the major Port Trusts Act, 1963 and is managed by a Board of Trustees constituted under the provisions of the said Act. Under Section 5 of the said Act the Board of Trustees is a body corporate having perpetual succession and a common seal with power, subject to the provisions of the act, to acquire, hold or dispose of property and may sue or be sued in the name of the Board. An industrial dispute was raised by the Paradip Shramik Congress representing the workmen with regard to the termination of the services of one Nityananda Behera, a temporary teacher in the Paradip Port Trust High School. The dispute was referred to the Industrial Tribunal (Central) Bhubaneswar, Orissa, under Section 10(1)(d) of the Industrial Disputes Act, 1947 (briefly the Act).

2. The respondents (hereinafter to be referred to as the Union) appeared before the tribunal through the Adviser and General Secretary of Paradip Shramik Congress. The appellant sought to be represented before the tribunal through Shri T. Misra, Advocate, who was a "Legal Consultant" of the trust. The appellant filed their authority in Form 'F' under Rule 36 of the Orissa Industrial Dispute Rules in his favour. The appellant subsequently filed also a power of attorney executed by the Chairman of the Board of Trustees in favour of Shri T. Misra who was admittedly a practising advocate of the Orissa High Court.

3. An objection was taken by the union to the representation of the Paradip Port Trust (hereinafter to be described as the employer) by Shri T. Misra, Advocate, and the union refused to give their consent to his representation as required under Section 36(4) of the Act.

4. The tribunal after hearing the parties upheld the objection of the union. The tribunal examined the terms and conditions of the appointment of Shri T. Misra as Legal Consultant of the employer and held as follows :

> His duties and the restrictions on his practice which have been extracted above and the terms as to his professional fees, etc. indicate that the relationship of the first party and Shri Misra is clearly that of a client and his lawyer and not that of employer and employee. Hence, Shri Misra cannot be said to be officer of the first party.

The tribunal further held :

> Merely by execution of a power-of-attorney, the restrictions attached to a legal practitioner contained in sub-section (4) of the Act cannot be circumvented. I would accordingly hold that Shri Misra who is a legal practitioner cannot represent the first party before this tribunal even if he holds a power-of-attorney executed in his favour by the first party.

5. The appellant has obtained special leave of this Court against the above order of the tribunal. We have heard the Solicitor-General on behalf of the appellant and Shri Goyal for the respondents.

6. Along with the above appeal two Special Leave Petitions 1844A and 1845 of 1976 are also posted for hearing for admission and we have heard Mr. Gobind Das at great length. The two special leave petitions are by the management of Keonjhar Central Co-operative Bank Ltd. One application is relating to rejection by the tribunal of the bank's prayer for representation before the tribunal through its advocate, Shri B. B. Rath, on the ground of objection by the union under Section 36(4) of the Act. The second application relates to the order of the tribunal allowing Shri A. C. Mohanty, Advocate and Vice President of the Keonjhar Central Cooperative Bank Employees Union under Section 36(1) of the Act notwithstanding the objection of the management.

7. Industrial law in India did not commence with a show of cold shoulder to lawyers as such. There was an unimpeded entrance of legal practitioners to adjudication halls before tribunals when the Act first came into force on April 1, 1947. Three years later when the Labour Appellate Tribunals were constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950, a restriction was imposed on the parties in engagement of legal practitioners before the Appellate Tribunal without consent of the parties and leave of the tribunal. When this was introduced in the appellate forum, the same restriction was imposed for the first time upon representation of parties by legal practitioners before the Industrial Tribunals as well [see Section 34 of the Industrial Disputes (Appellate Tribunal) Act, 1950]. In view of the recent thinking in the matter of profferring legal aid to the poor and weaker sections of the people it may even be possible that the conditional embargo under Section 36(4) may be lifted or its rigour considerably reduced by leaving the matter to the tribunals' permission as has been the case under the English law.

8. Restriction on parties in respect of legal representation before Industrial Courts is not a new phenomenon. It was there in England in the Industrial Courts Act, 1919 (9 & 10 Geo 5 c 69) and does not appear to be altered even by the Industrial Relations Act, 1971. Section 9 of the English Act provides that except as provided by rules, "no person shall be entitled to appear on any such proceedings by counsel or solicitor". However, Rule 8 of the Industrial Court (procedure) Rules, 1920 allows persons to appear by counsel or solicitor with permission of the court.

