BOMBAY HIGH COURT

K.K. Khadilkar

Vs.

Indian Hume Pipe Co. Ltd

Special Civil Appln. No. 968 of 1966

(K.K. Desai and Chandrachud, JJ.)

22.08.1966

JUDGMENT

Chandrachud, J.

1. An industrial dispute between the Indian Hume Pipe Company Limited and its workmen has been referred by the State Government to the Industrial Tribunal under Section 19 (1)(d) of the Industrial Disputes Act, 1947, hereinafter called "the Act". One Mr. K. S. Menta sought to represent the Company in the proceedings before the Tribunal but the workmen objected to his appearance on the ground that in view of the restrictive provisions of Section 36 (2) of the Act he could not represent the company. The Tribunal has overruled the objection and being aggrieved thereby, the workmen have filed this petition under Article 227 of the Constitution.

2. K. S. Mehta was working as the Personnel Officer of the Company till the 1st of July 1965, when he resigned from that post. He is a lawyer by qualification being a graduate in law; but not being enrolled as an Advocate, he is not, in a true sense, a legal practitioner. He, however, frequently represents the Indian Hume Pipe Company before the Tribunals constituted under the Act, in pursuance of what is clearly a long and uniform practice. He holds a contract with the company under which he receives a monthly payment of Rs. 1,000/- in consideration of the legal advice he tenders to it. In addition, the company pays him fixed fees for appearance in legal proceedings. In this reference, he claims the right to represent the company under a power of attorney executed by it in his favor authorizing him, amongst other things, to conduct and defend legal proceedings and to represent the company before judicial or quasi-judicial authorities.

3. The power of attorney executed by the company in favor of Mr. Mehta clearly constitutes him its agent to represent it in the dispute before the Industrial Tribunal. The question therefore is not of the construction of that power. The question is whether, despite the power, Mr. Mehta has no right to represent the company in view of the provisions contained in Section 36(2) of the Act.

Section 36 of the Act which, as its marginal note suggests, deals with the "Representation of parties", reads thus :

> "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) an officer of a registered trade union of which he is a member;
> (b) an officer 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 an officer 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 proceedings before a Labor 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 Labor Court, Tribunal or National Tribunal, as the case may be".

It is urged by Mr. Chitale, who appears on behalf of the workmen, that Section 36 (2) is exhaustive as regards the right of an employer to be represented in a proceeding under the Act and therefore, only those persons who fall under any of the three clauses of Section 36 (2) are entitled to represent an employer in a proceeding under the Act.

4. We find it difficult to accept this submission. In the first place, the language used in Section 36 is not the language which is ordinarily used in expressing a restriction on a right, but the language is one by which a right is extended or a particular person is enabled to act in a particular manner. The opening words of sub-section (2) of Section 36 speak of an employer being "entitled to be represented" in a proceeding under the Act. The words of sub-section (1) of that section similarly refer to a workman being "entitled to be represented" in a proceeding under the Act. When law says that a workman or an employer would be "entitled to be represented" in a particular manner, it is difficult to hold that the right of the workman or the employer to be represented in a proceedings must be restricted to the circumstances enumerated in the provision.

If the provision as regards the right of representation were intended to be exhaustive, it would have been easy enough to express such an intention by appropriate language. For example, such an intention could have been adequately expressed by providing that a workman or an employer shall be entitled to be represented in a proceeding under the Act by the persons mentioned in Clauses (a), (b) and (c) and by no one else. This intention could have also been expressed by deleting the words "be entitled to" in the opening part of sub-sections (1) and (2) of Section 36. If these words are deleted, sub-section (2), for example, will read to say that an employer who is a party to a dispute shall be represented in any proceeding under the Act by the persons mentioned in clauses (a), (b) and (c). On a plain reading of the Section, therefore are of the opinion that clauses (a), (b) and (c) of sub-section (2) are not exhaustive of the rights of an employer to be represented in a proceeding under the Act. It is open to the employer to be represented by any of the persons mentioned in clauses (a), (b) and (c) of sub-section (2) of Section 36 but if this is for any reason not feasible or convenient, it would be open to the employer to be represented in a proceeding under the Act in any other lawful manner. It may be that under any other law or under the rules governing the procedure of the Courts and Tribunals constituted under the Act a particular method of representation is excluded. In that event, the right of an employer to be represented in that manner shall have been taken away. But apart from such cases, it would be open to the employer to be represented in a proceeding under the Act in a manner other than that specified in clauses (a), (b) and (c) of sub-section (2) of Section 36.

