

ORISSA HIGH COURT : CUTTACK

**W. P.(C) NO. 10394 OF 2007**

In the matter of an application under Articles 226 and 227 of the Constitution of India.

M/s. Gulf Oil Corporation Ltd. .... Petitioner

**-Versus-**

The Presiding Officer, Labour Court,  
Sambalpur and another. .... Opp. Parties

For Petitioner : M/s. N.K.Mishra,  
P.K.Sahoo, D.K.Pani &  
A.K.Roy.

For Opp. Parties : M/s. Ramanath Acharya &  
Basudev Barik.  
(For O.P.No.2)

Decided on 22.06.2009.

**P R E S E N T :**

**THE HONOURABLE SHRI JUSTICE M. M. DAS**

***M.M. Das, J.***

The petitioner - M/s. Gulf Oil Corporation Ltd. has called in question the orders dated 27.6.2007 and 28.7.2007 under Annexure – 10 series to the writ petition passed by the Labour Court, Sambalpur in I.D. Misc. Case No. 23 of 2006. The petitioner is a limited company incorporated under the Companies Act, 1956 engaged in manufacture of different kinds of explosives having its corporate office at Hyderabad. One of its factory is situated at Sonaparbat, Rourkela . Originally, the company was

named as “IDL Chemicals Ltd.” and with effect from 22.8.2003, its name was changed to “M/s. Gulf Oil Corporation Ltd.”.

2. It is the case of the petitioner that the opp. Party no. 2 was appointed as a Laboratory Technician by the petitioner-management on temporary basis with effect from 13.11.1981 and was subsequently confirmed in the said post. While serving as such, the opp. Party no. 2 was selected as Senior Laboratory Technician with effect from 18.11.1985 and was further promoted as Senior Technician (Medical Service) with effect from 1.12.1986. While, thus working, the opp. Party no. 2 made an application for being absorbed in the post of Junior Management Cadre in the (Medical Unit) of the erst-while IDL Chemicals Ltd. Pursuant to such application, he faced the interview and being selected was issued with a letter of employment dated 29.7.1990. He accepted the said offer of employment and joined in Junior Management Cadre with effect from 1.8.1990. While working as such, his service was terminated with effect from 16.4.1996 by issuance of a notice. The opp. Party no. 2 raised an industrial dispute, which was ultimately referred to the Labour Court under sections 10 and 12 of the Industrial Disputes Act, 1947 (for short, ‘the Act’). The point of reference was as follows:-

“ Whether termination of service of Sri Manoj Kumar Sahu by the management of M/s. IDL Industries, Sonaparbat, Rourkela with

effect from 16.4.96 is legal and/or justified ? If not to what relief he is entitled?”

The case was registered as I.D. Case No. 9 of 1997 by the Labour Court. Ultimately, an award was passed on 31.3.1999 in which the termination of the opp. Party no. 2 was held to be illegal for which he was directed to be reinstated in service with full back wages from the date of termination till reinstatement, within a specified period from the date of publication of the award. Being aggrieved by the said award, the erst-while company approached this Court in O.J.C. No. 7086 of 1999. By order dated 24.6.1999, this Court passed an interim order granting stay of operation of the award subject to fulfillment of conditions by the petitioner-management under section 17-B of the Act. When the matter was pending before this Court, the petitioner-management withdrew the termination letter and allowed the opp. Party no. 2 to join in his duties by issuing the letter dated 14.6.2004 under Annexure-2 to the writ petition. In compliance thereto, the opp. Party no. 2 reported for duty on 25.6.2004 and was immediately absorbed in employment. It is the further case of the petitioner-management that the opp. Party no. 2 was paid all his legitimate dues on 22.9.2004. However, the opp. Party no. 2 raised some demands which, according to the petitioner-management are not connected with the subject-matter of the earlier reference or the consequential award, in any manner. The opp. Party no. 2 in this

respect submitted a representation, which is stated to have been received by the petitioner-management on 27.9.2004. On considering the said representation, the petitioner-management finding that the opp. Party no. 2 is not entitled to get the amount of Rs. 6450/-, but in the alternative, a sum of Rs.13095.00 was outstanding against him in respect of IDL Employees Credit Co-operative Society, accordingly issued a letter to the opp. Party no. 2 as at Annexure-3. In O.J.C. No. 7086 of 1999, which was pending before this Court, the opp. Party no. 2 filed a counter affidavit, inter alia, stating therein that the writ petition would no more be maintainable as it has become infructuous due to implementation of the award by the petitioner-management. The said writ petition was disposed of on 27.4.2005 with the following order:-

“27.4.2005. Heard.