9. The Act envisages investigation and settlement of industrial disputes and with that end in view has created various authorities at different levels all independent of one another. The word adjudication occurs only with reference to labour courts, industrial tribunals and national tribunals.

These bodies are manned by judges of High Courts or by officers with appropriate judicial and labour law experience. The conciliation proceedings held by a Board or a Conciliation Officer are mainly concerned with mediation for promoting settlement of industrial disputes. It is reasonable to suppose that the presence of legal practitioners in conciliation may divert attention to technical pleas and will detract from the informality of the proceedings impeding smooth and expeditious settlement. Legal practitioners entrusted with their briefs cannot be blamed if they bring forth their legal training and experience to the aid and benefit of their clients. But labour law operates in a field where there are two unequal contestants. The Act, therefore, takes care of the challenge of the situation in which the weaker party is pitted against the stronger before adjudicating authorities. That appears to be one of the reasons for introducing consent of the parties for representation by legal practitioners. Employers, with their purse, naturally, can always secure the services of eminent counsel.

10. The question that arises for consideration will turn on the interpretation of Section 36 of the Act which may be quoted :

> 36. (1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by -
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> (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.
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> (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 or 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.
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> (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.
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> (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.

11. Section 36 provides for representation of parties before the tribunals and the labour court. Under Section 36(1) a workman who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by three classes of officers mentioned in (a), (b) and (c) of that sub-section. Similarly under Section 36(2) an employer who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by three classes of officers mentioned in (a), (b) and (c) of that sub-section. By sub-section (3) a total ban is imposed on representation of a party to a dispute by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a court of enquiry. Then comes Section 36(4) which introduces the requirement of prior consent of the opposite party and leave of the tribunals and of the labour court, as the case may be, for enabling a party to be represented by a legal practitioner.

12. Under the scheme of the Act the parties to an industrial dispute are employers and employers; employers and workmen; and workmen and workmen [Section 2 (k)]. The definition of "appropriate Government" under Section 2(a) of the Act lays bare the coverage of industrial disputes which may be raised concerning, amongst others, several types of corporations, mentioned therein, companies, mine, oilfield, cantonment board and major port. The definition of employer under Section 2(g), which is a purposive but not an exhaustive definition, shows that an industrial dispute can be raised in relation to an industry carried on even by the Government and by local authorities. It need not be added that industry is also carried on by private owners, private companies and partnerships. Employers and workmen will, therefore, be drawn from numerous sources. Leaving aside for the present industrial disputes between employers and employers and workmen and workmen, such disputes, almost, always are between employers and workmen. Prior to the insertion of Section 2A in the Act by the Amendment Act 35 of 1965 a dispute raised only by a single individual workman did not come under the category of an industrial dispute within the meaning of section 2(k). Left to himself, no remedy was available to such an aggrieved individual workman by means of the machinery provided under the Act for adjudication of his dispute. Such an individual dispute, for example, relating to the discharge or dismissal of a single workman, however, became an industrial dispute only if a substantial body of workmen or a union of workmen espoused his cause. The trade union of workmen, therefore, comes to be recognised as a live instrument under the Act and has an active role to play in collective bargaining. Thus, so far as workmen are concerned, union is, almost, always involved in the dispute from the inception. Since the dispute, itself, in a large number of case takes the character of industrial dispute from participatory involvement of the trade union, the Act confers an unbartered right upon he workmen to be represented by a member of the executive or by an office-bearer of a registered trade union. It is, therefore, in the very scheme of things that a workman's absolute right to be represented by an office-bearer of the union in recognised under the act, Indeed it would have been odd in the entire perspective of an industrial dispute and the objects and purposes of the Act not to give due recognition to the union. But for a provision like Section 36(1) of the Act, there may have been difficult under the general law in the way of the office-bears of the union representing workmen before the adjudicating authorities under the Act unless, perhaps, regulated by the procedure under Section 11 of the Act. To put the matter beyond controversy an absolute right is created in favour of the workmen under Section 36(1) in the matter of representation. Having made such a provision for the workmen's representation the employer is also placed at par with the workmen in similar terms under the act and the employer may also be represented by an officer of the association of employers of which the employer is a member. The right is extended to representation by the officer-bearers of the federation of the union and by the officers of the federation of employers. The provisions of Section 36(1) and 36(2) confer on the respective parties absolute rights of representation by persons respectively specified therein. The rights of representation under Section 36(1) and Section 36(2) are unconditional and are not subject

to the conditions laid down under Section 36(4) of the Act. The said two sub-sections are independent and stand by themselves.