5. The second reason why section 36 (2) is, in our opinion, not exhaustive is that quite obviously, it does not exhaust all the categories of representation. An employer for example is unquestionably entitled to appear in person if he has a physical personality, but such a right is not included in the three clauses of sub-section (2) if the undisputed right of an employer to appear in person in cases in which he can so appear is not included in subsection (2), it must follow that the three clauses of that sub-section are not exhaustive as regards the manner in which an employer can be represented in a proceeding under the Act. It is urged by Mr. Chitale that the section does not purport to deal with the right of a litigant to appear in person and therefore, the sub-section can be construed to be exhaustive of circumstances in which an employer can be represented otherwise than by personal appearance. This mode of construction does not appeal to us. Such a method presupposes, in the first place, that when the Legislature says that a person shall be entitled to be represented in a particular manner, the Court must assume that the intention of the Legislature was to exhaust all categories of representation. Secondly, the argument assumes that though the Legislature intended to make the provision exhaustive and though it was aware that the right of a litigant to appear in person is an important right, it did not think it necessary to include such a right in any of the categories of representation which are said to exhaust the right of an employer to be represented in a proceeding under the Act. In our opinion, the exclusion from sub-section (2) of the right of an employer to appear in person in cases in which he can so appear shows that sub-section (2) is not exhaustive of the right of an employer to be represented in a proceeding under the Act.

6. If the construction suggested by Mr. Chitale is put on sub-section (2), one would be compelled to hold that sub-section (2) takes away, by implication, the right of an employer to appear in person. In fact, a similar construction shall also have to be placed on sub-section (1), the words of the two sections being identical. It would, in our opinion, be wholly wrong to construe these sub-sections so as to lead to the result that a valuable right of a workman or an employer to appear in person is excluded by implication and therefore, it would not be proper to hold that the provisions of sub-section (2) are restrictive.

7. Strange results would follow if the construction canvassed by the Counsel were accepted. Let us take the facts of the case before us and work out the rights of the 1st respondent which is incorporated under the Indian Companies Act. An incorporated Company is not a physical entity and therefore, it cannot obviously appear in person. It can only appear through the medium of a counsel or some other representative. As observed in Salmond on Jurisprudence. Eleventh Edition, page 363.

> "A corporation, having neither soul nor body; cannot act save through the agency of some representative in world of real men". Sub-section (3) of Section 36 provides that no party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under the Act or in any proceedings before a Court. Sub-section (4) provides that in a proceeding before a Labour Court, a Tribunal or a National Tribunal, a party to a dispute can be represented by a legal practitioner with the consent of the other party to the proceedings and with the leave of the Labour Court, the Tribunal or National Tribunal as the case may be. It is therefore, clear that an incorporated company, like any other employer, has no right to say that it will be represented before the Tribunal by a legal practitioner. The other side has a right to object to the appearance of a legal practitioner and assuming that the workmen give their consent to the appearance of a legal practitioner on behalf of a company, the leave of the Tribunal has also to be obtained. If the company has no unqualified right to be represented by a legal practitioner, it shall have to turn to one of the three clauses of sub-section (2) of Section 36 in order to find out how it will be represented, if these clauses exhaust its right of representation. Under Clause (a) the company would be entitled to be represented by an officer of an association of employers of which it is a member. Under Clause (b) it would also be entitled to be represented by an officer of a federation of associations of employers to which the association referred to in clause (a) is affiliated. Now if a company is not a member of an association of employers, clause (a) can obviously not apply and wherever clause (a) has no application, clause (b) would also have no application. In a case therefore, in which a company is not a member of an association of employers, its right of representation must be found in clause (c) and nowhere else. Under that clause, the company would be entitled to be represented by an officer of any association of employers connected with the industry in which the company is engaged or by any other employer engaged in the particular industry. Now to compel a company to be represented in a dispute with its workers by an

employer engaged in a similar industry would often mean the compulsion to engage a rival in business.

