

(1983) 09 GUJ CK 0019

Gujarat High Court

Case No: None

Pravin Soneji, Vice President,
Jamnagar Shopping and General
Employees" Union

APPELLANT

Vs

J.M. Baxi and Co. and Another

RESPONDENT

Date of Decision: Sept. 20, 1983

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10(1)(c), 10(1)(c), 36(2), 36(3), 36(4)

Citation: (1984) GLH 119 : (1984) 2 GLR 1350

Hon'ble Judges: R.C. Mankad, J; A.P. Ravani, J

Bench: Division Bench

Judgement

R.C. Mankad, J.

Petitioner No. 2 who was in service of respondent No. 1 was removed from service. An industrial dispute arising out of

the demand made for his reinstatement in service of respondent No. 1 with full back wages was referred for adjudication to the Second Labour

Court at Rajkot u/s 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as the ""Act"").

2. The Labour Court permitted S.P. Chag and petitioner No. 1 President and Vice President respectively of Jamnagar Shipping and General

Employees" Union registered under the Trade Unions Act, 1926, to represent workman petitioner No. 2. Respondent No. 1, the employer,

sought permission of the Labour Court to allow Mr. J. N. Shah, a practising Advocate to represent them. However, since the petitioners refused

to give their consent to the appearance of Mr. J. N. Shah, the Labour Court did not grant leave sought for by respondent No. 1. Thereupon an

application was made by respondent No. 2, a clerk of Mr. J. N. Shah and "Labour Adviser" to permit him to represent respondent No. 1.

Petitioners objected to the appearance of respondent No. 2 and opposed the application made by him. The Labour Court, however, by its

impugned order dated September 3, 1981, overruled the petitioners' objection and allowed respondent No. 2 to represent respondent No. 1.

Petitioners have, therefore, filed this petition under Article 227 of the Constitution of India, challenging the validity of the order passed by the

Labour Court.

3. In his affidavit in reply, respondent No. 2 has stated that he is working as a clerk and Labour Adviser. He has stated that he is a clerk of Mr.

J.N. Shah, who is an Advocate appearing in Labour matters. In paragraph 6 of his affidavit, respondent No. 2 has stated:

...I say that whenever appearance of Shri J.N. Shah Advocate is objected to by the Union then in that case I appeared in such matters before the

Labour Court as a Labour Adviser and Representative of the Company. I say that the Labour Court has allowed my appearance in such matters.

In paragraph 10 of his affidavit he has further stated:

...I say that I have also appeared in several cases pertaining to Labour matters before the Govt. Labour Officer and also before the Assistant

Commissioner of Labour. I have appeared in several cases in the consideration (conciliation) proceedings before the Labour Officer as well as the

Assistant Commissioner of Labour.

Respondent No. 2 has given a list of matters in which he has appeared and further stated in paragraphs 11 and 12:

...I say that thus I have appeared in several conciliation proceedings and also before Labour Court as Authorised Agent and Representative of

respondent No. 1-Company...I was also allowed to appear in several other matters as shown below...."" ""I say that under the circumstances, it is

the practice for me to appear before Labour Court as the authorised agent and representative of respondent No. 1-Company and therefore, the

order passed by the Labour Court is legal and proper.

Respondent No. 2 is a commerce graduate and he does not possess qualification to practise as an Advocate. It however, appears that he has appeared as Labour Adviser and representative of employers in many Labour cases. The statements made in the affidavit of respondent No. 2

clearly establish that though he is not entitled to practise as Advocate, or a Legal Practitioner, he is practising profession of law.

4. It is in the background of the above facts that the question arises whether respondent No. 2 could have been permitted to represent or appear

on behalf of respondent No. 1, the employer ? Section 36 of the Act which makes provision for representation of parties, reads as under:

36. (1) A Workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by:

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

(b) any member of the executive or other office bearer of 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 proceedings and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be.

Sub-section (1) creates the absolute right in favour of workmen in the matter of representation. A workman who is a party to a dispute is entitled

to be represented in any proceeding under the Act by office bearer of a registered trade union of which he is a member or federation of a trade

unions to which registered trade union of which he is a member is affiliated. In case where workman is not a member of any trade union, he is

entitled to be represented by office bearer of any trade union connected with or by any other workman employed in the industry in which he is

employed and authorised in the manner prescribed. The employer is also placed on par with the workman in similar terms under Sub-section (2).