The award dated 31<sup>st</sup> March, 1999 passed the Presiding Officer, Labour Court, Sambalpur in I.D. Case No. 9 of 1997 is assailed by the petitioner-management in this writ petition.

Mr. Nanda, learned counsel for the petitioner-management, submitted that in the meanwhile the management has complied with the direction issued in the award. In that view of the matter nothing remains to be decided in this writ petition. Accordingly, the writ petition is disposed of giving liberty to the workman to pursue any other grievance before the appropriate forum, if he is so advised.”

The petitioner- management alleges that the opp. Party no. 2 has never challenged the decision of the management under Annexure-3. Hence, it was contended by the petitioner-management that all claims of the opp. Party no. 2 arising out of and in respect of his earlier termination, the award of the Labour Court and the specific claim raised on 27.9.2004 were taken as fully and finally complied with in view of the ultimate disposal of the earlier writ petition by this Court with the above quoted order.

3. The petitioner-management alleges that long after the disposal of the writ petition, it was surprised to receive a copy of the claim application purportedly filed under section 33C (2) of the Act by the opp. Party no.2 along with a notice dated 14.8.2006 in Misc. Case No. 13 of 2006 issued by the Labour Court. The petitioner-management has alleged that in the said notice, no date of appearance was fixed and the claim of the opp. Party no. 2 enclosed thereto was imaginary, baseless and highly inflated which was not in any way connected with the award passed earlier. The petitioner-management took steps in the said case, the number of which was subsequently changed as Misc. Case No. 23 of 2006. The petitioner-management filed its objection on 22.3.2007 resisting the said claim as not maintainable both in law as well as in fact and also taking a specific stand that the claim made by the petitioner-management is barred by the principles of

res judicata keeping in view the full and final satisfaction of the award passed earlier which was the subject-matter of the writ petition before this Court.

4. The petitioner-management has averred that the opp. Party no. 2 used to attend the Labour Court personally and the petitioner-management was represented through Shri G.Pujari being the General Secretary of Sundergarh District Employees' Association in accordance with the provisions of section 36 (2) of the Act and, he was also permitted to represent the petitioner-management by the Labour Court. On 6.6.2007, the petitioner-management, being the opp. Party, before the Labour Court, through its authorized representative filed a petition for taking up the issue of res judicata as a preliminary issue since the same touches the very root of the matter. The petition was fixed for hearing to 27.6.2007 by which date the opp. Party no. 2 was to file his objection. On 27.6.2007, the authorized representative of the petitioner-management did not attend the Labour Court. As it appears, the opp. Party no. 2 was present, but did not file any objection to the petition. The representative of the opp. Party no. 2, however, orally submitted on the merit of the petition and the Labour Court passed the order dated 27.6.2007 purportedly in the absence of the representative of the petitioner-management. By the said order, the petition filed by the

petitioner-management to take up the question of res judicata as a preliminary issue was rejected and the matter was fixed to 28.7.2007. The petitioner-management finding that the authorized representative of the opp. Party no. 2 who appeared in the case for the first time on 27.6.2007 was not authorized to represent the opp. party no. 2 as, even though Form – G was filed by the workman along with his claim application, but the same was never served on the petitioner-management nor any application was filed seeking leave of the Labour Court for being represented by his authorized representative. No consent of the petitioner-management was also taken as is required under section 36 of the Act. Finding thus, the petitioner-management filed two petitions on 28.7.2007, inter alia, making a prayer to recall the order dated 27.6.2007 and not to allow the opp. Party no. 2 to be represented by an Advocate. By order dated 28.7.2007, the Labour Court has rejected both the petitions by a composite order. Being aggrieved by the orders dated 27.6.2007 and 28.7.2007, the petitioner-management has preferred this writ petition for appropriate relief.