8. It must also be borne in mind that law does not create any obligation in the persons mentioned in Clauses (a), (b) and (c) of sub-section (2) to appear for a particular employer. The officer of an association of employers of which the employer is a member or an officer of a federation of associations of employers to which the association of employers is affiliated may decline to appear for a particular employer for reasons of convenience, exigencies or the like. To accept the construction for which Mr. Chitale contends is to hold that the Legislature has compelled an employer to be represented through certain persons who may or may not agree to appear on behalf of the employer. If a company cannot appear in person, if it has no unqualified right to be represented by a legal practitioner and if the persons mentioned in clauses (a), (b) and (c) who are stated to exhaust the category of persons through whom an employer can be represented, do not agree to appear for the company, the case of the company shall have to go by default. The right or a company to be heard in support of its case will thus be rendered illusory. It is therefore, impossible to accept the submission of Mr. Chitale that sub-section (2) is exhaustive.

9. It is difficult to appreciate any logic behind the intention to make the provisions of sub-section (2) exhaustive. Sub-section (2) clearly confers upon an employer the right to be represented in a proceeding under the Act, by an agent. If representation through an agent is permissible, there would be no reason for restricting the employer's choice of an agent. The reason why the three categories are specifically mentioned in sub-section (2) is that the Legislature wanted to confer an unqualified right on an employer to be represented by the class of persons mentioned in the three clauses of sub-section (2). Under section 11 of the Act, the Tribunal can follow such procedure as it thinks fit which includes the right to determine the mode of representation which a party before it may adopt. The employer, however, is entitled to tell the Tribunal that he wants to be represented by any of the persons mentioned in clauses (a), (b) and (c) of sub-section (2) and the Tribunal would have no right to say that it will not recognize that form of representation. Thus, the object of sub-section (2) is to create a right in an employer to be represented by a class of persons and not to restrict the right of representation to the classes enumerated.

10. As we have stated earlier, it is difficult to appreciate why the Legislature should have intended to make the provisions of sub-section (2) exhaustive. If the provisions of sub-section (2) are construed to be exhaustive, a company for example would have no right to be represented before the Industrial Tribunal by one of its officers or directors in his capacity as such. But if such an officer or director is an officer of an association of employers of which the company itself is a member or if he is an officer of a federation of associations of employers to which the particular association of which the company is a member is affiliated, the company could be represented by its own officer or director. In accepting the construction canvassed by Mr. Chitale one shall be driven to hold that the intention of the Legislature is capable of being easily defeated in a large variety of cases.

11. On the question of absurd consequences flowing from the construction canvassed on behalf of the workers, we might draw attention to a real difficulty which one may have to countenance in that construction. If a company is not a member of any association employers, its right of representation shall have to be sought in clause (c). That clause recognizes two modes of representation, namely, through an officer of the association of employers connected with the industry or through any other employer engaged in the industry. The right conferred by clause (c) that an employer can be represented by another employer engaged in similar industry would be incapable of being exercised if such an employer is also an incorporated company. Therefore, in certain cases, the ultimate right of an incorporated company to be represented in a dispute under the Act would have to be restricted to its being represented by an officer of an association of employers connected with the industry. If a company could be represented by such a remote agent, it seems to us difficult to conceive that it was intended to deny to it the right to be represented by an agent of its choice.

12. We will only point out one more difficulty in working out the provisions of sub-section (2) if the construction suggested on behalf of the workmen were accepted. The Government or the local authorities could be employers in conceivable cases. Some of the Departments of the Bombay Municipal Corporation have, for example, been held to be industries and therefore, the dispute between the Corporation and its workmen can go before the Industrial Tribunal under the Act. If clauses (a), (b) and (c) are exhaustive of the right of an employer to be represented in a proceeding under the Act the Corporation shall have, mostly, to forge its right to be heard in support of its cause. Usually, local authorities are not members of any association of employers and therefore, clauses (a), (b) and (c) of sub-section (2) cannot apply. It is also unlikely that any other employer could be engaged in an industry similar to the one in which a local authority is engaged. It is equally difficult that there could be an association of employers connected with the industry in which the local authority is engaged. In cases, therefore, of this variety the right of representation of a local authority would be rendered wholly illusory.

13. As observed in Maxwell on Interpretation of Statutes, Eleventh Edition, page 78 :

> "Before adopting any proposed construction of a passage susceptible of more than one meaning, it is important to consider the effects of consequences which would result from it for they often point out the real meaning of the words".

