

(1986) 03 KL CK 0026

High Court Of Kerala

Case No: O. P. No 1635 of 1986

Calicut Co-Operative Milk
Supplies Union

APPELLANT

Vs

Calicut Co-Operative Milk Supply
Workers" Union and Another

RESPONDENT

Date of Decision: March 31, 1986

Acts Referred:

- Industrial Disputes Act, 1947 - Section 36(4)

Citation: (1986) 23 KLJ 556

Hon'ble Judges: K.P. Radhakrishna Menon, J

Bench: Single Bench

Advocate: M. Ramachandran, for the Appellant;

Final Decision: Allowed

Judgement

K.P. Radhakrishna Menon, J.

Ext. P3 is under challenge. By Ext. P3 the 2nd respondent has virtually revoked the order, he had passed, permitting the petitioner to have it being represented in I. D7/83, by a lawyer.

2. Relevant facts lie in a narrow compass. They are: pursuant to the notice, the petitioner appeared before the 2nd respondent through lawyer who filed the vakalath on 2-9-1983. The first respondent also appeared before the 2nd respondent through lawyer who filed vakalath on 7-9-1983. The other two trade unions impleaded as parties to the proceedings, ate not interested in the outcome of the proceedings and therefore they have not been participating in the enquiry.

3. This was the state of affairs when on 8-11-1985 the first respondent filed the petition, C. M. P. 59 of 1985 (Ext.P1) praying that it may be allowed to conduct the case without the assistance of the lawyer and that the vakalath filed by the counsel on its behalf therefore be cancelled. The first respondent simultaneously objected

the petitioner being represented by the lawyer. In short, the first respondent wanted the 2nd respondent to pass an order directing the petitioner to dispense with the service of the counsel who had filed vakalath on its behalf as early as 2-9-1983.

4. The 2nd respondent by the impugned order has allowed the petition, C. M. P. 59 of 1985.

5. The learned counsel for the petitioner submits that Section 36(4) of the Industrial Disputes Act, for short the I. D. Act, does not contain a provision enabling the 1st respondent to revoke the consent once given and which is the basis of the order of the 2nd respondent giving permission to the petitioner to engage a lawyer to represent its case. The order, Ext. P3, under challenge therefore is liable to be set aside, the learned counsel submits.

6. Section 36(4) reads:

In any proceeding before a Labour Court, Tribunal or National, Tribunal, a party to a dispute maybe 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.

7. This Section does not prescribe that the consent must be given in a particular manner or in a particular form. If that be so, the consent of a party which is the basis for the grant of leave to the other party for being represented by a lawyer in a proceeding under the I. D. Act, can be inferred from the surrounding circumstances as also the conduct of the consenting party. Consent can be implied. The Section does not insist upon a written consent. Consent once given cannot be revoked at a later stage because there is no provision in the I. D. Act enabling such withdrawal or revocation. To put it pithily the consent once given by a party, entitling the other party to be represented in the proceeding, by a lawyer would enure to his benefit till the proceeding is finally disposed of. I am fortified in this view by a decision of the Calcutta High Court in Reckitt and Colman v. Jitendra Math, A. I. R. 1956 Cul. 353.

8. Considered in the light of the principles of law enunciated above, I am of the view, that the conduct of the 1st respondent in objecting to the petitioner being represented by a lawyer in I. D.7/83, amounts to a revocation of its consent. This is not permissible.

9. The 2nd respondent therefore committed an error in allowing C. M P. No 59 of 1985 in I. D. 7 of 1983. Ext, P3 therefore is liable to be set aside. I accordingly set aside Ext. P3 and direct the 2nd respondent to dispose of I. D. No. 7 of 1983 as expeditiously as possible, in any event, within three months from the date of receipt of a copy of this judgment. The petitioner therefore will be permitted to engage a lawyer to represent their case.

The Original Petition is allowed as above. No order as to costs.