M/s Hygienic Foods Malerkotla Road Khanna Vs Jasbir Singh and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 13, 2009

Acts Referred: Advocates Act, 1961 â€" Section 2(i), 30, 49(1)
Bar Council of India Rules, 1975 â€" Rule 49
Companies Act, 1956 â€" Section 25 , 36(2)
Industrial Disputes (Appellate Tribunal) Act, 1950 â€" Section 33
Industrial Disputes Act, 1947 â€" Section 11(2), 2, 36, 36(1), 36(2)

Citation: (2011) 1 ILR (P&H) 672 : (2010) 1 RCR(Civil) 243

Hon'ble Judges: T.S. Thakur, C.J; M.M. Kumar, J; Kanwaljit Singh Ahluwalia, J; Jaswant Singh, J; Hemant Gupta, J

Bench: Full Bench

Judgement

M.M. Kumar, J., for himself, T.S. Thakur, Chief Justice, Kanwaljit Singh Ahluwalia and Jaswant Singh, JJ.
The short issue raised in this

reference is whether an employer can be validly represented by a practising advocate enrolled under the Advocates Act, 1961 (for brevity, "the

Advocates Act"), in an industrial dispute by becoming an officer of an association of employers of which such an employer is a member, or a

federation of such associations of employer u/s 36(2) of the Industrial Disputes Act, 1947 (for brevity, "the ID Act").

2. In order to put the controversy in its proper perspective, it would be appropriate to first notice a few facts. The services of workman-

respondents were terminated by their employer-Hygienic Foods who are the appellants in this letters patent appeal. The workmen-respondents

raised industrial disputes regarding termination of their services. The dispute was referred to the Labour Court, Ludhiana, in the shape of various

references. During the pendency of the proceedings when most of the references were fixed for arguments, an application was filed on 18th

December, 2006 on behalf of the workmen-respondents before the Labour Court raising objection to the appearance of Mr. B.P. Bansal and his

associates for the Hygienic Foods (P-1). The principal plea raised by placing reliance on Section 36(4) of the ID Act was that the workmen-

respondents did not consent to the appearance of Mr. B.P. Bansal and his associates for Hygienic Foods being advocates and that they could not

be regarded as "officer" of an association of employer or federation of such an association of employers within the meaning of Section 36(2)(a)

and (b) of the ID Act. The application was contested by the employer Hygienic Foods by filing reply (P-2). The Labour Court held that Sarvshri

B.P. Bansal, Manoj Bansal and their associates have been representing the Hygienic Foods in those industrial disputes since the year 2000/2001

and most of the reference were then fixed for arguments, therefore, there was implied consent by the workmen-respondents for then-appearance

to represent Hygienic Foods and the same could not be withdrawn. The other ground was that the application was filed at a belated stage.

Accordingly, the Labour Court dismissed the application,--vide its order dated 19th Jaunary, 2007 (P-3).

3. Feeling aggrieved, the workman challenged the order of the Labour Court, Ludhiana before this Court in C.W.P. No. 4322 of 2007 A learned

Single Judge following the Full Bench judgment of this Court rendered in the case of Indrasan Parsad versus Presiding Officer 2008 (1) S.C.T.

522, held that the order dated 19th January, 2007 (P-3), passed by the Labour Court was not sustainable because the requirement of Section

36(4) of the ID Act is that appearance of a practising advocate for the management could be possible only if (a) the workman has accorded

express consent and (b) the leave of the Labour Court was granted. Learned Single Judge rejected the contention of the employer-Hygienic Foods

that once the advocate is working as an "officer" with his employer"s association within the meaning of Section 36(2) and no objection was raised

over a long period of time then at the stage of argument, such a plea would amount to an implied consent. Accordingly the learned Single Judge

quashed the order dated 19th January, 2007 and allowed the writ petition,--vide his order dated 5th February, 2009.

4. The employer-Hygienic Foods did not feel satisfied with the view taken by the learned Single Judge and preferred LPA No. 250 of 2009. The

Letters Patent Bench,--vide its order dated 24th April, 2009, expressed the opinion that observations in para 38 made by the Full Bench of this

Court in the case of Indrasan Parsad (supra) were in conflict with those of Hon"ble the Supreme Court in paras 16 and 17 of the judgment

rendered in the case of Paradip Port Trust, Paradip Vs. Their Workmen, . The relevant part of the reference order in extenso is extracted below,

which reads thus :-

4. Learned Counsel for the appellant submits that there is a conflict in the observations of the Full Banch of this Court in paras 38 and observations

of the Hon"ble Supreme Court in para 16 and 17 in Paradip Port Trust, Paradip Vs. Their Workmen, and the said observations have not been

referred to in the judgment of the Full Bench. He further submits that High Courts of Karnataka, Andhra Pradesh and Calcutta in Steel Authority of

India Ltd. Vs. Shri B. Yellappa, , Andhra Pradesh State Electricity Board, Hyderabad Vs. Andhra Pradesh Power Diploma Engineers Association

Trade Union Kotagundam Thermal Power Station and Another, and INFAR (India) Ltd. Vs. Madan Mohan Ghosh and Others, respectively, held

that even a legal practitioner could represent a party u/s 36(2) if he was office bearer of association.

5. In view of above, we are of the view the observations of the Full Bench of this Court may require reconsideration. Thus, the matter may have to

be decided by a larger bench on this aspect.

6. We, accordingly, direct that papers may be placed before Hon''ble the Chief Justice for appropriate orders.

7. In the meanwhile, the authorized representative of the appellant will be allowed to represent the appellant, if he is covered by Section 36(2) of

the Act and observations of the Hon''ble Supreme Court in Paradip Port Trust (supra) (paras 16 and 17).

5. It is in pursuance of the aforesaid order the matter has been placed before us.

6. At the outset it may be observed that Learned Counsel for the employer did not present the legal position correctly before the Letter Patent

Bench. The reference order notices various judgments to take a prima facie view that a legal practitioner could represent a party u/s 36(2) of the

ID Act if he was an office bearer of the association. The judgment of the learned Single Judge of the Andhra Pradesh High Court in the case of

Andhra Pradesh State Electricity Board, Hyderabad Vs. Andhra Pradesh Power Diploma Engineers Association Trade Union Kotagundam

Thermal Power Station and Another, , has not been approved by the Full Bench of the Andhra Pradesh High Court In Andhra Pradesh Power

Diploma Engineering versus Andhra Pradesh State Electricity Board 1995 Lab IC 2654. Likewise, the Division Bench judgment of Calcutta High

Court rendered in the case of M/s Infar (India) Ltd. versus Madan Mohan Ghosh 2001 (2) S.C.T. 305, on which reliance was placed, has been

set aside by Hon''ble the Supreme Court on an appeal filed by the workman and is reported as Madan Mohan Ghosh Vs. Infar (India) Ltd. and

Another, . Therefore, even a reference to Full Bench may not have been necessary had the correct position been projected before the learned

Letters Patent Bench. The option left with us is either to return the reference to the Letters Patents Bench or to opine on the issue which is of

general public importance and is likely to arise in a large number of cases before the Industrial Tribunals and Labour Courts in the States of

Punjab, Haryana and Union Territory of Chandigarh. Accordingly, we adopt the later course and proceed to answer the question.

7. Mr. Mansur Ali, Learned Counsel for the Hygienic Foods argued that u/s 36(2) of the ID Act, the management can be represented in any

proceedings by an ''officer'' of an association of employer of which he is a member or an officer of a federation of association of employers to

which such an association of the employer is affiliated. According to the Learned Counsel the expression ''an officer of an association of employer''

used in clause (a) of sub-section (2) of Section 36 of the ID Act must receive a liberal construction; and as long as a person is an ''officer'' of an

association of employers, his status of being an advocate would not create a bar. He maintained that all that clause (a) of sub-section (2) of Section

36 of the ID Act requires is that the person representing the employer is an officer of an association of employer. Similar argument has been

advanced in respect of clause (b) of sub-section (2) of Section 36 of the ID Act. In nutshell the argument is that a practising advocate, as long as

he is an officer of an association of employers, could legally represent the employer before an Industrial Tribunal or Labour Court etc. In support

of his submission, Learned Counsel has heavily relied upon the observations made in paras 16 and 17 of the judgment of Hon''ble the Supreme

Court in the case of Paradip Port Trust (supra) and argued that in such a situation no consent of the workman and leave of the Court as

contemplated by Section 36(4) of the ID Act would be necessary to permit a person to represent the employer. He has emphasised that u/s 36(1)

of the ID Act, a legal practitioner can also appear for the workman as long as he is an ''office bearer'' of a trade union or member of its executive.

Accordingly, a corresponding right has also been given to the employer provided he fulfils the qualifications contemplated by Section 36(2) of the

ID Act. He suggested that there is mutuality in the provisions.

8. Mr. Mansur Ali has argued that the Labour Court or the Tribunal has jurisdiction to make an inquiry into the motive for appointment of such a

legal practitioner as an ''office bearer'' either of the trade union or of the employer''s association and, therefore, it would be too late in the day to

argue that an enrolled advocate cannot represent the employer. In support of his submissions Learned Counsel placed reliance on a Division Bench

judgment of Calcutta High Court rendered in the case of M/s Infar (India) Ltd. (supra), and argued that Section 36(1) & (2) of the ID Act have

given equal representation to the workman as well as the management. Once the aforesaid mutuality has been maintained then the question of

prejudice to the interest of the workman would become irrelevant. Highlighting the difference between the expression ''office bearer'' as used in

Section 36(1) of the ID Act and the expression ''officer'' as used in Section 36(2) of the ID Act, Learned Counsel submitted that the expression

''office bearer'' in relation to a trade union would mean an office bearer of any trade union be it a President or Secretary whereas the expression

''officer'' in the context of employer would mean a person who is an officer of the association of employer. In that regard, he has drawn our

attention to para 15 of the Division Bench judgment of Calcutta High Court in the case of M/s Infar (India) Ltd. (supra). He also placed reliance on

the view taken by the learned Single Judge of Karnataka High Court in the case of Steel Authority of India Ltd. Vs. Shri B. Yellappa, and argued

that a specific question was framed as to whether legal practitioners who are office bearers of an association of employer or federation of such an

association of employers could represent the management in pursuance of Section 36(2) of the ID Act. He placed reliance on another Single

Bench judgment of Jharkhand High Court in the case of Nav Chandra Jha versus Presiding Officer 2001 L.L.R. 483 and a Division Bench

judgment of Madras High Court in the case of Rajamani R. versus Presiding Officer 2007 11 LLJ 704 (Mad).