The provisions of Sub-sections (1) and (2) thus confer on the respective parties absolute rights of representation by persons respectively specified

therein. The rights of representation under the said provisions are unconditional and are not subject to the conditions laid down in Sub-section (4).

Sub-section (3) puts a complete embargo on representation through a legal practitioner in any conciliation proceeding under the Act or in any

proceeding before a Court of Enquiry. However, in any proceeding before a Labour Court or Tribunal or National Tribunal a party to a dispute

may be represented by a legal practitioner, if two conditions laid down in Sub-section (4) are satisfied. The conditions which are required to be

satisfied are: (i) the consent of the opposite party; and (ii) the leave of the Labour Court or Tribunal or National Tribunal as the case may be. In

other words, both the consent of the opposite party and leave of the Labour Court will have to be secured to enable a party to seek representation

of appearing through a legal practitioner. However, as pointed out by the Supreme Court in Paradip Port Trust, Paradip Vs. Their Workmen,

Section 36 is not exhaustive but only supplemental to any other lawful mode of representation of parties. It is not intended under the Act that

companies and corporations are confined to representation of their cases only through the officers specified in Section 36(2) of the Act. They can

be represented by their directors or their own officers authorised to act in that behalf in a lawful manner provided it is not contrary to any pro"

vision of the Act. The Supreme Court has made it clear : ""This would not, however, mean that the companies and corporations, and for the matter of that, any party, are free to engage legal practitioners by means of a special power of attorney to represent their interests before the Tribunals without consent of the opposite party and leave of the Tribunal."" It is not the claim of the respondents that respondent No. 2 is one of the officers specified in Section 36(2) of the Act.

5. The question whether or not respondent No. 2 could be considered to be a legal practitioner will be dealt with separately, but suffice it to say at

this stage that total bar against representation by a legal practitioner provided u/s 36(3) has no application to the facts in the present case, since we

are concerned with a proceeding before a Labour Court and not conciliation proceedings or proceeding before a Court of Enquiry. It is, however,

contended on behalf of the respondents that respondent No. 2 is agent of respondent No. 1, the employer, and in his capacity as agent, he is

entitled to appear before the Labour Court. It is submitted that since Section 36 is not exhaustive as laid down by the Supreme Court in the case

of Pradip Port Trust (supra), such representation is permissible. Now, the observations made by the Supreme Court to the effect that companies

and corporations are not confined to representation of their cases only through the officers specified in Section 36(2) of the Act and that they can

be represented by their directors or officers to act in that behalf in a lawful manner, relied on behalf of the respondents, has no direct application to

the facts of the present case. Respondent No. 1, the employer, in the present case is a partnership firm and not a company or a corporation. A

company or corporation is a legal person or entity which has no physical existence and therefore, it cannot appear in person before the Labour

Court or Tribunal. It must necessarily appear through someone in a lawful manner; it may be represented by its director or officers authorised in

that behalf. In other words, company or corporation can make representation only through its agent. On the other hand a partnership firm is not a

legal entity. Individuals who join as partners constitute a firm. Partners are agents of one another and they or any of them can appear in person

before the Labour Court or Tribunal. Partners have physical existence and it cannot be said that they cannot appear except through agent as in the case of company or corporation. But even assuming that a partnership firm can appear through agent it can do so only in a lawful manner and not in violation of any provision of law.

6. Respondent No. 2, as pointed out above, is practising profession of law though legally not entitled to do so. Admittedly he is not a legal

practitioner as defined u/s 2(i) of the Advocates Act; nor is he an Advocate entitled to practise under the Advocates Act. Section 29 of the

Advocates Act lays down that there shall be only one class of persons entitled to practise profession of law, namely, the Advocates. This section

has come into force from June 1, 1969. Section 33 of the Advocates Act provides : that except as otherwise provided in the said Act or in any

other law for the time being in force, no person shall, on or after the appointed day (that is June 1, 1969) be entitled to practise in any court or

before any authority or person unless he is enrolled as an Advocate under the said Act. Therefore, unless respondent No. 2 is Advocate enrolled

under the Advocates Act, he is not entitled to practise in any Court or before any authority or person. Respondent No. 2 having not been enrolled

as advocate, under the Advocates Act, is not entitled to practise profession of law. Any person who is not entitled to practise profession of law,

practises before any Court or before any authority or person, is liable to be penalised u/s 45 of the Advocates Act. Section 45 provides that any

person who practises in any Court or before any authority or person or before whom he is not entitled to practise under the provisions of the