Therefore, it is, in our opinion, important that one must have regard for the consequences which would flow if the construction canvassed on behalf of the workmen were accepted. The three clauses of sub-section (2) are made to correspond to the parallel clauses of subsection (1), in an effort, perhaps, to bring about a sort of parity between the rights of labor and the rights of capital. It was overlooked that there is a material distinction between the position of a workman and the position of an employer, because a workman can always appear in person, whereas if an

employer happens to be an incorporated company, it cannot appear in person. It must of necessity be represented by some other person.

14. It is then contended by Mr. Chitale that if Section 36 (2) was not intended to be exhaustive and if the right of an employer to be represented by an agent of his choice was intended to be saved, nothing would have been easier for the Legislature than to provide that an employer would be entitled to be represented in a proceeding under the Act by an agent duly authorized by him in that behalf. Now this argument overlooks that one of the objects of sub-section (2) is to create an absolute right in an employer to be represented by the class of persons mentioned in its three clauses. It was not intended that an unfettered right should be conferred upon an employer to engage an agent of his choice. We might, in this behalf, draw attention to Section 11 of the Act which says that subject to any rules that may be made, a Tribunal, amongst other authorities, shall follow such procedure as it may think fit. This right of the Tribunal to regulate its own procedure is important, because in the exercise of that right, the Tribunal can refuse the right of audience to a particular agent. In re, Philip N. Godinho, 36 Bom LR 1 : (AIR 1934 Bombay 70) (FB), Rangnekar J. who was one of the members of the FB which decided that case, relies upon a passage in Ex parte, Evans, (1846) 9 QB 279 to the effect that the general principle as to a right of audience in a Court is that in the absence of any statutory enactment or established practice defining what persons are to be heard as advocates, the Court itself has the power to regulate its own procedure and to determine what class of persons shall have audience. The origin of this passage can be traced to *Collier v. Sir William Hicks*[1], in which Park J. observes at page 672 that every Court has the power of

[1](1831-32) 2 B and Ald 663

regulating its own proceedings and the tribunals which are not bound by an established usage or by a set of rules could exercise their discretion whether they will allow any or what persons, to act as advocates before them. It is this passage which has been cited with approval in the case reported in (1846) 9 QB 279. In *Mulchand Gulabchand v. Mukund Shivram*[2], Chagla C. J. delivering the judgment of a Division Bench observes that it is for the Courts or tribunals to determine as a matter of procedure as to how parties should be represented and how they should present their case to the Court or the tribunal. In our opinion, it is in order to restrict this right of the tribunal that the Legislature provided by sub-section (2) of Section 36 that an employer shall be entitled to be represented by a certain class of agents. This object could not have been achieved by providing simply, as suggested by the learned Counsel, that the employer shall be entitled to appear through an agent of his choice.

15. It is urged by Mr. Chitale that apart from the consideration whether Section 36 is exhaustive, the right of a litigant to be heard in his cause is a personal right and is incapable of being delegated to an agent. It is argued that there is no law providing the right of a litigant to be heard in person can be delegated to an agent and therefore, it is unlawful for a litigant to delegate his right. We are unable to accept this submission. The fundamental principle of natural justice, as we conceive it, is not that a litigant shall be heard in person, but that his cause shall be heard and

that no order affecting his rights shall be passed unless an opportunity is afforded to him to show cause why such an order should not be passed. As observed by Stirling J. in *Jackson and Co. v. Napper*[3], at p. 172, the true position is that subject to certain well-known exceptions, every person who is sui juris has a right to appoint an agent for any purpose whatever, and he can do so when he is exercising a statutory right no less than when he is exercising any other right. The delegation of one's right to an agent is not required to be sanctioned or authorised by law, for as observed by the learned Judge, in order to make out that a right can only be exercised personally, and not through an agent, you must find something in the Act which limits the right of a person to appoint an agent to act on his behalf. A similar view has been expressed by Lord Esher, M. R., in The *Queen v. Assessment Committee of Saint Mary Abbotts. Kensington*[4] at p. 382.

16. We may mention on this point that there is nothing in Chapter X of the Indian Contract Act to justify the submission that the right of audience cannot be delegated to an agent. Under the Contract Act, an agency can be created for every lawful purpose and an agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such an act. It is therefore open to a person to employ an agent for being represented before a tribunal though the procedure governing the right of representation before the tribunal may deny to a particular agent the right of audience.