9. Mr. S.S. Chauhan, Learned Counsel for the workmen-respondents however, submitted that the Full Bench in Indrasan Parsad (supra) has

taken the correct view, inasmuch as, no consent of the workman, which is required by sub-section (4) of Section 36 of the ID Act, could be

implied or inferred in favour of the management that it could be represented by a practising advocate. He submitted that expression ''officer'' used

in clause (a) of sub-section (2) of Section 36 of the ID Act cannot be construed to include an advocate enrolled under the Advocates Act.

According to the Learned Counsel such an officer has to be on the pay rolls of his employer, which an advocate cannot be. He further submits that

such an advocate should also be under his disciplinary control. He further contends that the Bar Council of India has framed Rules in pursuance of

power u/s 49(1)(c) of the Advocates Act read ''With the proviso thereto. Under the heading ''Standard of Professional Conduct and Etiquette'',

there is an express prohibition for an advocate to be a full-time salaried employee of any person, government, firm, corporation or concern so long

as he continues to practise. The Rule casts an obligation on an advocate that on taking up any employment he must intimate that fact to the Bar

Council where he is enrolled. He has to cease his practise as an advocate during the course of his employment. The suggestion made by Mr.

Chauhan is that either a person can continue to hold license to practise as an advocate or he can be a full-time officer in an association of

employer. But he cannot continue to be a practising advocate and also an officer drawing full-time salary.

10. In order to appreciate the controversy raised, it would be useful to first read Section 36 of the ID Act, which is extracted below:-

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

(a) any member of the executive or other office bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected

with, or by any other workman employed in, the Industry in which the worker is employed and authorised in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

(a) an officer of an association of employers of which he is a member;

(b) an officer of a federation of association of employers to which the association referred to in clause (a) is affiliated-

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any

other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any

proceedings before a Court.

(4) In any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with

the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be.

11. It is evident that Section 36 of the ID Act seeks to regulate representation of the parties to a dispute raised under this Act. Sub-section (1) of

Section 36 entitles a workman to be represented by (i) 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 (i)

is affiliated; and (c) where the workman is not a member of any trade union then a workman has been given a wholesome right of being

represented by any member of the executive or office bearer of any trade union connected with the industry in which the worker is employed or by

any other co-worker employed in such industry.

12. The language of sub-section (1) is quite different in its phraseology from the language used in sub-section (2) of Section 36 of the ID Act.

There would be hardly any difficulty to discover a member of the executive or an office bearer of a trade union or a federation of trade unions to

which the trade union referred to above is affiliated. As long as a representative answers the prescription of any of the provisions of sub-section (1)

of Section 36 of the ID Act, it would not make any difference even if he is a legal practitioner. It follows that such a representative would not be

required to satisfy the conditions envisaged by Section 36(4) of the ID Act, namely, to secure consent of the other party and leave of the Court

because Section 36(4) would not simply apply because an office bearer or a member of the executive would cover even a legal practitioner or an

advocate enrolled under the Advocates Act. It is significant to point out that there is no bar against a legal practitioner becoming a member of the

executive or office bearer of a trade union or a federation of trade unions under the Advocates Act or any rules framed thereunder. By virtue of

becoming member of the executive or an office bearer of trade union no relationship of employee and employer between the advocate or the trade

union into being.

13. It is significant to notice that the earlier expression "an officer" was substituted by Act No. 45 of 1971 with the words "any member of the

executive or other office bearer". There is no mention of any reason in the statement of objects and reasons why the expression "officer" was

substituted by the words "any member of the executive or other office bearer" in sub-section (1) of Section 36 of the ID Act.

14. However, in sub-section (2) of Section 36 of the ID Act, the expression "Officer" has been retained. A legal practitioner enrolled as an

advocate under the Advocates Act would be covered by the expression "any member of the executive or other office bearer" but he may not be

able to answer all the attributes of an "Officer" of an association of employer of which he is a member or an officer of federation of association of

employers to which such an association is affiliated. A perusal of sub-section (2) of Section 36 of the ID Act would further reveal that the

employer is entitled to be represented in any proceedings under the ID Act by an officer of an association of employer of which he is a member or

an officer of a federation of association of employers to which the association of the employer is affiliated. Sub-section (3) of Section 36 of the ID

Act in unmistakable terms states that no party to a dispute is entitled to be represented by a legal practitioner either in any conciliation proceedings

under the ID Act or in any other proceedings before a Court. There is, thus, a complete bar created by sub-section (3) of Section 36 of the ID

Act to be represented by a legal practitioner in two types of proceedings, namely, any conciliation proceedings which are defined in clause (e) of

Section 2 of the ID Act or in any proceedings before a Court which means a Court of Inquiry constituted under the ID Act as defined in sub-

section (f) of Section 2. Thus, there is complete bar on the parties to be represented by a legal practitioner in the aforesaid two types of

proceedings. However, a perusal of sub-section (4) of Section 36 of the ID Act on the other hand would show that a party to the 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.

15. The issue raised before us whether "employer can be validly represented by a legal practitioner enrolled as an Advocate and described as

"officer" by his employer has fallen for consideration of Hon"ble the Supreme Court in the leading case of Paradip Port Trust (supra). However,

there are observations which would be directly relevant to resolve the issue raised before us. In that case, the provisions of Section 36 of the Act

were also interpreted. Therefore, it would be imperative for us to closely analyze the aforesaid judgment so as to deduce the principles of law laid

down by Hon"ble the Supreme Court.

16. Few skeletal facts may first be noticed. The employer Paradip Port Trust was represented by an Advocate Shri T. Mishra in a reference made

to the Industrial Tribunal at the instance of Paradip Shramik Congress representing the workmen with regard to termination of services of their

workmen. The employer projected the Advocate "as its Officer" on the premise that he was working with them as a" legal consultant". The

Advocate had filed an authority letter executed in his favour by the Paradeep Port Trust. An objection was raised by the workmen to the

appearance of the Advocate. The Tribunal sustained the objection and refused to grant him leave to appear. The view of the Tribunal is quoted by

Hon"ble the Supreme Court in para four of the judgment, which has been approved. According to the Tribunal, the terms and conditions of the

appointment of Shri Mishra as legal consultant of his employer of the relationship of the Paradeep Port Trust employer and Shri T Mishra was

clearly that of a client and his lawyer and not that of employer and employee. The Tribunal had further held that in such a situation, it could not be

said to be an officer of the employer-Port Trust. The Tribunal went on to observe that merely by execution of the power of attorney, the

restrictions imposed on a legal practitioner by Sub section (4) of Section 36 of the Act could not be circumvented Accordingly, it was held that a

legal practitioner cannot represent the employer Port Trust before the Tribunal.

17. Thus the view taken by the Tribunal was upheld. The view of Hon"ble the Supreme Court is discernible from para 15, 16, 25 and 26, which

reads as under :-

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 an their pay (sic ?) 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 entiled to represent the workmen

before the Tribunal u/s 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 cases of an employer and in the capacity of an office bearer of the union in the cases 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 qualification specified in Section 36(1) and Section

36(2) are fulfilled by him.

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 govening 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 case there is no absolute ban to appear even

against the Port. This condition is not at all 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 association of employers and no consent of the other side and leave of the Tribunal will, then, be necessary.

18. Hon"ble the Supreme Court has also interpreted Section 36 of the ID Act. The views of Hon"ble the Supreme Court, which are discernible

from various paras may be summarised as under:-

(i) Section 35(1) confers in "unbartered" and "absolute right" upon the workman to be represented by a member of the executive or an office

bearer of the registered trade unions. Likewise, the employer is also placed at par with the workman in the matter of representation before the

Labour Court, Industrial Tribunals and National Tribunals. Consequently, an employer may also be represented by an "Officer" of the association

of employer of which the employer is a member. The right is extended to representation by an Officer of the federation of employer to which the

association of employer is affiliated.

(ii) The rights of representation u/s 36(1) of the ID Act are unconditional and are not subject to the conditions laid down in Section 36(4) of the ID

Act. Both the sub-sections are independent and stand by themselves.

(iii) Section 36 of the ID Act is not exhaustive in the sense that beside the person specified therein, there can be other lawful mode of appearance

of the parties as such (para 13). Such an eventuality has been envisaged by Section 36(2)(c) in case of an employer, who is not 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.

(iv) A legal practitioner, who is appointed as an officer of Company or Corporation can represent them subject to certain conditions. The first

condition is that he must be on their pay rolls and under their control. The second is that if a legal practitioner is appointed as an officer of a

company or corporation then the mere fact that he was earlier a legal practitioner or he has a law degree to his credit was not to stand in the way

of the Company or the Corporation being represented by such a person. Section 36(3) of the ID Act imposes a complete embargo on

representation by a legal practitioner by either party to the dispute before the Court or in any conciliation proceedings under the Act.

(v) In the matter concerning representation by a legal practitioner the parties are required to conform to the conditions laid down in Section 36(4)

of the ID Act. The consent of the opposite party and the leave of the Labour Court or Tribunal have to be secured to enable a party to seek

representation before the Tribunal through a legal practitioner.

(vi) If a legal practitioner becomes an officer of an association of employer or a federation of such association of employer which is affiliated to

such a federation within the meaning of sub-Section 2(a) and 2(b), then he can represent an employer. Merely because such an officer has been

earlier a legal practitioner or he is a law graduate or has acquired legal acumen otherwise would not impede his appearance. Likewise, an ''office

bearer'' of a trade union or a member of its executive would be entitled to represent the workmen before the Tribunal u/s 36(1) in his capacity as

the officer bearers or member of its executive, even though, he is a legal practitioner.