13. As stated earlier, Section 36 deals with representation of the parties. Neither the Act not Section 36 provides for appearance of the parties themselves when they are individuals or companies or corporations. The tribunals and the Labour courts being quasi-judicial authorities dealing with rights affecting the parties cannot adjudicate their disputes in absence of the parties. It is, therefore, incumbent upon the tribunals and labour courts to afford reasonable opportunity to the parties to appear before them and hear them while adjudicating industrial disputes. This position is indisputable. Section 36, therefore, is not exhaustive in the sense that besides the persons specified therein there cannot be any other lawful mode of appearance of the parties as such. As indicated earlier Section 36 does not appear to take count of companies and corporations as employers. It is, however, common knowledge that industrial disputes are raised in a predominantly large number of cases where companies or corporations are involved. Since companies and corporations have necessarily to appear through some human agency there is nothing in law to prevent them from being represented in any lawful manner. As Salmond says :

> Every legal person, therefore, has corresponding to it in the world of natural persons certain agents or representatives by whom it acts. . . . . (Salmond on Jurisprudence, 12th Edition, page 312)

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.

14. Again, although under Section 36(2)(c) there is provision for the contingency of an 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 that be-all and end-all of the types of representations envisaged under the Act. The impossibility of the position indicated above is a crucial pointer to Section 36 being not exhaustive but only supplemental to any other lawful mode of representation of parties.

15. 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.

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 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 an employer and in the capacity of an officer-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.

17. 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, fulfilment 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 matter 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) 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.

18. We may note here the difference in language adopted in Section 36(1) and Section 36(2). While Section 36(1) refers to "any member of the executive" or "other office-bearer", Section 36(2), instead, mentions only "an officer". Now "executive" in relation to a trade union means the body by whatever name called to which the management of the affairs of the trade union is entrusted [Section 2 (gg)]. "Office-bearer" in relation to a trade union includes any member of the executive thereof but does not include an auditor [Section 2 (III)]. So far as trade unions are concerned there is no difficulty in ascertaining a member of the executive or other office-bearer and Section 36(1) will create no difficulty in practical application. 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 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 determining as to who is an officer in 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. We should also observe that the officer under Section 36(2) is of the association or of the federation of associations of employers and not of the company of corporation.

19. The matter of representation by a legal practitioner holding a power of attorney came up for consideration before the Full Bench of the Appellate Tribunal of India in the year 1951 (see Kanpur Hosiery Workers' Union v. J. K. Hosiery factory, Kanpur ([1952] 1 LLJ 384). The provision for representation which applied to the Appellate Tribunal was Section 33 of the repealed Industrial Disputes (Appellate Tribunal) Act, 1950. This Section corresponds to Section 36 of the Industrial Disputes Act with which we are concerned. Although the Appellate Tribunal rejected the claim of the party to be represented by the legal practitioner on the basis of a power of attorney, with which we agree, the reasons for its conclusion based solely on the ground of Section 36 being exhaustive do not meet with our approval. The Appellate Tribunal took the view that the Act intended to restrict the representation of parties to the three classes of persons enumerated in sub-sections (1) and (2) of Section 33. The Appellate Tribunal was of the view that sub-sections (1) and (2) of Section 33 were intended to be exhaustive of the persons (other than the party himself) who might

represent either of the party. Since holding of a power of attorney is not one such mode that claim of the legal practitioner failed, according to the Appellate Tribunal. The Rajasthan High Court in Duduwala & Co. v. Industrial Tribunal (AIR 1958 Raj 20 : (1959) 1 LLJ 75) took the same view. Our attention has been drawn to the decisions of the Calcutta and Bombay High Courts wherein a contrary view has been taken with regard to the interpretation has been drawn to the decisions of the Calcutta and Bombay High Courts wherein a contrary view has been taken with regard to the interpretation of Section 36 as being exhaustive [see Hall & Anderson Ltd. v. S. K. Neogi ([1954] 1 LLJ 629 (Cal.)) and Khadilkar (K. K.) General Secretary. Engineering Staff Union, Bombay v. Indian Hume Pipe Company Ltd., Bombay ([1967] 1 LLJ 139 (Bom.)]. For the reasons already given by us we are of opinion that the views of the Labour Appellate Tribunal and that of the Rajasthan High Court in this aspect of the matter are not correct and the Calcutta and Bombay High Courts are right in holding that Section 36 is not exhaustive.