17. In support of his submission that an agent, generally, cannot have the right of audience, Mr. Chitale has drawn our attention to cases under Order 3, Rules 1 and 2 of the Code of Civil Procedure which are reported in *Aswin Shambhuprasad v. National Rayon Corpn. Ltd*[5]*., Harchand Ray Gobordon Das v. B. N. Rly. Co*[6]*., In re Eastern Tavoy Mineral Corpn. Ltd*[7]*.,* and *Thayarammal v. Kuppuswami Naidu*[8], These cases have taken the view that a recognized agent has no right of audience in a

[2] 54 Bom LR 285 : (AIR 1952 Bom 296)
[3] (1886) 35 Ch. D. 162
[4] 1891-1 QB 378
[5] 57 Bom LR 209 : (AIR 1955 Bom 262)
[6] AIR 1916 Cal 181
[7] AIR 1934 Cal 563
[8] AIR 1937 Mad 937

Court of law, because the right of a audience is concomitant of the right to plead and the right to plead is not conferred on an agent by Order 3, Rule 1 of the Code of Civil Procedure. These decisions do not justify Mr. Chitale's argument because they proceed on the peculiar language of O. 3, Rule 1. It provides that any appearance, application or act in or to any Court, required or authorised by law to be made or done by a party in such Court, may except where otherwise expressly provided by any law for the time being in force, be made or done by to party in person, or by his recognised agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf. The decisions cited by Mr. Chitale have taken the view that the right to plead is a different right from the right to appear or to apply or to act and that right is deliberately excluded by Order 3 Rule 1.

18. Section 36 of the Act presents a striking contrast with Order 3 Rule 1 of the Code of Civil Procedure. The policy of the Code in regard to representation is to restrict the right of pleading to legal practitioners and to deny that right to recognised agents. The policy of Section 36 of the Act

on the other hand is to allow the right of audience to legal practitioners under stated conditions only and to concede an unrestricted right of representation in favour of a class of agents. That the right of representation mentioned in Section 36 covers the right of pleading is clear from Rule 32 of the Industrial Disputes (Bombay Rules) 1956 which says that the representatives of parties shall have the right of examining, cross-examining and re-examining witnesses and of addressing the authority on completion of the evidence. If the basic policy of the two statutes is so strikingly different, it would be wrong in our opinion, to construe the provisions of Section 36 of the Act by reference to the decisions turning on the peculiar language of Order 3 Rule 1 of the Code of Civil Procedure.

19. On the construction of the words used in Section 36 of the Act we are therefore, of the opinion that Clauses (a), (b) and (c) of sub-section (2) are not exhaustive of the right of an employer to be represented in a proceeding under the Act. Those clauses are devised merely to create an unqualified right in an employer to be represented by a class of persons. They do not take away his right to be represented in any other lawful manner.

20. Mr. Chitale has cited a large number of decisions some of which have a direct bearing on the question which arises before us. It would now be necessary to consider the more important of these decisions.

21. In *Duduwala and Co. v. Industrial Tribunal*[9], a Division Bench of the High Court of Rajasthan has held that the Industrial Disputes Act, being a special Act providing for special contingencies, must be treated as a complete code when it provides for representation of employees and employers before Industrial Courts or Tribunals, that must be held to be exhaustive. According to the learned Chief Justice, who delivered the judgment of the Court, Section 36 mentions a specific way of representation, and appointment through a special power-of-attorney not being one of them, persons other than those mentioned in Clauses (a), (b) and (c) of sub-sections (1) or (2) of Section 36 cannot claim to represent the employees or the employers. With great respect, we are unable to agree with this decision. It is true that the Industrial Disputes Act is a special law providing for special contingencies, but every provision of the Act cannot, for that reason alone, be a code in itself. On the language of Section 36 it is in our opinion, not possible to take the view that it deals exhaustively with the right of representation.

[9] AIR 1958 Raj 20

22. The decision of the High Court of Rajasthan has been considered by a Division Bench of the High Court of Mysore in the *Printers (Mysore) Private Ltd. v. Presiding Officer, Labour Court*[10], where the right of an incorporated company to be represented by its officer was considered. The Mysore High Court, it would appear, was not inclined to accept the view of the Rajasthan High Court, but it did not think it necessary to consider the question whether the provisions of Section 36 are exhaustive. It has taken the view that when an incorporated company appears through an agent, the representation "establishes equivalence of the incorporeal entity" and therefore, the appearance of a company through an agent is the appearance of the company itself. With respect,

we are not disposed to agree with this view either, because if an incorporated company, not being a physical entity, cannot appear in person, it must appear through an agent and the appearance of an agent cannot, in our opinion, be equated with the appearance of the company in person. The stark fact is that an incorporated company has no personality of its own and therefore it cannot appear in person. If it appears through an agent, as it must, its right to be thus represented has to be determined on the basis whether the right is excluded by Section 36.