(vii) The expression ''office bearer'' or any member of the executive in relation to trade union as per Section 2(gg) of the ID Act means the body by

whatever name called to which the management of the affairs of the trade union is entrusted. An ''office bearer'' in relation to a trade union would

include any member of its executive. However, the expression ''Officer'' used in Section 36(2) has not been defined in the ID Act. In the absence

of any definition, some controversy is likely to arise, therefore, Hon''ble the Supreme Court in para 18 has observed that 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 would be required to determine on the materials produced before it whether the claim is justified. Hon''ble the

Supreme Court further observed that an officer u/s 36(2) is of the association or of the federation of associations of employers and not of the

company or corporation.

(viii) No advocate could claim a right to practice by placing reliance on Section 30 of the Advocates Act. That Act has to give way to ID Act

because it is a special piece of legislation with the avowed aim of labour welfare. The mode of representation before adjudicatory authorities has

been regulated by keeping that object in view. Moreover, the matter is not to be viewed from the point of view of a legal practitioner but from that

of the employer and the workmen, who are the principal contestants in an industrial dispute. In ID Act, restriction is upon a party as such and the

occasion to consider the right of the legal practitioner to practise before every court as per provisions of Section 30 of the Advocates Act would

not arise.

19. Having extracted various principles relevant to answer the question raised in this reference from the judgment of Hon''ble the Supreme Court in

Paradip Port Trust''s case (supra), it would be convenient to divide the discussion in two parts, namely:-

(A) What are the true attributes of an'' officer'' within the meaning of Section 36(2) (a) and Section 36(2) (b) ?

(B) What would be the interpretation of expression ''association of employers'' or ''a federation of association of employers'' given in clause (a) and

(b) of sub-section (2) of Section 36 of the ID Act?

Re : Question (A)

20. The discussion in the preceding para shows that no difficulty was felt with regard to representation being made by a legal practitioner in respect

of workmen because they could lawfully become member of the executive or any other office bearer within the meaning of sub-section (1) of

Section 36 of the ID Act. It is also evident that in two types of proceedings no legal practitioner is permitted to represent either of the party,

namely, conciliation proceedings under the ID Act or any proceeding before a Court as defined in Section 2(e) and 2(f) respectively. Likewise, no

difficulty has been confronted in understanding the provisions of sub-section (4) of Section 36 of the ID Act because in any proceeding before a

Labour Court, Tribunal or National Tribunal, a party to the dispute may be represented by a legal practitioner with the consent of the other parties

to such proceedings and also with the leave of the Labour Court, Tribunal or National Tribunal as the case may be.

21. In para 18 of the Judgment of Hon''ble the Supreme Court in Paradip Port Trust''s case (supra), speaking through Justice Goswami has

observed that the expression ''Officer'' used in Section 36(2) of the ID Act was ''bound'' to give rise to some controversy. The prophetic words of

Hon''ble the Supreme Court have come true as there is controversy on the aforesaid issue. However, the preponderance of authorities is that a

legal practitioner cannot be regarded as an ''Officer'' as would be evident from the succeeding paras. We will first refer to the view taken by

Hon''ble the Supreme Court in Paradip Port Trust''s case (supra), itself and then to the opinion expressed by a Full Bench of Andhra Pradesh High

Court in the case of Andhra Pradesh Power Diploma Engineer''s Association versus Andhra Pradesh State Electricity Board 1995 LAB. I.C.

2654. The relevant extract from para 18 of the judgment of Hon''ble the Supreme Court in Paradip Port Trust''s case (supra), reads thus :

.....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

u/s 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 u/s 36(2) is of the association or of the federation of associations of employers and not of the company or

corporation.

22. A perusal of the aforesaid para makes it evident that a legal practitioner claiming to be an ''Officer'' has to be officer of the association or the

federation of association of employers and not that of the company or corporation. Hon''ble the Supreme Court appears to have made a distinction

between ''Officer'' of the company or corporation which is an employer and an ""Officer"" of the association or federation of employers as

contemplated by sub-Section 2(a) and 2(b) of Section 36 of the ID Act.

23. Hon''ble the Supreme Court in Paradip Port Trust''s case (supra), in unmistakable terms has laid down that when such a question is raised

before the Tribunal then in each individual case it has to be determined on the material placed before it whether the claim of such a representative is

justified that he is an officer. Such person is required to be ''Officer'' within the meaning of Section 36(2) of an association or of the federation of

association of employers and not of the company or corporation. Hon''ble the Supreme Court also recorded its disagreement with the view

expressed by the Full Bench of the Appellate Tribunal of India in the case of Kanpur Hosiery Worker''s Union versus J.K. Hosiery Factory,

Kanpur (1952) I L.L.J.384 although it agreed that a party could not be represented by a legal practitioner on the basis of a power of attorney.

24. However, the controversy has arisen on the interpretation of Section 36(2) of the ID Act. The definition of expression ''Officer'' is available in

Oxford Dictionary and Thesaurus which reads thus: ''officer/ noun 1 person holding position of authority or trust, esp. one with commission in

armed forces. 2 policeman or policewoman, 3 president, treasurer, etc. of society etc. Likewise, Webster''s Third New International Dictionary

defines the expression ''Officer'' to mean ''one charged with a duty, a person trained and commissioned to engage in paid full-time service''. In the

Chambers 21 st Century Dictionary the expression ''officer'' has been defined to mean ""1 someone in a position of authority and responsibility in

the armed forces. 2 someone with an official position in an organization, society or government department. 3 a policeman or policewoman. 4 a

person in authority on a non-naval ship "". It has specifically excluded a solicitor from the ambit of the word ''Officer'' to the body corporate. In that

regard reliance may be placed on a judgment of Calcutta High Court rendered in the case of Bharat Petroleum Corpn. Ltd. Vs. The Presiding

Officer and Others, ,. It follows that a solicitor or a lawyer designated as a legal adviser cannot be an officer of a company or an association or

federation without first showing the relationship of employer and employee, payment of regular salary and control of the employer over such an

''Officer''. Thus, it is clear that a lawyer enrolled as an advocate under the Advocates Act cannot become an ''Officer'' of a company, corporation,

association of employers or federation of association of such employers as there is a legal bar on their acceptance of full time employment or

control by any other body or institution. The various provisions framed under the Advocates Act shall be discussed in the succeeding paras.

25. As is evident from the preceding para the expression ''Officer'' has definite connotation. It contemplates an office which is to be occupied by an

incumbent. Such an incumbent has to be in their pay and under their control. Therefore, only such an officer of the association of employers or that

of the federation of association of employers can represent the employer. The employers can also be represented by their directors or their own

officers authorized to act in that behalf. However, it would not mean that the companies and corporations are free to engage legal practitioners by

means of special power of attorney to represent their interest. It was in this context that the obseration of Hon''ble the Supreme Court in the case

of Paradip Port Trust (supra) would be relevant in which it has been held as under :-

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 versus J. K. Hosiery Factory, Kanpur (1952) I LLJ 384 LATI

Cal). 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

reason for its conclusion based solely on the ground of Section 36 being exhaustive do not meet with our approach.....

26. The matter has also been examined in some detail by a Full Bench of Andhra Pradesh High Court in the case of Andhra Pradesh Power

Diploma Engineers'' Association''s case (supra). From para 16 of the Full Bench judgment it is evident that all the attributes of an Officer as

pointed out by Hon''ble the Supreme Court in Paradip Port Trust''s case (supra) have been adopted by the full Bench. It is appropriate to mention

that these attributes have been indicated in para 25 of the judgement in Paradip Port Trust''s case (supra) to which reference has already been

made in the preceding paras. Some of those attributes are that such an Officer has to be on the pay rolls of the company. He has to be under its

control and he could not enjoy the freedom to accept cases from other parties as any other legal practitioner. If such are the necessary attributes of

an Officer within the meaning of Section 36 (2) (a) and (b) then a person who is a legal practitioner and registered as such, cannot become an

office bearer of the association of employers or become an office bearer of federation of association of employers to which such an association is

affiliated. We further find that Hon''ble the Supreme Court has observed in Pardip Port Trust''s case (supra) that the rights of representation u/s

36(2) are unconditional. Those rights are not subject to the conditions laid down u/s 36(4) of the ID Act.

27. In the concluding sentence of para 12 of the judgement of Paradip Port Trust''s case (supra) it has further been observed that ''The said two

sub-sections are independent and stand by themselves''. It is significant to notice that sub-section (1) and (2) of Section 36 of the ID Act do not

use the expression ''legal practitioner''. The expression ''legal practitioner has been specifically used in sub-section (3) and (4) of Section 36 of the

ID Act. Therefore, to say that a legal practitioner can masquerade as an ''Officer'' of the association of employer or the federation of association of

employers of which such an employer''s association is affiliated u/s 36(2), would amount to achieving indirectly something that cannot be achieved

directly. It is an impossible proposition to accept. It has however, been clarified by Hon''ble the Supreme Court in Pardip Port Trust''s case

(supra) it self that once an entrolled advocate or a legal practitioner has given up his status as an Advocate then the mere fact that he was at any

point practising as such would not result in attaching any disability for him to become an officer of the association of employer or federation of

employers to which the employer''s association is affiliated. It has further been held that Section 36 is not exhaustive regarding representation of the

parties to a dispute arising under the ID Act. In that regard the view taken by the Division Bench of Bombay High Court in K.K. Khadilkar Vs.

