

(1958) 02 BOM CK 0014

Bombay High Court

Case No: Reference (I.T.) No. 291 of 1957

Dadajee Dhackjee and Co.
(Private) Ltd.

APPELLANT

Vs

Their Workmen (Clerical Staff
Employed in the Dyes
Department)

RESPONDENT

Date of Decision: Feb. 19, 1958

Acts Referred:

- Industrial Disputes Act, 1947 - Section 36, 36(2), 36(4)

Citation: (1958) 2 LLJ 121

Hon'ble Judges: M.R. Meher, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

1. In this reference Sri Sachindranath who has appeared for the union has objected to the appearance of Sri A. T. Joshi for the company and has requested that if his objection is overruled, a formal order be passed so that he (Sri Sachindranath) may, if so advised, challenge the order in a higher Court. At the outset Sri Sachindranath objected on the ground that Sri Joshi was a legal practitioner, but when Sri Joshi stated that he had got his sanad cancelled sometime in 1956, Sri Sachindranath stated that he wanted to objection on other grounds.

2. Sri Joshi has produced a letter of authority from the company in which it is stated :

"Be pleased to note that we have appointed Sri A. T. Joshi, our labour adviser, to appear on our behalf and represent us in the above matter."

3. Sri Sachindranath has urged that Sri Joshi is not an officer of an association of employers and so he is not entitled to appear under S. 36(2) of the Industrial Disputes Act. He has further argued that Sri Joshi has been appointed labour adviser

only for the purpose of this case and is not a regular employee of the company, that he is not a person employed in the industry, and no resolution of the board of directors has been produced that he has been appointed labour adviser.

4. It is undeniable that a corporation must be allowed to appear through somebody as has been observation Salmond's Jurisprudence at p. 331, 10th Edn. :

"A corporation, having neither soul nor body, cannot act save through the agency of some representative in the word of real men."

But Sri Sachindranath has in support of his arguments referred to the case of the Alembic Chemical Works Company, Ltd., and another v. P. D. Vyas and another 1954 II L.L.J 148. In this case the Bombay High Court held that if there is an attempt to circumvent the provisions of S. 36(4), a legal practitioner making such an attempt should not be allowed to appear. It seems to me that the decision in that case has no application to the present case, for here there is no attempt to circumvent the provisions of the Act. Sir Joshi has stated that he got his sanad as district pleader cancelled sometime in 1956, that from 1942 to 1946 he was labour officer, Pratap Mills, from 1946 to 1949 was in the Central Government service and since 1950 has been labour adviser to several concerns and appears in the industrial court, before conciliators and labour authorities, e.g., Payment of Wages Authority. This is therefore not a case of a legal practitioner making an attempt to circumvent the provisions of S. 36(4) of the Act, as Sri Joshi is not a legal practitioner. There are observations in the case, which, far from supporting Sri Sachindranath's contentions, are against him. In that case Tendulkar, J., observed that he was inclined to hold that S. 36 of the Industrial Disputes Act is an enabling section and not exhaustive of the right of representation of parties and went on to say :

"The manner however in which the corporation should be heard not having been provided for by S. 36 becomes a matter of procedure to be determined by the tribunal whose duty it is to enable the corporation to appear before it."

In the case of Mulchand Gulabchand v. Mukund Shivram Bhide (1951) 54 Bom. L.R. 285 it was held that the manner in which a party should be represented is a matter of procedure to be determined by the tribunal. The learned Chief Justice in his judgment at p. 287 observes :

"Now, it is for the courts or for tribunals to determine as a matter of procedure as to how parties should be represented and how they should present their case to the court or the tribunal."

In the case of the Elgin Mills Company, Ltd., Kanpur v. Suti Mill Mazdoor Union, Kanpur 1951 I L.L.J 184, the Labour Appellate Tribunal observed :

"A corporation being an artificial person must, of necessity, appear through a human being. It can, therefore, appear through an agent or by any other authorized person, the only limitation being that when that person is a lawyer and appears in

his capacity as lawyer, he can appear only if the conditions of Sub-section (3) are fulfilled."

5. It is therefore clear that Sri Sachindranath's contentions are not well founded. I do not think he is entitled to insist that a person representing a company must be a director or a full-time officer of the company. Some concerns to engage full-time officers who make a study of labour laws and case law in labour matters and can conveniently represent employers in proceedings before the industrial court, the labour courts, Payment of Wages Authority, etc., but there are concerns which cannot afford to, or do not wish to, incur the expenditure of having in their permanent employment such full-time or even part-time officers. So with the growing labour legislation and growing case law there has arisen a small class of persons who specialize in such matters, who are called "labour advisers" and whom employers engage for putting their case in the industrial court, industrial tribunals, labour courts, Payment of Wages Authority, etc. Small concerns, in particular, find it economical to engage the services of such "labour advisers." Section 36 being not exhaustive on the subject of appearance before industrial tribunals, it would appear that there is nothing to prevent an industrial tribunal from permitting an employer to represent his case through such a "labour adviser"; in any case, so far as corporations are concerned, in view of the reasoning and authorities given above, there can be no doubt that they must be allowed to appear through such persons and whether Sri Joshi is a permanent labour adviser of the company, or appointed only for the purposes of this case does not, in my opinion, make any difference.

6. As regards the other objection that no resolution of the board of directors has been produced, this objection has no substance. It is a matter of internal management of the company whether in such matters there should be a resolution by the board. The objection that Sri Joshi is not a person employed in the industry is equally without any substance as the law does not require that an employer who is a corporation can be represented only by a person employed in the industry.

7. For the foregoing reasons I reject the objections raised by Sri Sachindranath and hold that Sri Joshi must be allowed to appear for the company.