5. Mr. Mishra, learned counsel for the petitioner vehemently argued that the plea of res judicata is a valid plea, which can be decided without recording any evidence in the given facts and circumstances and the same necessitated the Court to take up the issue of “res judicata” as a preliminary issue as it goes

to the root of the matter. The rejection of such prayer of the petitioner in the impugned order is ex – facie unjust and illegal, more so, when it is well settled that in a proceeding under section 33C (2) of the Act, the Court cannot create a new right in favour of the claimant and then execute the same. He further contended that as per section 36 (4) of the Act, an advocate can appear for any party only after getting express consent of the other party and with leave of the court, but not otherwise. In the present case, according to the learned counsel, the court in contravention of the provision of the said section, perpetuated the error by rejecting the petition dated 28.7.2007 of the Management by ascribing reasons based on surmises and conjectures. According to Mr. Mishra, there is no scope for “implied consent” under section 36 (4) of the Act. In support of the above contentions, Mr. Mishra relied upon the decisions in the cases of ***Paradip Port Trust, Paradip v. Their Workmen***, AIR 1977 S.C. 36, ***Deepak Puri and others v. Fifth Industrial Tribunal, West Bengal and others***, 1986 Lab. I.C.) 132 (Calcutta), ***P. Adinarayana Reddy v. Presiding Officer, Industrial Tribunal and others***, 1990 (II) OLR 94, ***Punjabi Ghasitaram Halwai Karachiwala (Partnership firm) v. Sahadeo Shivram Pawar & Ors.***, 1994 (I) LLJ 1022 (Bombay), ***Municipal Corporation of Delhi v. Ganesh Razak and***



**another**, 1995 (I) LLJ 395 (SC) and **State of Andhra Pradesh v. Rayavarapu Punnayya and another**, AIR 1977 S.C. 45 .

6. In the case of *Municipal Corporation of Delhi (supra)*, the Supreme Court while considering the power of the Labour Court under section 33C (2) of the Act, referring to various earlier decisions of the Apex Court laid down that the Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercising of its power under section 33C (2) of the Act. It further laid down that it is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof, some ambiguity requires interpretation the same can be treated as incidental to the Labour Court's power under section 33C (2) like that of the Executing Court's power to interpret the decree for the purpose of its execution. The ratio of the above decision, therefore, is not in support of the contention that the Labour Court should have decided the question of res judicata as a preliminary issue. This Court, therefore, finds no error in the conclusion of the Labour Court while rejecting the prayer of the petitioner for deciding the question of res judicata as a preliminary issue.

7. Now coming to the question of the legality of the impugned order dated 28.7.2007 in holding that there is no merit in the petition filed by the petitioner questioning the appointment of the legal practitioner from the side of the workman, it appears that the Labour Court has taken various facts and circumstances of the case before coming to its conclusion and rejecting the prayer of the management. The facts taken into consideration by the Labour Court are as follows:-

- (i) The petition filed on behalf of the petitioner was by one Purna Chandra Pradhan describing himself to be the Manager, Industrial Relation. No document was filed to show that he is the authorized representative of the Management. He also conceded before the Labour Court that he has not filed any such authority. The "G" form which was filed on behalf of the Management was in favour of one Gobardhan Pujari, Advocate, who was absent on the date of hearing of the petition.
- (ii) The workman - Manoj Kumar Sahu filed the application under section 33C (2) of the Act on 28.7.2006, which was received by the Labour Court on 3.8.2006 along with the "G" form authorizing Shri R.N. Acharya, Advocate and P.K. Sahu, Advocate to represent him in the said case

. Thereafter, show cause notice was issued to the Management and on 6.11.2006 Shri Gobardhan Pujari, Advocate in his capacity as the General Secretary of the employer's association appeared and filed an adjournment petition. No "G" form was filed. Copy of the authorization was also not served on the workman.

- (iii) Thereafter on three occasions, adjournment petitions were filed on behalf of the Management and on two previous dates, none appeared from the side of the Management.
- (iv) On 22.3.2007, Shri Gobardhan Pujari filed counter affidavit/objection to the application under section 33C (2) of the Act.
- (v) On 30.4.2007, the workman filed a petition praying to call for certain documents, notice of which was issued to the employer.
- (vi) On 6.6.2007, Shri Pujari on behalf of the employer filed objection to the petition filed by the workman. He also filed a separate application raising the plea of res judicata. The said application was disposed of by order dated 27.6.2007 rejecting the prayer to decide the question of res judicata as a preliminary issue.