Indian Hume Pipe Co. Ltd. and Another, has been approved by Hon''ble the Supreme Court in Paradip Port Trust''s case (supra). We also place

reliance on Single Bench judgment of Gujarat High Court in the case of J.B. Transport Company versus Shankarlal @ Mavaram Nathuji Patel

2000 I LLJ 442. In that case the Gujarat High Court has held that an officer must hold an office and take part in the management or directions of

the employer''s institution. He must be trained and engaged in discharging a duty and paid fully for the services rendered by him. For appearance

before the Labour Court/Industrial Tribunal, a legal practitioner should be a regular officer of such employees'' association/union otherwise it would

defeat the provisions of Section 36(2) and 36(4). Referring to the provisions of Advocates Act, Gujarat High Court has held that an advocate

cannot be an employee in any institution without the express permission of the Bar Council. The Gujarat High Court has also placed reliance on the

Full Bench judgment of the Andhra Pradesh High Court rendered in the case of Andhra Pradesh Power Diploma Engineers'' Association''s case

(supra). Similar view has been taken by Calcutta High Court in the case of Bharat Petroleum Corpn. Ltd. Vs. The Presiding Officer and Others, .

In that case the Tribunal had refused permission to be represented by two Executive Committee members of the association who happen to be

legal practitioners. On the basis of various submisssions made, the Calcutta High Court concluded by placing reliance on the judgment of Hon''ble

the Supreme Court in The K.C.P. Employees'' Association, Madras Vs. The Management of K.C.P. Ltd., Madras and Others, , that Industrial

Law is interpreted and applied in the perspective of Part-IV of the Constitution and if there is any doubt on law and fact then the same has to be

extended to the weaker section i.e. labour. Accordingly, it was held that two Executive Committee members of the association belonging to the

Bharat Petroleum Corporation were not entitled to represent the Corporation.

28. Further, if a legal practitioner is included in the definition of expression ''Officer'' then it is very handy for anyone to become such an office

bearer of an association of employer or federation of association of employers which of the employer''s association is affiliated and the provisions

of Section 36(3) and Section 36(4) of the ID Act could be easily circumvented. In any case no such intention could be imputed to the legislature

because Section 36(1) of the ID Act was amended by the Parliament in pursuance of Act No. 45 of 1971. The expression'' Officer'' was replaced

by the expression ''any member of the executive or other office bearer''. The Parliament did not replace the word ''Officer'' occurring in Section

36(2)(a)(b) & (c) of the ID Act. Therefore, by becoming a President. Vice-President or Secretary of an association of employer or federation of

association of employers to which such association is affiliated, a legal practitioner cannot be permitted to assume duality of character and

camouflage the intention of the legislature. For the aforesaid view we find ample support from the Full Bench judgment of Andhra Pradesh High

Court in Andhra Pradesh Power Diploma Engineers'' Association''s case (supra). In the concluding part of para 16, their Lordships'' of the Full

Bench has observed as under :-

16.....It would hence be seen that the word conveys the meaning, in its essentiality, as being subjected to some type of control and check and to be

in reciept of some type of remuneration from the person or body whose officer he is and that the engagement is not for a specific occasion only. It

was pointed in the decision in Prabhudas Mulji Doshi versus Governor General of India in Council ILR (1951) I (Cal) 443, that the word ""officer

imports the idea of an ""office"" and that to be an ""officer"" therefore, the person claiming must show that there in an office which he holds. A Full

Bench of this Court in the decision in B. Veeraswamy and Others Vs. State of Andhra Pradesh and Others, , also express similar view in saying

the individual who is invested with the authority and is required to perform the duties incidental to an office is an officer. For determining whether

officers are subordinate or not, the test is not whether a review of such of their determinations as are quasi-judicial may be had, but whether in the

performance of their various duties they are subject to the direction and control of a superior officer, or are independent officers subject to such

directions as the statute gives."" in Nandial More Vs. Ramchandiram Mirchandani and Others, , the Court was of the view that ""officer"" and ""office

are correlated and basically an ""officer, whether he occupies a specific office or not, must be in the relation of an employee or servant of a

company, firm or individual who is his employer or master. Being an officer pre-supposes a relationship of employer and employee or master and

servant."" In that case the question to be considered was whether a power of attorney holder can be called an officer of the executor of the power

of attorney. It was pointed out that a power of attorney creates a relationship of principal and agent and not of master and servant.

The aforesaid view has been examined in some detail by Shri O.P. Malhotra in his well known commentary ''Law of Industrial Disputes''.

29. Another aspect of the matter is that the Bar Council of India have framed rules u/s 49(1)(c) of the Advocates Act, which are titled ''Standards

of Professional Conduct and Etiquettee''. According to Rule 49, no advocate could be a full time salaried employee. The aforesaid rule reads as

under :-

49. An advocate shall not be a full-time salaried employee of any person, Government, firm, corporation or concern, so long as he continues to

practice, and shall, on taking up any employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to

practice as an advocate so long as he continues in such employment.

30. A perusal of the aforesaid rule makes it explicit that once an advocate is on the pay roll of an employer or an association of employer or

federation of such association of employers then it necessarily come in conflict with Rule 49 and, therefore, an advocate to that extent cannot have

duality of character. For the aforesaid view we place reliance on the observation made in para 17 of the judgment of Delhi High Court in the case

of Siemens Ltd. versus K.K. Gupta, 2006 (1) RSJ 405. Cf. Management of the Associated Cement Cos. Ltd. versus Workman, Saroj Arora

2001 (2) SCT 771.

31. At this stage the argument raised by Mr. Mansur Ali placing reliance on a Single Bench Judgment of Karnataka High Court in the case of B.

Yellappa (supra) may be considered. The Karnataka High Court has held that a legal practitioner who is an office bearer of a federation or an

association of employer is entitled to represent a member of the association u/s 36(2) of the ID Act and has provided the rationale that the Labour

Court could not go into the motive as to why the employer company had become member of the association of employers. Likewise, reliance has

also been placed on another judgment of learned Single Judge of Karnataka High Court in the case of Hotel Ashok versus Additional Labour

Court, Bangalore 1984 (1) KLJ 227 and Division Bench judgment of Madras High Court rendered in the case of Rajamani R. (supra) wherein

same view has been taken. With utmost respect we are unable to subscribe to the view taken by the Karnataka and Madras High Courts in the

aforementioned judgments because the same fail to examine the true meaning of expression ''Officer'' and the expression ''association of employer''.

The true meaning of expression ''Officer'' has been ascertained in the preceding paras by referring to the legislative intent which was highlighted by

the amendment of Act No. 45 of 1971 substituting the word ''Officer'' in sub-section (1) of Section 36 and retaining the same word in sub-section

(2) of Section 36. The substituted expression after 1971 in Section 36(1) is ''any member of executive or other office bearer''. If the expression

''Officer'' was to have the same meaning then no substitution of that expression in Section 36(1) would have been necessary. The substitution of

word ''Officer'' in Section 36(1) with those of'' any member of the executive or other office bearer'' is deliberate and intentional. Therefore, we

cannot include an ''office bearer'' in the expression ''Officer'' and as such an intention cannot be imputed to the legislature. Likewise, the expression

''association of employer'' has to be interpreted to mean employer alone and it would not admit any one elso like Advocates asnd legal

practitioners. Therefore, we regret our inability to subscribe to the aforesaid view.

32. In the light of the aforesaid discussion, it has to be concluded that the expression ''Officer'' used in sub-section (2) of Section 36 would not

include a legal practitioner because an advocate cannot satisfy various attributes concerning relationship of employer and employee including

salary, whatever name called. He can also not be under any professional or disciplinary control of any body other than the Bar Council. An

advocate also suffers a bar created by the rules framed by the Bar Cooncil of India. Therefore, the first question is answered accordingly.

Re : Question (B)

33. The expression ''employer'' has been defined in Section 2(g) of the ID Act to mean an industrial employer alone. Meaning of expression

''association of employer'' or ''federation of association of employers'' has been considered by the Full Bench of the Andhra Pradesh High Court in

Andhra Pradesh Power Diploma Engineers'' Association''s case (supra). It has been observed that in the plain sense it would mean the status of the

members of the association to be that of employer. The use of words in specific and without any ambiguity and accordingly have to be understood

in their natural sense. The Full Bench observed that these words ''are susceptible to the only meaning that the association must be of persons who

are employers and have formed themselves into an association because of their status as such. In other words, the membership of the association

must be qua employers and not otherwise.....''. The Full Bench has opined that an association of persons enjoying different and varieties of status

of which some accidentally happen to be employers would not be covered by the definition of expression ''association of employers''. It is for the

reason that when a statute speaks of an association of a specified kind of persons as forming a classification, it is the legislative intendment which is

paramount and it is to be interpreted in that sense alone. Accordingly, it follows that these expressions as understood within the meaning of Section

36(2) to be an association of employers or federation of association of employers alone and not all others. For the aforesaid view, apart from

placing reliance on the Full Bench of Andhra Pradesh in Andhra Pradesh Power Diploma Engineers ''Association''s case (supra), reliance can also

be placed on a Division Bench judgment of the Mysore High Court rendered in the case of Workmen of B.R. Darbar Ginning and Pressing

Factory versus B.R. Darbar Ginning and Pressing Factory (1969) II LLJ 25 (Mys). In that case from the Memorandum of Association and

Articles of Association of Federation of Chamber of Commerce it was found that the membership consist not only employer but all non-employer

also such as practising lawyer. The Division Bench, therefore, took the view that the federation could not be regarded as on association of

employers u/s 36(2) of ID Act. Likewise, reliance may also be placed on another judgment of Gujarat High Court rendered in the case of Hosing

Ardasar Ichhaporiya Vs. Mahavir General Hospital and Another, . The further requirement of Section 36(2) is that such an employer has to be

represented by an officer of any association of employer or federation of association of employers with which it has been affiliated or of which it is

a member.

34. From the aforesaid discussion it becomes evident that a legal practitioner can neither be an officer of the association of employer nor he can be

member of any such association of employer because essentially the association of employer or federation of association of employers has to be

only those of employers.

35. In the present case there is no material placed on the record to show the nature of relationship between Mr. B.P. Bansal and his associates, his

employer or association of employer. However, Mr. B.P. Bansal, who represented the employer in the proceedings before the Labour Court was

present in the Court on 11th September, 2009. He has in unequivocal terms stated that he is enrolled as an advocate and a member of the

Ludhiana District Bar Association, where he has a chamber. He has not shown us any document which may prove that he is covered by the

expression "Officer" of the association of employer or federation of association of employers to which his association of employer is affiliated.