Advocates Act, shall be liable for punishment for a term which may extend to six months. Respondent No. 2 has thus exposed himself to

punishment u/s 45 by practising profession of law. Respondent No. 2 is not an officer or an employee of respondent No. 1. He is admittedly not

an agent of respondent No. 1, except in Labour matters or matters before the Labour Court or authorities under the Act. Again, he does not act

only on behalf of respondent No. 1. As stated in his affidavit respondent No. 2 has appeared in number of Labour matters before various

authorities on behalf of employers other than respondent No. 1. Respondent No. 2 is not under the control of respondent No. 1 and he is not its

bona fide agent. Under these circumstances, we are unable to see how respondent No. 2 can be described as agent of respondent No. 1. But

apart from that in the guise of making representation as agent in effect and substance what respondent No. 2 does is to practise profession of law.

This would, clearly, be in violation of the provisions of Sections 29 and 33 of the Advocates Act. In other words, it cannot be said that he

represents respondent No. 1 in a lawful manner unless representation is in lawful manner, representation by agent cannot be permitted.

7. A question arises whether respondent No. 2 though legally not entitled to practise profession of law, can be considered to be a legal practitioner

within the meaning of Section 36(4) of the Act ? As already observed above, a legal practitioner cannot represent a party to a dispute in any

proceeding before a Labour Court, Tribunal or National Tribunal, unless two conditions, namely, (i) consent of the opposite party; and (ii) leave of

the Labour Court, Tribunal or National Tribunal, as the case may be, are satisfied. In other words, the embargo on representation by a legal

practitioner is lifted if the opposite party gives consent and leave is granted by the Labour Court or the Tribunal. The object or reason in enacting

the provision contained in Section 36(4) of the Act is explained by the Supreme Court in *Pradip Port Trust's case* (supra). The Supreme Court

has observed:

..It is reasonable to suppose that the presence of legal practitioner in conciliation may divert attention to technical pleas and will detract from the

informality of the proceedings impeding smooth and expeditious settlement. Legal practitioners entrusted with their briefs cannot be blamed if they

bring forth their legal training and experience to the aid and benefit of their clients. But labour law operates in a field where there are two unequal

contestants. The Act therefore takes care of the challenge of the situation in which the weaker party is pitted against the stronger before

adjudication authorities. That appears to be one of the reasons for introducing consent of the parties for representation by legal practitioners.

Employers, with their purse, naturally can always secure the services of eminent counsel.

(Emphasis supplied)

Can a legal practitioner in the guise of an agent represent a party without the consent of the opposite party or leave of the Labour Court or the

Tribunal ? The answer is obviously No. To permit such representation would clearly defeat the object of making the above provision. We have

already extracted above the relevant observations made by the Supreme Court in that connection. As observed by the Supreme Court a party

cannot engage legal practitioner by means of special power of attorney to represent its interest before the Tribunal without the consent of the

opposite party and leave of the Tribunal.

8. The next question which we are required to consider is whether a person who is not legally entitled to practise profession of law, but who in fact

practises profession of law, can represent a party before the Labour Court. It is argued on behalf of the respondents that unless a person is a legal

practitioner as defined in Section 2(i) of the Advocates Act, provisions of Section 36(4) will not be attracted. It is urged that since the term ""legal

practitioner"" used in Section 36(4) is not defined in the Act, it must be understood in the same sense in which it is understood under the Advocates

Act. In other words, this term must be assigned the same meaning which is assigned to it under the Advocates Act. We are not inclined to give

such a restricted meaning to the term ""legal practitioner"" used in Section 36(4) of the Act. We cannot overlook or ignore the object behind making

the provision contained in Section 36(4), while construing the term ""legal practitioner"". In our opinion, the term or expression ""legal practitioner

should be liberally construed. If it is construed in the restricted sense as urged on behalf of the respondents, the very object of enacting Section

