**CALCUTTA HIGH COURT**

Hall and Anderson, Ltd

Vs

S.K. Neogi

(Sinha , J.)

30.07.1953

**JUDGMENT**

**Sinha, J.**

1. This is a rule upon the opposite parties to show cause why an order passed by the first respondent (the sixth industrial tribunal), dated 28 January 1953, should not be quashed, and why the said respondent should not be directed to allow Mr. S.M. Basu, chairman of the board of directors of the petitioner company, to appear before him and represent the company.

2. The facts are briefly as follows: The petitioner is a public limited company. Some time about June 1952. disputes and differences arose between the petitioner and some of its workers represented by respondent 2. The State of West Bengal referred the disputes for adjudication to the first respondent, under the Industrial Disputes Act, 1947, by a notification, dated 5 September 1952. Mr. S.M. Basu, a practising solicitor of this Court, has been a director of the said company since 1948 and is now the chairman of the board of directors. It is stated by the pettioner that the said Mr. S.M. Basu has been at the helm of the company's affairs and no one is better acquainted with the facts and circumstances leading up to the disputes referred as aforesaid. On 28 January 1953, the said Mr. Basu appeared before the tribunal at the hearing of the reference, to represent the petitioner. The first respondent, by his order, dated 28 January 1953, disallowed the respondent from appearing before him or representing the petitioner. The ground for disallowing Mr. Basu to appear and represent the company is based upon the interpretation pub by the first respondent upon Section 36(4) of the Industrial Disputes Act, 1947, which runs as follows:In any proceeding before a 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 tribunal.

3. Mr. Basu did not appear or seek to appear in his capacity as a legal practitioner. He appeared as a director of the company, and as representing the company in that capacity. According to the first respondent, if a person was in fact a legal practitioner, it did not matter whether he was

attempting to represent the company as a director or not. In doing so, he did not cease to be a legal practitioner, nor did he cease to carry with him the legal knowledge and experience which he had gathered as a legal practitioner. It is said that the intention of the legislature appeared clearly to respect the ordinary right of representation by legal practitioners in industrial disputes in the "interests of preservation of an atmosphere of conciliation instead of serious legal arguments and of smooth disposal." Mr. Acharya, appearing on behalf of respondent 2 added (perhaps unwittingly), that it was intended that proceedings before the industrial tribunal were intended to be divorced from law. I sincerely hope that such is not the case, Under Section 36 of the Industrial Disputes Act, 1947, as it originally stood, legal practitioners were debarred from appearing in conciliatory proceedings, but they were allowed to represent parties before a labour court or tribunal. By the amendment of 1950, they are absolutely debarred from representing parties in any conciliation proceedings under the Act or in any proceedings before a labour court. In the case of proceedings before a tribunal, a party to a dispute could always be represented by a legal practitioner under the old Act, but after the amendment, it can only be done with the consent of the other parties to the proceeding and with the leave of the tribunal. This procedure may be compared with Section 33(3) of the Industrial Disputes (Appellate Tribunal) Act, 1950, which runs as follows:A party to a proceeding under this Act may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Appellate Tribunal.

4. Thus the provisions of Section 36(4) of the Industrial Disputes Act has been brought into line with `tion 33(3) of the Industrial Disputes (Appellate Tribunal) Act, 1950. The point which I have to decide, appears to have arisen in the case between Elgin Mills Company, Ltd., Kanpur and the Suti Mill Mazdoor Union, Kapur 1951 I L.L.J. 184, under Section 33 of the Industrial Disputes (Appellate Tribunal) Act, 1950. Before the Appellate Tribunal, Mr. Hoon, a director of the company, appeared to represent the company. He was a lawyer, and objection was taken to his appearance. The Labour Appellate Tribunal disallowed the objection. The Appellate Tribunal said as follows:The respondent's contention is that an employer can be represented by the class of persons enumerated in Section 33(2) of Industrial Disputes (Appellate Tribunal) Act, 1950, and also by a lawyer subject to the conditions mentioned in Sub-section 3 and by none else. We cannot accede to that contention. Leaving aside representation by lawyers for the moment, that section enacts that a party to an appeal shall be entitled to be represented in an appeal by the three clasess of persons mentioned in Sub-section (1) in the case of workmen and three classes of persons mentioned in Sub-section (2) in the case of employers. These two sub-sections confer a privilege as the phrase 'shall be entitled' indicates and the meaning is that if any person falling within those classes appears in the appeal either for the workmen, or for the employer the other party would not be entitled to object to his appearance. Undoubtedly the workman concerned in an appeal could appear in person, though he is not mentioned in Sub-section (1) and likewise the