Therefore, in such a situation he cannot be regarded as an "Officer" working with Hygienic Foods or an "Officer" of an association of employers of

which he is a member or an officer of a federation of association of employers to which such an association is affiliated. He being an advocate

cannot be permitted to camouflage his status as an advocate by removing his band and gown to become an officer of the association of employer

or an officer of the federation of association of employers to which the association of employer is affiliated. Therefore, we are of the view that Mr.

B.P. Bansal and his associate Advocates could not have acted as an officer u/s 36(2) of the Act.

Hemant Gupta, J. (dissenting) :

36. I have gone through the majority view authored by brother M.M. Kumar. Though, I am in agreement in respect of Question B, to the extent

that Association or Federation of the Employers has to be of the employers alone. However, I am unable to agree with the conclusion arrived at

that a legal practitioner, to be an Officer of the Association of the Employers, has to on pay rolls of such association as the expression ""officer

denotes relationship of employee and employer.

37. The issue raised has arisen in different High Courts even prior to the Judgment of Hon"ble Supreme Court in Paradip Port Trust"s case. In Hall

and Anderson, Ltd. Vs. S.K. Neogi and Another, . It was held by Single Bench of Calcutta High Court that if Director of a Company or a

Corporate body happen to be a practising lawyer, his appearance would not involve any contravention of provisions of Section 36(4). It was of

the view that a legal practitioner who wished to get round the bar by shedding his gown and obtaining a power of attorney from party is not

permitted. It was held that in case of company or corporate body it must be represented by some one as it is not human. Thus, the Managing

Director of a Public Limited Company, a practising lawyer, was permitted to represent the company in proceedings under the Industrial Disputes

Act between the employer and its workmen. A practising lawyer was found to be an officer of the Employer. It observed thus-

.....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.....

38. In Sarbeswar Bardoloi versus U.K. Gohain, Judge, Industrial Tribunal, Assam and another AIR 1955 Ass 148 a Division Bench has examined

the question, ""whether a legal practitioner, who is a legal advisor of an Association is entitled to represent employer in a industrial dispute before

the Labour Court."" Though the matter was remitted back to the Industrial Tribunal to decide the question in the light of observation made above to

produce evidence on the question of controversy, but the following principles were enumerated-

As to what are the qualifications or distinguishing marks of an officer of an association of employers the matter is not free from difficulty. The word

officer"" has not been defined in the Act. It does not admit of any easy definition. In the absence of any definition dictionaries may be of some

assistance though the meaning assigned to the expression in dictionaries may not be binding on the Courts. The Courts have to ascertain the

meaningsof terms with reference to the context in which they occur. Even so, the meaning that an expression bears according to dictionaries may

afford guidance and assistance in ascertaining the import and connotation of the expression, the meaning of which is in dispute. In this case, Mr.

Chaudhuri has referred us to the meaning of the expression given in the Oxford Dictionary. The expression ''officer'' in the dictionary sense means

one who holds an office. In relation to companies or societies, it is a person who holds and takes part in the management or direction of a society

or institution, for instance, one who is holding the office of President, Treasurer or Secretary, Associations and Corporate bodies have normally

these officers. But the list is not exhaustive. A practising lawyer may conceivably be an officer, but the description as legal adviser without

reference to the terms of his appointment and the duties of his office would not be enough for a finding that he is an officer of the company. The

statement is no doubt negative in character. But a positive rule covering all cases in not at all easy to formulate and each case has to be decided on

its own facts after examining the terms of the relationship between the legal practitioner concerned and the association or the company, of which he

claims to be a member. What is necessary is that the legal practitioner concerned must be a regular officer of the employers" association. If on

facts, he can be found to be a regular officer, nothing short of an attempt to circumvent the provisions of Section 36(4) would disqualify him from

representing a member of his association.

39. It also held that no legal practitioner is disqualified from representing a party by reason of fact alone that he happens to be legal practitioner, if

his case is covered by Clause (a) and (b) of Section 36(2). It was found that it is conceivable that a legal practitioner may be an officer of an

Association of employers of which the employer who is a party to the issue is a member. A legal practitioner can be both, an Officer of an

Association of employer under Clause (b) and also an Officer of Federation of Association of Employers. He being a legal practitioner would not

create bar in the way of his representing the employers.

40. A Division Bench of Rajasthan High Court in a judgment reported as Duduwala and Co. and Others Vs. Industrial Tribunal and Another, has

examined two points of law. The first being ""whether Section 36 is exhaustive of the right to represent before an industrial court or tribunal and

therefore, no party can claim to be represented through a person to whom he has given a special power of attorney"". The second question was

whether a practising lawyar, who holds one of the capacities as described in Clause (a), (b) and (c) of Section 36(2), can be prohibited from

appearing before an industrial tribunal on the ground that his appointment was a circumvention of the provisions of sub-section (4)"". It may be

noticed at this stage that the said judgment has met the approval of the Hon"ble Supreme Court in respect of first question in the judgment reported

as -Paradip Port Trust, (supra). But in respect of second question, relying upon a Division Bench judgment of Assam in Sarbeswar Bardoloi

versus Industrial Tribunal, Assam and Another AIR 1955 Ass 148 and a Bombay High Court judgment in Alembic Chemical Works Company

Ltd. and another versus P.D. Vyas and Another 1954 XI L.L.J. 148 it was held to the following effect:

It cannot be said that there is moral turpitude attaching to a lawyer appearing before an industrial tribunal. Even sub-section (4) recognizes that

lawyers can appear before industrial tribunals with the permission of the tribunal and the consent of the parties. There is nothing, therefore,

inherently wrong in lawyers appearing before such tribunals. Further, there are authorities which lay down that if a lawyer fulfils the conditions laid

down in sub-section (1) and (2), he has a right to represent the employer or the employee. We cannot see why a distinction should be made on the

theory of circumvention and a lawyer should be permitted to appear for the employer of the employee if he has been holding one of the offices

mentioned in sub-section (1) or (2) before the dispute arose, but should not be so allowed to appear if he was elected or appointed to the office

after the dispute.....

41. In Alembic Chemical Works Company Ltd. Case (supra), a learned Single Judge of Bombay High Court has held that Section 36 is not

exhaustive and there are cases outside Section 36 in which the parties would be entitled to be represented in a manner other than the manner set

out in sub-section (1) and (2) of Section 36. While considering sub-section (1) and (2) of Section 36, it held that an officer of any trade union, as

referred to in sub-section (1) or an officer or Director of a Corporation, referred to in sub-section (2) is entitled to be represented by the

procedure governing the tribunal even though he happens to be a legal practitioner. It pre-supposes that such an officer is a regular officer either of

the trade union or the association or in the case of an officer of a corporation a regular officer of the corporation, and in the case of director that he

is a bona fide director. It was held that if a legal practitioner is transformed into an officer of a registered trade union or of an association of

employees or of a corporation or is appointed a director of a corporation, in order to get over the disability imposed on a legal practitoner

representing a party, then such a person shall not be allowed to appear and represent a party. It was held to the following effect:

.....:.....Therefore, it appears to me that if an officer of any trade union who is referred to in sub-section 36(1) as qualified to represent a workman

or an officer of an association of employees who is qualified to represent an employer under sub-section (2) or an officer or director of a

corporation through whom a corporation is entitled to be represented by the procedure governing the tribunal happens to be a legal practitioner,

that fact by itself cannot disqualify him from appearing before the tribunal. But this presupposes that such an officer is a regular officer either of the

trade union or the association or in the case of an officer of a corporation a regular officer of the corporation, and in the case of a director that he is

a bona fide director not elected a director merely for the purposes of enabling him to appear in a pending proceeding before a tribunal. In other

words, if a legal practitioner is transformed into an officer of a registered trade union or of an association of employees or of a corporation or is

appointed a director of a corporation, in order to get over the disability imposed on a legal practitioner representing a party, then such a person

shall not be allowed to appear and represent a party. But short of an intention to circumvent the provisions of Section 36(4) if a legal practitioner is

ordinarily a regular officer either of a trade union or an association of employees referred to in Section 36(1) and (2) or of a corporation or if he is

a director bona fide appointed as a director, I see nothing in sub-section (4) to prevent his appearing on behalf of the party merely by reason of the

fact that he happens to be a legal practitioner.

42. A Single Bench of this Court in a judgment reported as M/s Delite Cinema and Others versus Rameshwar Dyal and Another AIR 1957

Punjab 189, quoted with approval from the judgment of Rajasthan High Court. this Court was dealing with a case of an officer of a trade union, as

per the provisions of Section 36(1) in force at that time. It was held that a practising lawyer, who holds any of the capacities, mentioned in Section

36(1) and (2) is entitled to represent the workmen or the employer as the case may be. It was held to the following effect:

(13) xx xx xx

The Learned Counsel for the petitioner has, however argued that if an officer of the Trade Union is a legal practitioner of this Court, then he is

debarred u/s 36(4) of the Industrial Disputes Act, 1947. It has, however, been held repeatedly that a practising lawyer who holds any of the

capacities mentioned in Section 36, sub-section (1) or sub-section (2) is entitled to represent the workmen or the employers as the case may be.

Wanchoo C.J. in Duduwala and Co. and Others Vs. Industrial Tribunal and Another, has observed :

It is now well settled that a lawyer can appear before an Industrial Tribunal if he holds one of the capacities mentioned in sub-section (1) or sub-

section (2) of Section 36 and his being a practising lawyer will not be a disqualification for his so appearing.

(14) I am in respectful agreement with this observation. I, therefore, reject this contention of the Learned Counsel.