36(4) would be defeated. It is true that having regard to the provisions of Sections 29 and 33 of the Advocates Act, a person who is not enrolled

as advocate is not entitled to practise profession of law. But if a person in fact practises profession of law, though not entitled to do so, it cannot be

said that he is not practising profession of law. The penal provision contained in Section 45 of the Advocates Act is aimed at such a person. As

pointed out above, a person who is not entitled to practise, practises in any Court or before any authority or person, he is liable to be punished u/s

45 of the Advocates Act. Therefore, Section 45 clearly envisages a situation where a person though not legally entitled may engage himself in

profession of law. And it is to prevent illegal practice of law that penal provision is made in Section 45 of the Advocates Act. In the instant case,

the facts stated above clearly reveal that respondent No. 2 is practising profession of law though he is not legally entitled to do so. He has thus

violated the provisions of Sections 29 and 33 of the Advocates Act and exposed himself to penalty u/s 45 of the Advocates Act. But the mere fact

that he is not legally entitled to practise, does not and cannot lead to the conclusion that he is not practising profession of law. We cannot shut our

eyes to the reality of the situation and hold that though respondent No. 2 in fact practises profession of law, he is not a "legal practitioner" since he

is not legally entitled to practise profession of law. To hold that respondent No. 2 is not a "legal practitioner" would be in violation of the provisions

contained in Section 36(4) of the Act. Respondents cannot be allowed to circumvent the provisions of Sections 29 and 33 of the Advocates Act

and Section 36(4) of the Act and take shelter behind the specious plea that respondent No. 2 is not legally entitled to practise and therefore he is

not a "legal practitioner".

9. The Labour Court can no doubt regulate its proceedings u/s 11 of the Act and allow parties to be represented by proper persons, but it

certainly cannot allow any party to be represented by any person in violation of express provisions of law contained in the Advocates Act. A

person cannot be allowed to practise profession of law and in the guise of an agent represent a party. In our opinion therefore, even if a person

who actually practises profession of law though legally not entitled to do so, would be covered by the term "legal practitioner" used in Section

36(4) of the Act. We are supported in our view by a decision of the Supreme Court in A.K. Roy and Others Vs. Union of India (UOI) and

Others, In that case, one of the questions which arose before the Supreme Court was whether the detenu has a right of being represented by a

legal practitioner in the proceedings before the Advisory Board constituted under National Security Act, 1980.

10. The Supreme Court held that the detenu had no right to appear through legal practitioner in the proceedings before the Advisory Board. It,

however, observed that if the detaining authority or Government is allowed to appear before the Advisory Board with the aid of a legal practitioner

or a legal adviser, there would be breach of Article 14 of the Constitution, if a similar facility is denied to the detenu. It was pointed out to the

Supreme Court that the officers of the Government in the concerned Department, often appear before the Advisory Board and assist it with a view

to justify the detention order. It was in that context that the Supreme Court observed that the Advisory Board should not permit the authorities to

do indirectly what they cannot do directly, and no one should be enabled to take shelter behind the excuse that such officers are not ""legal

practitioners"" or legal advisers. The Supreme Court observed that regard must be had to the substance and not the form, and whosoever assists or

advises of facts or law must be deemed to be in the position of a legal advisor. If the ratio of the decision of the Supreme Court is applied to the

facts of the present case, in our opinion, a person who, though not legally entitled to practise, practises profession of law, would be covered by the

term ""legal practitioner"" used in Section 36(4) and he cannot be allowed to represent the party before the Labour Court unless two conditions laid

down in that provision are satisfied. As observed by the Supreme Court regard must be had to the substance and not to the form and the party

cannot be allowed to take shelter behind the excuse that respondent No. 2 is not a legal practitioner as defined under the provisions of the

Advocates Act. We, therefore, hold that the Labour Court has committed error apparent on the face of the record in permitting respondent No. 2

to represent respondent No. 1 without the consent of the petitioners. It is not disputed that the petitioners have not only not given their consent but

objected to the appearance of respondent No. 2.

11. In the result, this petition is allowed and the impugned order dated September 3, 1981, passed by the Second Labour Court at Rajkot below

Exh. 20 in Reference (ICR) 473 of 1980 is quashed and set aside. The application or request made by respondent No. 2 for permission to represent respondent No. 1, the employer is rejected. In other words, respondent No. 2 is not allowed to appear for and on behalf of or to represent respondent No. 1.

Rule made absolute with costs.