8. From the conduct of the parties, the Labour Court concluded that it can be implied from the circumstances and conduct of the parties that the employer had consent for the legal practitioner named in the “G” form filed by the workman to represent him, though, in fact, there is no consent in black and white. From the date of filing of the application under section 33C (2) of the Act along with the “G” form by the workman, Shri Gobardhan Pujari, Advocate, who appeared in the capacity of the Secretary of the employer’s association never raised any objection for the legal practitioner conducting the case on behalf of the workman. The first order sheet inadvertently did not mention the fact that the “G” form was filed along with the application under section 33C (2) of the Act by the workman. As the Act is a beneficial legislation, the provisions are to be liberally construed.

9. In the case of *Paradip Port Trust, Paradip (supra)* , the Supreme Court, while considering the scope of section 36 (2) & (4) of the I.D. Act , held that section 36 is not exhaustive but supplemental to any other lawful mode of representation of parties. The parties, however, will have to conform to the condition 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. 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. But, he can appear in the capacity of an office bearer of a registered trade union or an officer of associations of employers and no consent of the other side and leave of the Tribunal will then be necessary.

10. In the said case, the workman appeared before the Tribunal through the advisor and General Secretary of Paradip Shramik Congress. The appellant – Paradip Port Trust sought to be represented before the Tribunal through Shri T. Mishra, Advocate, who was the “legal consultant” of the Trust and filed their authority in Form “F” under Rule 36 of the Orissa Industrial Disputes Rules in his favour. Subsequently, a Power of Attorney was filed by the Chairman of the Trust Board in favour of Shri T. Mishra, who was admittedly a practising advocate of the Orissa High Court. An objection was taken by the Union to the representation of the Port Trust by Shri T. Mishra, Advocate and the Union refused to give its consent to his representation as required under section 36 (4) of the Act. The Supreme Court, in essence, while dealing with the provisions of section 36 (1) and (2) of the Act, came to the conclusion that a lawyer, *simpliciter*, cannot appear before an Industrial Tribunal without the consent

of the opp. Party and leave of the Tribunal merely by virtue of a Power of Attorney executed by a party. But he can appear in the capacity of an office-bearer of a registered trade union or an officer of associations of employers and no consent of the other side and leave of the Tribunal will then be necessary. The other decisions cited by Mr. Mishra are rendered following the ratio of the decision in the case of *Paradip Port Trust, Paradip* (supra).

11. In the facts of the present case, admittedly, a “G” form was filed by the workman along with his application under section 33C (2) of the Act and the legal practitioner named therein continued to represent the workman without any objection, from the side of the employer and the Labour Court allowed such legal practitioner to represent the workman. Rather, the petition filed on behalf of the employer objecting to such representation of the workman was by a person, who was not authorized to represent the management.

12. Section 36 (4) of the Industrial Disputes Act, 1947 reads as follows:-

**“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 –

xx

xx

xx

(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.))]

The word “consent” used in the above section does not specify that the same should be a written consent.

13. It is a settled position of law in the context that where a consent is necessary, such “consent” is put in plain antithesis to “acquiescence” and, therefore, if something comes within the description “acquiescence”, it is not consent. The difference between the two is that “consent” involves some affirmative acceptance, not merely a standing-by and absence of objection. The affirmative acceptance may be in writing, which is the clearest. It may be oral, it may conceivably, even be by conduct, such as, nodding the head in a specific way in response to an expressed request for consent. It must be something more than merely standing-by and not objecting. This definition of implied consent as has been applied by the Labour Court appears to be in conformity with law. Similarly, the question with regard to leave of the Court, if examined in the facts of the present case, would lead to an inevitable conclusion that the court has granted leave to both the parties to be represented by Shri Gobardhan Pujari on behalf of the employer and the legal practitioner in whose favour, the form “G” was filed to represent the workman though no specific order to that effect has been passed.

14. Therefore, having not found any perversity or illegality in the impugned orders called in question by the petitioner, I am not inclined to interfere with the same.

15. The writ petition is accordingly dismissed, but in the circumstances, without cost.

The interim order passed earlier stands vacated.

.....  
***M. M. Das, J.***

*Orissa High Court, Cuttack.  
June 22nd , 2009/Biswal.*







---