43. The question before the Division Bench of Bombay High Court in a judgment reported as K.K. Khadilkar Vs. Indian Hume Pipe Co. Ltd. and

Another, was that- ""Whether Section 36 is exhaustive in the manner of representation by or on behalf of company or a corporation u/s 36(2) of the

Act"". It was held while approving the judgment in Alembic Chemical Works Company Ltd. Case (supra) that Section 36 is not exhaustive and it

would be open to the employer to be represented in the proceedings under the Act in a manner other than that specified in clause (a), (b) and (c)

of sub-section 2 of Section 36. While considering clause (c) of Section 36(2), it was observed that the company would be entitled to be

represented by an Officer of any association of employers connected with the industry in which company is engaged or by other employer engaged

in the particular industry. Therefore, to compel a company to be represented in dispute with its worker by an employer engaged in similar industry

would often mean the completion to engage a rival in business. It proceeded ahead to hold as under :

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 employers the right to be represented in a proceeding under the Act, by an agent. If representation through an agent is permisible, 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 S. 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 Cls. (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.

XX XX

On the construction of the words used in S. 36 of the Act we are, therefore, of the opinion, that Cls. (a), (b) and (c) of Sub-section (2) are not

exhaustive of the right of an employer to be represented in a proceedings 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.

XX XX

In the result, we are of the opinion that the provisions contained in S. 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 Cls. (a), (b) and (c) of

Sub-section (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 S. 11 of the Act, which gives to the tribunal the right to regulate its procedure must

of course be used judicially.

44. Section VII, of Rules on standards of professional (Chapter H, Part VI) of Bar Council of India Rules at this stage needs to be extracted.

Section VII--Restriction on other Employments

47. An advocate shall not personally engage in any business; but he may be a sleeping partner in a firm doing business provided that in the opinion

of the appropriate State Bar Council, the nature of the business is not inconsistent with the dignity of the profession.

48. An advocate may be Director or Chairman of the Board of Directors of a company with or without any ordinarily sitting fee, provided none of

his duties are of an executive character. An advocate shall not be a Managing Director or a Secretary of any company.

49. An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to

practise, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon

cease to practise as any advocate so long as he continues in such employment.

45. A legal practitioner is defined in Section 2(i) of Advocates Act, 1961 to mean an advocate, Vakil, a pleader, or revenue agent. u/s VII of Bar

Council of India Rules, as reproduced above, an Advocate is permitted to be a Director or Chairman of the Board of Directors of a company with

or without any ordinary sitting fee. He shall not be a managing director or a secretary of any company. An advocate shall not be full time salaried

employee of any person.

46.Still further, there is no specific statute regulating the formation of Association of the employers. The employers can form an Association and get

the same registered under the Societies Registration Act, 1863; can form a company and also seek deletion of the word Limited in its name in

terms of Section 25 of the Companies Act, 1956, if such Company is formed for promoting commerce, art, science, religion, charity or any other

useful objects. Such Association can be unregistered body as well as there is nothing in Section 36 of the Act, which provides that it has to be a

registered Association of employers. Though, sub-Section (1) of Section 36 talks about registered trade union, but sub-Section (2) does not refer

to an Association of the employers as a registered Association. Therefore, an unregistered Association of employers also falls within the scope of

sub-Section (2) of Section 36 of the Act.

47. In Paradip Port Trust''s case (supra), one Shri T. Mishra, a legal consultant, sought to represent the employer-Trust. He sought to appear

before the Tribunal on the basis of power of attorney executed by Chairman of the Trust. The Tribunal, the decision of which was subject matter of

challenge before the Hon''ble Supreme Court, examined the terms and conditions of appointment of Shri T. Mishra and held that ""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 Mishra is clearly that of a client and a lawyer and not that of employer and employee. Hence, Shri Mishra cannot be said to be

Officer of the first party"". The Supreme Court while considering the scope of sub-section 2 of Section 36, inter alia, returned a finding that

companies and corporations are not confined to representation of their cases only through the officers specified in sub-section (2) of Section 36 of

the act. they can be represented by their Directors or their own officers authorized to act on 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 the 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. It was, therefore, the Court held to the following effect:

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 e mployers 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 workman before the

Tribunal u/s 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 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.

[Emphasis Supplied]

XX XX

25. In the appeal before us we find that the Tribunal after considering the materials produced before it, held that Shri T. Mishra 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 Mishra 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

Mishra"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. The condition is not at all consistent with the position of an officer of the Trust. We agree with the opinion of the

tribunal that Shri Mishra 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 association of employers and no consent of the other side and leave of the Tribunal will, then, be necessary.

48. The Supreme Court approved the view of Calcutta and Bombay High Court in Hall and Anderson Ltd. versus S.K. Neogi and another and

Khadilkar (K.K.) cases (supra), in holding that Section 36 is not exhaustive. The judgment of Rajasthan High Court reported as Duduwala and

Co. and Others Vs. Industrial Tribunal and Another, was not approved to the extent it held that Section 36 is not exhaustive. A perusal of the

above extract would show that Shri Mishra though a retainer for the employer-Trust was entitled to fix fee for appearance in cases, but he could

appear even against the Trust. It was also found that Shri Mishra was neither in the pay of the company nor under its control and enjoyed freedom

as any another legal practitioner to accept cases from other parties. In para 26, it has been categorically held that a lawyer can appear before the

Tribunal in the capacity of an officer bearer of a registered trade union or an officer of association of employers and no consent of the other side

and leave of the Tribunal will, then, be necessary. The restrictive meaning to the word "officer" as a person, who is in full time employement and

drawing pay from the employer is not discernible from the said conclusion. In terms of Section VII of the Bar Council of India Rules, as

reproduced above, the restriction on the legal practitioner is for appointment as Managing Director or a Secretary of a Company. There is no

prohibition in the Bar Council of India Rules that a legal practitioner cannot be an officer of an association, when he does not draw any pay and

allowances in such capacity.

49. The above judgment considers three situations (i) When 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; (ii) If a legal practitioner is an officer of an Association of employers or of a

federation of such association; (iii) an office bearer of a trade union or a member of its executive, even though he is a legal practitioner. The legal

practitioners falling in the last two categories are entitled to represent either the employer or the employee. The right of a legal practitioner falling in

second category is derived from the words in italics in the above extract from the Supreme Court Judgment. The stand that the legal practitioner as

an officer of an Association of employer or Federation of such Association can only be an employee as in first category is primarily based upon the

use of word ""similarly"" in the paragraph extracted above. But in my opinion, the word similarly has been used to consider another situation and not

to put an officer of an Association at par with the first category. It goes without saying that if a person takes up full time employment, even if he

was enrolled as a legal practitioner at one point of time will not have the right to practice as an Advocate in terms of Clause 49 of the Bar Council

of India Rules. Such legal practitioner would fall within the first category. As per the Supreme Court Judgment, the legal practitioner in the above

two cases i.e. an officer of an Association or an office-bearer of a trade union are entitled to appear before the Industrial Tribunal or a Labour

Court not in the capacity of a legal practitioner but as an officer of the association. The fact that he is a legal practitioner will not affect the position

if the qualifications specified in Section 36(1) and 36(2) are fulfilled by him.

50. The judgement in Paradip Port Trust"s case (supra) came up for consideration firstly before the Karnataka High Court in Hotel Ashok versus

Addl. Labour Court, Bangalore and Another, 1984 64 FLR 1 The dictionary meaning of word ''officer'' from the dictionaries was considered and

it was held that the word ''officer'' includes two categories of persons; (i) Those who hold employment or appointment of responsibility under a

public corporation, municipal corporation, institution, etc.; and (ii) those who are members of a governing body by whatever name it is called, such

as managing committee, board of directors, executive committee, etc., It was held that the word ''officer'' is 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. The relevant extract from the aforesaid judgment

reads as under:

10. The meaning of the word ''Officer'' is given at page 82 of Volume 7 of the Oxford English Dictionary. While various shades of meaning of the

word are given therein, the meaning which are apposite for the interpretation of S. 36 of the Act read; ''Officer''***

2. One who holds a public, civil or ecclesiastical office; a servant or minister of king, as one of the great functionaries of royal house-hold, etc., a

person authoritatively appointed or elected to exercise some functions pertaining to public life, or to take part in the administration of municipal

Government, the management or direction of a public corporation, institution, etc. In early use, applied esp. to persons engaged in the

administration of law or justice.

***

A person holding office and taking part in the management or direction of a Society or Institution, esp. one holding the office of president, treasurer

or secretary; an office-bearer.

The meaning indicates that inter alia two categories of person fall within the meaning of the word ''officer''

(i) Those who hold employment or appointment of responsibility under a public corporation, municipal corporation, institution, etc. and

(ii) those who are members of a Governing body by whatever name it is called, such as managing committee, board of directors, executive

committee, etc., of a public corporation, company institution, organisation, etc. in whom the management of the affairs of the concerned body is

vested, either as member, director etc., or as president, chairman, Vice-chairman, secretary, treasurer, etc.

(11) One distinguishing feature between the two categories of person referred to above is in the first category i.e., in the case of persons, who are

appointed to a post, there would be a relationships of employer and employee between the body or authority who appoints and the appointee,

whereas in the case of office bearer i.e. those elected or nominated to an office connected with the governance or management of the affairs of a

company, corporation, organisation etc., there would be no relationship of master and servant.

(12) The word ''officer ''is 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 (emphasis supplied).

(13) Thus, while the expression'' office bearer'' used in S.36(1) of the Act has restricted meaning namely, it covers only persons, who are members

of the executive and other office bearers of a trade union such a President, Vice President, Secretary, etc., the expression ''officer'' used in sub-

section (2) of S. 36 has a wider meaning. It includes employees appointed to positions of responsibility as also office bearers elected or nominated

as members of the managing committee or executive committee and as President, Vice-president, Secretary etc., depending upon the constitution

or bye law or Memorandum of Association of the concerned body.

xxx xxx xxx

17. In the light of the above discussion, I am of the opinion that the "Officer" used in S. 36(2) of the Act includes both categories of persons,

namely, employees, who hold responsible posts, under the Employers Association of which the concerned employer is a member of a federation to

which the Association is affiliated and legal practitioner, who are office bearers of such Association or Federation.

xxx xxx xxx

21. It would not also be possible to hold that the expression officer used in S. 36(2) means only employees and that it does not include "office

bearers" such an interpretation of the provision would at once bring the provision into conflict with Art. 14 of the Constitution for, the effect of such

interpretation would be, one party to a dispute, namely workmen would have the right of being represented through a trained practising lawyer by

making him an office bearer of trade union and another party to the same dispute would be disentitled to be represented by a trained lawyer even if

he weer to be an officer-bearer of employer"s association, resulting in patent discrimination against the latter. It is a cardinal rule of constitution that

when there are two plausible interpretations of a provision, the one which comes into conflict with the provisions of the Constitution should be

eschewed and the other which does not should be preferred.....