23. A view, similar to that of the High Court of Mysore, has been taken by a Division Bench of the High Court of Patna in *Bihar Journals Ltd. Patna v. H. K. Choudhuri*[11], In that case, the Board of Directors of a limited company had passed a resolution authorising a shareholder of the company who was also its employee to appear on behalf of the company in a proceeding before the Industrial Tribunal. It was held that as the company could not appear in person, it was entitled to act through an agent under a proper resolution. According to the learned Judges, the shareholder was authorized in a proper manner to act for the company and that being "a permissible way for a company to act itself it was difficult to find why the shareholder could not represent the company. Such a representation "is really not the representation as envisaged in sub-section (2) of Section 36". The High Court of Patna also, has not considered the question whether the provisions of Section 36 are exhaustive, but we might, with respect, observe that for reasons for which we are unable to agree with the decision of the High Court of Mysore, we are unable to agree with the view of the Patna High Court that in appearing through an agent, a company appears in person. In both these cases, the question which arises before us, expressly arose for decision but the question was left undecided on considerations which, with respect, do not appeal to us.

24. The decision of Tendolkar J., in *Alembic Chemical Works Co. Ltd. v. P. D. Vyas*[12], contains an observation that the right of representation of parties is not exhaustively dealt with in Section 36 and there are cases outside that section in which the parties would be entitled to be represented in a manner other than the one set out in sub-sections (1) and (2) of Section 36. We are in respectful agreement with this observation though it must be said that the question arising before us did not arise before Tendolkar J. There the question was whether a company was entitled to be represented through a person who was a practicing lawyer but who was appointed a Director of the company a few days before the commencement of the hearing before the Industrial Tribunal. It was held that short of an intention to circumvent the provisions of Section 36 (4) of the Act, if a legal practitioner is a regular officer either of a trade union or an association of employers

[10] AIR 1960 Mys 44

[11] AIR 1964 Pat 532

[12] (1954) 56 Bom LR 917

referred to in sub-sections (1) and (2) of Section 36 or if he is a director *bona fide* appointed as a director, there is nothing in Section 36(4) to prevent him from appearing on behalf of a party merely by reason of the fact that he happens to be a legal practitioner.

25. We might, before we part with this point, draw attention to two conflicting decisions of the Labour Appellate Tribunal. Section 33(2) of the Industrial Disputes (Appellate Tribunal) Act,

1950, corresponded exactly to Section 36(2) of the Industrial Disputes Act, 1947. On a construction of the former provision, it was held by the Labour Appellate Tribunal in *Elgin Mills Co. Ltd. Kanpur v. Suti Mill Mazdoor Union, Kanpur*[13], that a Director of a Company was entitled to appear on behalf of the Company before the Tribunal. According to the Tribunal, the words "shall be entitled" only indicate that if a person falling within the classes enumerated in sub-section (2) appears in the proceedings, the other party cannot object to his appearance. A contrary view was taken by a larger bench in *Kanpur Hosiery Workers' Union v. J. K. Hosiery Factory, Kanpur*[14], but for reasons aforesaid we do not agree with that view.

26. In the result, we are of the opinion that the provisions contained in Section 36(2) of the Industrial Disputes Act, 1947 are not exhaustive. It is, therefore, open to an employer to seek to be represented in a proceeding under the Act by a person other than those mentioned in Clauses (a), (b) and (c) of subsection (2). We might only add that the exercise of this right is subject to the discretion of the Authority concerned to deny to a particular person the right of audience. This discretion which flows from Section 11 of the Act, which gives to the Tribunal the right to regulate its procedure must of course be used judicially.

27. We accordingly confirm the decision of the Industrial Tribunal and discharge the rule in this petition. There will be no order as to costs.

Rule discharged.

[13] 1951 (1) LLJ 184

[14] 1952 (1) LIJ 384