20. The Solicitor General contends that "and" in Section 36(4) should be read as "or" in which case refusal to consent by a party would not be decisive in the matter. The tribunal will then be able to decide in each case by excercising its judicial discretion whether leave, in a given case, should be given to a party to be represented by a lawyer notwithstanding the objection of the other party. It is pointed out by the Solicitor General that great hardship will be caused to public corporations if the union is given a carte blanche of finally decide about the matter of representation by refusing to accord its consent to representation of the employer through the legal practitioner. It is pointed out that public corporations, and even Government running a transport organisation like the State Transport, cannot be expected to be members of any employers' association. In their case Section 36(2) will be of no avail. The deny them legal representation would be tantamount to denial of reasonable opportunity to represent their cases before the tribunal. It is submitted that since such injustice or hardship cannot be intended by law the final word with regard to representation by legal practitioners before the tribunal should rest with the tribunal and this will be effectively implemented if the word "and" in Section 36(4) is read as "or". This, it is said, will also achieve the object of the Act in having a fair adjudication of disputes.

21. We have given anxious consideration to the above submission. It is true that "and" in a particular context and in view of the object and purpose of a particular legislation may be read as "or" to give effect to the intent of the legislature. However, having regard to the history of the present legislation, recognition by law of the unequal strength of the parties in adjudication proceedings before a tribunal, intention of the law being to discourage representation by legal practitioner as such, and the need for expeditious disposal of cases, we are unable to hold that "and" in Section 36(4) can be read as "or".

22. Consent of the opposite party is not an idle alternative but a ruling factor in Section 36(4). The question of hardship, pointed out by the Solicitor General, is a matter for the legislature to deal with and it is not for the courts to invoke the theory of injustice and other consequences to choose a rather strained interpretation when the language of Section 36 is clear and unambiguous.

23. Besides, it is also urged by the appellant that under Section 30 of the Advocates Act, 1961, every advocate shall be entitled "as of right" to practise in all courts and before any tribunal [Section 30(i) and (ii)]. This right conferred upon the advocates by a later law will be properly safeguarded by reading the word "and" as "or" in Section 36(4), says counsel. We do not fail to see some difference in language in Section 30(ii) from the provision in Section 14(1)(b) of the Indian Bar Councils Act, 1926, relating to the right of advocates to appear before courts and tribunals. For example, under Section 14(1)(b) of the Bar Councils Act, an advocate shall be entitled as of right to

practise save as otherwise provided by or under any other law in any courts (other than High Court) and tribunal. There is, however, no reference to "any other law" in Section 30(ii) of the Advocates Act. This need not detain us. We are informed that Section 30 has not yet come into force. Even otherwise, we are not to be trammelled by Section 30 of the Advocates Act for more than one reason. First, the Industrial Disputes Act is a special piece of legislation with the avowed aim of Labour welfare and representation before adjudicatory authorities therein has been specifically provided for with a clear object in view. 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. The Industrial Disputes Act is concerned with representation by legal practitioners under certain conditions only before the authorities mentioned under the Act. Generalia specialibus non derogant. As Maxwell puts it :

> Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language. . . or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the special one (Maxwell on Interpretation of Statutes, 11th Edition, page 169).

24. Second, 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 Disputes. It is only when a party engages a legal practitioner as such that the latter is enabled to enter appearance before courts or tribunals. Here, under the Act, the restriction is upon a party as such and the occasion to consider the right of the legal practitioner may not arise.

25. In the appeal before us we find that the tribunal, after considering the materials produced before it, held that Shri T. Misra could not claim to be an officer of the corporation simply because he was a legal consultant of the trust. The tribunal came to this conclusion after examining the terms and conditions governing the relationship of Shri Misra with the trust. He was neither in pay of the company - nor under its control and enjoyed freedom as any other legal practitioner to accept cases from other parties. It is significant to note that one of the conditions of Shri Misra's retainer is that he will not appear in any suit or appeal against the Port until he has ascertained from the Chairman that his services on behalf of the Port will not be required. That is to say, although on a retainer and with fixed fees for appearance in cases there is no absolute ban to appear even against the Port. This condition is not at a consistent with the position of an officer of the trust. We agree with the opinion of the tribunal that Shri Misra cannot be held to be an officer of the trust.

26. 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 of associations of employers and no consent of the other side and leave of the tribunal will, then, be necessary.

27. In the result the appeal is dismissed with costs. Necessarily the special leave petitions also fail and stand dismissed.

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