51. A Single Bench of Bombay High Court in a Judgment reported as Associated Cement Companies Ltd. Vs. Associated Cement Staff Union

and Another, while examining the judgments of the Supreme Court in Paradip Port Trust"s case, held to the following effect:-

9. The most important aspect however, is the Industrial Disputes Act. The word workmen has been defined u/s 2(s) on the one had and employer

u/s 2(g) on the other. A person to be an Employer must satisfy the tests as set out in Section 2(g) of the Industrial Disputes Act. Similiarly, the

workmen u/s 2(s) includes all persons. However, for the purpose of the Industrial Disputes Act certain categories or classes are excluded as set

out therein. Reference need not be made to the Special categories, but to those holding supervisory posts and drawing salary above the minimum

laid down under the Act or those employed mainly in a managerial or administrative capacity. The word "officer" has not been used under the

Industrial Disputes Act. Therefore, it would be clear from this that the word "Officer" in Section 36 would have to be read differently in construing

the relationship of Employer and of workmen u/s 2(s) of the Industrial Disputes Act. A workman in its widest amplitude includes all persons

including supervisory but excludes those employed mainly in managerial or administrative capacity, who are denied the protection of the Industrial

Disputes Act. This to my mind is internal evidence in the Act itself, to show that the expression ""officer"" is distinct from the expression workman or

those employed in supervisory, managerial or administrative where the expression is used, is in Section 32 of the Industrial Disputes Act in the

matter of offences committed by companies. The word officer there is used alongwith Director, manager amongst others as defined under the

Companies Act so as to specifically hold them liable for offences committed by the company. The expression ""Officer"" under the Trade Unions

Act before its amendment meant those holding office in the Trade Union. Those holding office in the Trade Union would be the office bearers. The

same meaning will have to be assigned to ""Officer"" of Association to mean that those holding office in the Association, Trade Union or any

Association of employers by themselves can be Employers if the activities that they carry on fall under the expression ""Industry"". Therefore, they

can also have persons, who will include supervisors, and persons working in Managerial or administrative capacity. Therefore, the expression

Officers"" in Section 36 of the Industrial Disputes Act, cannot be identified with those in employment of the Employer whether Union or

Association. They must connote something different or distinct. That would be satisfied if it is held that the expression ""Officer"" means those who

constitute the executive of Association or in other words its office bearers. This to my mind makes it abundantly clear that what Parliament meant

when the Act was enacted and even after its amendment,-- vide amendment of 1971 that the word ""office bearer"" and ""Officer"" has been used

differently from those in employment of the employer. All those in administrative work who also are workmen but are denied the protection of the

Industrial Disputes Act. The definition of workman, has not included the expression ""Officer"" unlike the Companies Act. I have therefore, no

hesitation to hold that the expression Officer in Section 36(2) would mean those holding Officer in the Association namely controlling affairs or the

Association and that would include the Executive Committee of the Association or its office bearers.

11.....With the above discussion, the first question must be answered as under:

Any Officer or Member of the Executive Committee or the Office Bearers of Association, if legal practitioner, will be entitled to represent the

employer in all cases where the employer can be represented by the Association of Employers or Federation of Employers as contemplated by

Section 36(2) of the Act. The labour Court or Tribunal in such an enquiry will only examine the regulations, bye-laws, memorandum of Association

or the like to find out whether the Office held exists, either as a member of the Executive or as an officer in the Executive Committee. If a person

holds such an office and that is certified by producing a letter from the President or the Secretary or a person authorized by the Association, that to

my mind would be sufficient proof that such person would be entitled to appear and represent the employer. The matter then can be disposed off

on that basis. The Association must be legally recognized in that it must be registered under son law in force which provides for registration or

recognition of such as Association.

52. The said judgment has been affirmed by the Division Bench in appeal in a judgment reported as Associated Cement Staff Union versus

Associated Cement Companies Ltd. And others 2002 11 L.L.J. 768. In appeal, it was held to the following effect:

10. 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 or other office bearer, probable 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 employers. The word ''officer'' must be given its plain meaning, that is any person who holds an office of 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.

53. A Single Judge of Delhi High Court in a judgment reported as Management of the Associated Cement Cos. Ltd. Vs. Workman, Saroj Arora,

has also held to the following effect:

8. It seems that Tribunal had messed up various provisions of Section 36 under the belief that sub-section (3) imposed a blanket bar for a legal

practitioner to represent the employer which could be only waived with the consent of the other party or with the leave of the Court/Tribunal under

sub-section (4), ignoring that provision of sub-Sections (1) and (2) of Section 36 provided representation by other categories of persons who

could be legal practitioner or something more at the same time.

9. At this stage, Mr. Vohra, Learned Counsel for the respondent-workman disputed that Mr. Sameer Parkash, Advocate was the President or

Treasurer of an Officer on special duty of the Industrial and Commercial Association of India, I am afraid it would not be possible to examine his

plea now as he had failed to resist before the Tribunal. Nor had Tribunal examined this aspect of the matter. In fact, Tribunal had disregarded his

being so in the light of judgment reported in State of Punjab versus Gurdarshan Singh Grewal, which was distinguishable. All the same petitioner or

alternatively Mr. Sameer Parkash, Advocate is required to file his credentials supporting his claim of being an officer of employer Association and

the membership of petitioner thereof before Tribunal within two weeks from receipt of this order.

(54) Though the judgement of Calcutta High Court in INFAR (India) Ltd. Vs. Madan Mohan Ghosh and Others, has been set aside by the

Hon''ble Supreme Court in a judgment reported as Madan Mohan Ghosh Vs. Infar (India) Ltd. and Another, . But a reading of the order of

Hon''ble Supreme Court shows that the matter has been remitted to the Industrial Tribunal for fresh consideration as to whether Shri Amar Roy, a

legal practitioner, was eligible to represent the employer. It was alleged on behalf of the workmen that Shri Amar Roy was not the President of the

Association of which employer was a member and, therefore, he was ineligible to represent the employer. The tribunal did not call upon the

employer to produce certain documents required by the workmen for adjudication of the matter. The tribunal did not found any merit in the

objection against the appearance of Shri Amar Roy. The learned Single Judge held that Amar Roy may be an office bearer of the employers''

association, but not an officer of the said association. Therefore, he was not eligible to represent the workmen. In appeal the order passed by the

learned Single Judge was set aside. The Hon''ble Supreme Court has held that the order passed by the Tribunal was made without proper enquiry

into the matter and not based upon any acceptable material. There is no comment in the order passed by the Supreme Court on the finding

recorded by the Calcutta High Court that the expression ""officer"" as given in Concise Oxford Dictionary and Webster''s New World Dictionary

would include any person, who is holding office of any society or association or authority.

55. Similarly, a Single Judge of Karnataka High Court in a judgment reported as Steel Authority of India Ltd. Vs. Shri B. Yellappa, has

considered the question whether the legal practitioners, who are office bearers of Federation or Association of Employers are entitled to represent

the employer, wherein it was held to the following effect:-

...It is stated that in terms of the memorandum of association and the rules governing the said association, petitioner is entitled to be represented by

the office-bearers of the said association. Petitioner has also produced the memorandum of articles of the association. If that is so, Section 36(2)

clearly provides for engaging the services of the officers of the company or office bearers of the association or of a federation to which petitioner is

a member notwithstanding the said office or office-bearer is incidentally a law graduate or practising lawyer. This aspect of the matter has been

settled not only by the decision of the Apex Court, but also the decision of this Court which is followed subsequently, in a later judgment of this

Court in the case of Katwa Infotech Limited, wherein this Court has held that, Section 36(4) of the Act will not prevent the company from

engaging the services of office-bearers of the association or a federation. That being the position of law and in this case petitioner having shown

that it is a member of ICEA and the persons sought to be represented being office-bearers of the said association, Section 36(4) does not prevent

them from representing the petitioner notwithstanding they are Legal Practitioners.....

56. A Division Bench of Madras High Court in a judgment reported as Rajamani R. versus Presiding Officer, II Additional Labour Court, Chennai

and Another 2007 XI L.L.J. 704 considered the argument of the workmen that Shri N. Balasubramaniam is practising lawyer and not a paid

officer, therefore, not entitled to represent the employer. It was held to the following effect:-

13. In the present case, the question is whether Mr. N. Balasubramaniam, 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"". Similary 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.

57. The some of the judgments have taken contrary view that the word ''officer'' in Section 36(2) of the Act means a person, who is in full time

employment of a company or an association. The leading judgment taking the said view is that of a Full Bench of Andhra Pradesh High Court

reported as A.P. Power Diploma Engineers'' Assoication versus A.P.S.E. Board 1995 L.I.J 2654. The first submission in the aforesaid case was

that the association of employers or federation of assoication of employers only refers to industrial employers and that association should be

exclusively of such employers alone. There is no dispute about such finding. While considering the question as to whether an Advocate designated

as Honorary Joint Secretary can claim to be an officer of the federation, reference was made to Article 20(2) (k)(2) of the Memorandum of

Association of the employers and it was found that the office of the Honorary Secretary has not been defined in such Articles. The managing

committee of the federation does not include Honorary Secretaries. It was also found that the Advocates were enrolled as members in individual

category and the purpose of the admission of such members is to represent the cases of its members for which purpose a panel of advocates called

Honorary Secretaries is maintained. It was held to the following effect:-

19. The provisions of the article as also the evidence of RW 1 manifestly shows that Mr. Mohan Reddy did not hold any post of the office of

respondent No. 2. It was conceded by RW 1 that the post of Honorary Secretary is not one in the Managing Committee. There is no pay attached

to the post. There is no control over him of the federation and he is in no way responsible for his actions and conduct to respondent No. 2. As a

matter of fact the Memorandum and Articles of Association and the evidence of RW 1 makes it abundantly clear that drawing up of such a panel

of advocates and designating them as Honorary Secretaries is nothing but an attempt to overcome the Provisions of S. 36(4) of the Act and the

relationship simpliciter of a lawyer and a client, otherwise barred from being taken advantage of unless consented by the workmen, is sought to be

white-washed to make it appear as one authorized under another provision of the statute.....