employer when he is a natural person can himself appear in person. A corporation being an artificial person must, of necessity appear through a human being. It can therefore appear through an agent or by any other authorized person, the only limitation being that when that person is a lawyer, and appears in his capacity as a lawyer, he can appear only if the conditions of Sub-section (3) are fulfilled. A director of a company, we hold, has authority by reason of his position to appear for the company.The first respondent distinguishes this case on the ground that the Appellate Tribunal were considering Section 33(2) and not 33(3) of the Industrial Disputes (Appellate Tribunal) Act, 1950. In this he was clearly in error, as will appear from the extract quoted above. The essence of the thing is to find out whether a party was being represented by a legal practitioner as such. If the principle laid down by the first respondent be correct, it follows that where a party to a dispute is himself a legal practitioner, tie can never appear in person, an interpretation which must at once be rejected. The next case discussed by the first respondent is between Kanpur Hosiery Workers' Union and J.K. Hosiery Factory, Kanpur 1952 I L.L.J. 384. There, the legal practitioner of a party wished to get round the provisions of Section 33(3) by shedding his gown and obtaining a power of-attorney from the party. This was not permitted. The tribunal proceeded upon the footing that to permit this would be to circumvent the provisions of the Act itself. If the Appellate Tribunal intended to hold that under no circumstances could a party be represented by a person who was a lawyer but was not appearing as such, I must hold that the decision is incorrect. But I do not think that they intended to hold firstly that a party could always represent himself, secondly that he could be represented by the persons mentioned in Sub-sections (1) and (2), as the case may be. Thirdly, he could be represented by a lawyer, only under circumstances mentioned in Sub-section (3). In the case of a company or a corporate body, there can be no question of its appearing by itself. Since it is not human, it must be represented by some one, and a director would be a proper person to represent it. This right of representation is quite distinct from the right conferred by Sub-sections (1) and (2) of Section 33. If the director happened to be also a lawyer or a legal practioner, it cannot be said that his appearance was to circumvent the provisions of Sub-section (3), as might be the case if the party was an individual. These principles would apply equally in the case of appearance before a tribunal under Section 36(4) of the Industrial Disputes Act, 1947. I have already pointed out that after the amendment in 1950, there is virtually no difference between that provision and Section 33(3) of the Industrial Disputes (Appellate Tribunal) Act, 1950. It is true that we must give effect to the intention of the legislature in construing an Act, but it is not permissible to enter into fanciful dissertations of social philosophy in discovering that intention. It is true that lawyers are to be excluded, but there is no indication that they are to be excluded simply because they are lawyers. I find that this view finds support from the observations of the learned author of "Evolution of Labour Management Relations and the Indian Law of Industrial Disputes" at page 284. It is pointed out that if an officer of a registered trade union also happens to toe a legal

practitioner, the full bench ruling in 1952 L.A.C. F.B. (Kanpur Hosiery Workers' Union v. J.K. Hosiery Factory, Kanpur, ibid.) was inapplicable because his appearance is not as a legal practitioner.

5. I hold, therefore, that Mr. S.M. Basu, as a director of the petitioner company, was and is entitled to represent the company at the hearing of the reference before the first respondent, and that the first respondent was in error in refusing to allow him to appear before him and reprsent the company.

6. Mr. Sen next argues that I should not interfere under Article 226 of the Constitution, because the petitioner has a right of appeal under Section 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950.

7. An alternative legal remedy is no absolute bar to the jurisdiction of this Court. It is not a rule of law but a rule regulating the discretion of the court in granting the writ of *mandamusR. v. Joint, Stock Cos. Registrar*[1] Ordinarily this Court ought not to interfere when there exists a remedy, not less convenient, beneficial and effective. But an exception ought to be made in the case of an error in procedure, which will vitiate the whole trial. In Jagannath Sasiry v. Sarathambal I.L.R. 46 Md. 574, the High Court interfered in revision, where the court below refused to issue a commission to examine witnesses, although the petitioner could not possibly procure them without such an order. Wallace, J.,said:I think it is clearly the duty of the court to interfere, even in interlocutory proceedings rather than permit a trial to go on in an illegal course, which must entail unnecessary expense to the parties and useless waste of time.

8. See I.M. *Meyer v. C. Subba Rao*[7]

A mandamus was issued where a magistrate wrongly refused to accept evidence which a party was entitled to adduce *Queen v. Margham*[3] A mandamus will issue where the plaintiff can show that he will suffer injury by waiting for the result of the trial (witness Alkali).

9. If the present order is allowed to stand, the result will be that the reference will be decided ex parte so far as the petitioner is concerned. The order is a speaking order and the error of law appears on the face of it. (Halsbury, Vol. 9, p. 887.) I do not think that it is either just or convenient that the proceedings should go on, in the absence of the petitioner, leaving it to seek its remedy by way of an appeal to establish its very right of being heard, a right which it plainly has under the statute. It is obviously a remedy which is less convenient. I think that if it amounts to a failure to exercise jurisdiction in refusing to hear the evidence which a party at all, which is what it amounts to, where a party appears in a manner well within the four corners of the statute, but the right to a hearing is denied (Queen v. Margham, supra) (Sic).

10. The rule is accordingly made absolute. The order of the first respondent, dated 28 January 1953, is quashed by a writ in the nature of certiorari and/or set aside. There will also issue a writ in the nature of mandamus directing the said respondent to allow Mr. S.M. Basu, a director of the petitioner company, to represent it at the reference pending before him.

11. There will be no order as to cost.

Cases Referred.

[1] (1888) 21 Q.B.D. 131
[2] 57 C.W.N. 605
[3] *(1892) 1 Q.B. 371*