58. In the aforesaid judgment it was observed that the question whether the word ''officer'' would include also ''office bearer'' within the ambit of

Section 36(2) does not arise for consideration in the aforesaid case, as Shri Mohan Reddy not found to be not a member of the Managing

Committee and, thus, not an office bearer.

59. The Division Bench of Mysore High Court in a judgment reported as Workmen of B.R. Darbar Ginning and Pressing Factory, Hubli Vs. B.R.

Darbar Ginning and Pressing Factory and Others, , was considering a case, where the legal practitioner has earlier sought permission of Labour

Court to appear in cases as an Advocate. He was not permitted to appear by the Labour Court. Later, the said legal practitioner sought to appear

as representative on the basis Of resolution of Chamber of Commerce and Industry. It was resolved that the said legal practitioner can appear

before any of the Government Authorities including Labour Court, Industrial Tribunals to represent the members of Karnataka Chamber of

Commerce and Industry. Such legal practitioner was permitted to charge individual industrial concerns for the services rendered. Thus, it was

found that such legal practitioner is not an officer of the Chamber of Commerce and Industry. The Bench has quoted from Sarkeshwar Bardoloi''s

(supra) that a practising lawyer may not conceivably be an officer, but the description as a legal adviser without reference to the terms of his

appointment and the duties of his office would not be enough for finding that he is an officer of the company. It quoted Justice Deka, who delivered

the concurrent finding to the following effect:

Holding of office would precisely indicate some sort of official responsibilities than that of a law adviser. Where he (the officer) must have some in

the company or concern, some pay or remuneration attached to the office, terms'' of appointment or discharge, period or tenure of appointment, or

some administrative responsibilities or obligation to render some explanation for his conduct in discharge of the duties.

60. A Single Bench of Calcutta High Court in Bharat Petroleum Corpn. Ltd. Vs. The Presiding Officer and Others, held that the definition of word

officer in the Societies Registration Act, 1863 cannot be used to interpret the word officer appearing in the Industrial Disputes Act, 1947. It held

that an ordinary member of the Executive Committee of the Employers Association is not officer of the Association competent to represent

employer in view of the Dictionary meaning of word ''Officer''. The judgment in Globle Theatre Pvt. Ltd. versus Second Labour Court 1987 (55)

FLR 443 was considered and held that in the aforesaid case Vice President of the employers'' association has sought to represent the employer

and even of he is a legal practitioner, he appears in the capacity of an officer of an association and not in the capacity of a legal practitioner. The

said judgment was distinguished in Bharat Petroleum''s case (supra) for the reason that the legal practitioner in the case under consideration was

not a office bearer, but an ordinary executive manner.

61. In J. B. Transport Company and others versus Shankarlal @ Manaram Nathuji Patel 2000 I L.L.J. 442 a Single Bench of Gujarat High Court

returned a finding that the legal practitioner must be in regular appointment of an employers'' association to become officer.

62. The Single Bench of Delhi High Court in Siements Ltd. versus K.K. Gupta 2006 (1) R.S.J. 405 has followed the Full Bench judgment of

Andhra Pradesh High Court to return a finding that it was found that the legal practitioners were not the officers of the association. As such legal

practitioners have no other function in the association except to represent the various employers before the labour Court.

63. The above discussion would show that most of the judgments on the subject does not really address the issue raised in the present appeal and

are distinguishable for one or other reason. In the present case, the legal secretary, the representative of the employer is part of management as per

Clause 20 of the Memorandum of Association. The relevant para reads as under :

20. MANAGEMENT

(a) The affairs of the federation shall be managed by a governing body to known as executive committee. The said committee shall consist of the

following office bearers, who shall be nominated by the President. The President shall be elected by ballot after every three years, (i) President (ii)

Vice President, (iii) General Secretary, (iv) Cashier.

(b) There shall be one Legal Secretary to look after the legal interest of the members of the Labour and industrial disputes. He shall be a

permanent member of the federation and shall be authorized to represent the members of the federation or any other person who shall be member

or the federation affiliated to this federation.

(c) Any other office bearer shall be nominated by the President, who shall be the member of the Executive Committee.

23. FUNCTIONS OF THE OFFICE BEARERS :

(A) President: xxx

(D) Legal Secretary:

The legal Secretary shall have charge of all correspondence. He shall keep accounts of the assets, credits and liabilities of the federation. He shall

collect all dues and grant receipts. He shall institute, prosecute and defend suits and other proceedings in Labour office, Labour Court, Labour

Tribunal or in any Court of law of elsewhere in arbitration proceedings on behalf of the federation or the members or any other person who shall

be member of an association affiliated to the federation. He shall be the permanent office bearer. Shri B.P. Bansal, s/o Shri M.R. Bansal, 293-L

Model Town, Ludhiana, shall be the Legal Secretary of-the Federation.

64. Keeping in view the dictionary meaning of officer as culled down by the Karnataka High Court in Hotel Ashok''s case supra and other

judgments, referred to above, the word ''officer'' include two categories of persons including the members of the governing body by whatever

name called. Such office need not be in full time employment of the employer. The words ""any member of the executive or other officer bearer

appearing in clause (a), (b) and (c) of sub-Section (1) of Section 36, were substituted for the word an ""Officer"" by Central Act No. 45 of 1971.

Such amendment was necessitated on account of the amendment in Trade Union Act, 1926 by Central Act No. 38 of 1964. The Objects and

Reasons for substituting the word ''Officer'' in the Trade Union Act was that the word ""Officer'' in not considered appropriate in the case of Trade

Unions. Since the Trade Union Act, 1926 is the only enactment in respect of registration of Trade Union and the expression used in sub-section

''a"" is registered Trade Union, therefore, the amendment in sub-section (1) of Section 36 was to maintain parity with the phraseology under in the

Trade Union Act, 1926 alone.

65. The judgment interpreting the word officer appearing in sub-section 1) prior to the amendment in 1971 and/or Sub-Section (2) such as

judgment of this Court in M/s Delite Cinema and others; Assam High Court in Sarbeswar Bardoloi; Calcutta High Court in Hall & Anderson''s

case; Rajasthan High Court in Daduwalla''s case; Bombay High Court in Alembic Chemicals and in Khadilkar''s case hold the. field even after the

judgment in Paradip Port Trust'' case. In fact, the judgment in Paradip Port Trust''s case has not changed the interpretation of sub-section 1 or

sub-section 2 of Section 36 of the Act in respect of the expression ''Officer'' rendered by High Courts. The principles, which have been laid down

prior thereto continue to apply with full force even after the decision in Paradip Port Trust''s case.

66. Shri Bansal, the representative who has sought to represent employer, is a legal practitioner and a member of the Bar Association. But that

does not debar him from becoming a Legal Secretary of Ludhiana Commercial Undertakings and Establishments Association and to represent the

employer in proceedings under the Industrial Disputes Act, 1947 as an officer of such association. Present is a case, where the employer has not

sought representation before the Industrial Tribunal by a legal practitioner on the basis of power of attorney. The employer has sought

representation in its behalf not as a legal practitioner, but as an Officer of an association of which employer is a member. Such association is an

association of employers alone, which is evident from the terms of the Constitution of the Association ""Ludhiana Commercial Undertakings and

Establishments Association"", Annexure R-2. The membership of such association is open to any person having a firm, partnership, Joint Stock

Company, cooperative societies, corporation, joint family federation engaged in trade, commerce or industry. The ''Legal Secretary'' has been

defined under Clause 3(h) of the Constitution to mean the Secretary for the time being of the Federation. The fact that such representative is a legal

practitioner will not debar him from appearing before the learned Labour Court as an Officer of the Association, which status is distinct from that

of a legal practitioner. A legal practitioner who is on pay rolls of an employer ceases to be legal practitioner. Such person has no right to practice

as he is in full time employment of an employer. Therefore, a legal practitioner cannot be an officer in full term employment.

67. The Full Bench of this Court in Indrasan Parsad versus Presiding Officer 2008 (1) S.C.T. 522 has proceeded to decide the controversy as the

one of implied leave or consent. In that case, Shri S.S. Saini and Shri N.S. Rajput were appearing on behalf of the Employer as office-bearers of

an Employers'' Association but the issue has not been examined in the context of right of an Officer of an Association to appear to represent an

employer u/s 36(2) of the Act. Therefore, the ratio in the aforesaid judgment does not decide the controversy raised in the present appeal. It deals

with the issue of implied or express consent of the parties in permitting a legal practitioner to appear before a Labour Court. Such proposition is

beyond doubt.

68. In view of the above, I am of the opinion that the expression ""Officer"" appearing in sub-section 2 of Section 36 includes not only a paid

employee of employer or association of employers, but also an officer, who is in the management of the employers or association of the employers.

Thus, such person has a right to represent the employer, not as legal practitioner, but as an Officer in proceedings under the Industrial Tribunal Act,

1947.

ORDER

69. In view of the majority judgement, we hold that the expression ''Officer'' used in Section 36(2)(a)(b) of the ID Act, 1947 would not include a

legal practitioner within the meaning of Section 2(i) of the Advocates Act, 1961 on the rolls of any State Bar Council established under the said

Act. Consequently, this appeal fails and is hereby dismissed. The matter shall stand remanded back to the Labour Court for a fresh order in

accordance with law upon resumption of proceedings from the stage the objection to the appearance of Shri B.P. Bansal, was taken before the

said Court.