Bombay High Court T.K. Varghese vs Nichimen Corporation on 26 February, 2001 Equivalent citations: 2001 (4) BomCR 168, (2001) 4 BOMLR 917, 2001 (90) FLR 91, (2002) IVLLJ 1018 Bom, 2001 (3) MhLj 711 Author: R J Kochar Bench: R Kochar ORDER R. J. Kochar, J. 1. The Petitioner workman is aggrieved by the Order dated 9.8.2000 passed by the Presiding Officer of the 2nd Labour Court. Mumbai in Reference (IDA) No. 715 of 1999 in an Interlocutory, Application, which was marked as Exh. U-2. The main reference is still pending. , 2. The facts are in a very narrow compass. The Petitioner was in employment of the Respondent Company as a clerk and his employment was discontinued by an order of termination dated 8.3.1995. He challenged the propriety and legality of the said order by raising an Industrial dispute which was referred by the State Government for adjudication. The Labour Court on receipt of the order of reference issued notices to the respective parties. In response to the aforesaid notice the Petitioner appears to have filed his statement of claim on 18.2.2000 justifying his demand for reinstatement with full back wages and continuity of service on certain grounds with which we are not presently concerned. However, in the statement of claim itself the petitioner has mentioned as under : 6. "I say that I am unable to engage an advocate to fight my case in the Labour Court and therefore I will appear through Mr. S. V. Gole, General Secretary of my Association and I will also oppose the Company engaging any advocate to represent them." It further appears from the xerox copy of the Roznama relied on by the learned Advocate for the Respondent; Company that on 28.2.2000 the Company appeared through its General Manager before the Labour Court and he filed the authority of his advocate along with an application for adjournment. It also appears that on that day the statement of claim was filed by the workman, who was present along with his representative. The Labour Court had adjourned the matter for filing of written statement to 3.4.2000. On 3.4.2000 one Shri Padmanabh Shetty, a learned Advocate appeared and filed his reply and affidavit on behalf of the Respondent Company. He also filed his written statement and a list of documents on behalf of the Company. The workman was present and by consent the matter was adjourned to 19.4.2000. On 16.5.2000 it appears that an application was filed by the workman taking an objection to the appearance of Shri Shetty as an Advocate for the Company under Section 36(4) of the Industrial Disputes Act, 1947. The Labour Court adjourned the matter for filing of reply and/or say of the Company to the said objection. On the next dt. 7.7.2000 the Respondent Company filed its reply and the objection was heard on 28.7.2000. By an order dated 9.8.2000 the Labour Court rejected the application filed by the workman objecting the appearance of Shri Shetty as an Advocate for the Company. 3. It is the aforesaid order passed by the Labour Court which is impugned by the Petitioner workman under Article 226 of the Constitution of India. Ms. Shobhana Gopal, the learned Advocate for the Petitioner, has submitted that the impugned order is contrary to the provisions of Section 36(4) of the Act as no advocate or a legal practitioner is permitted to appear in any proceedings under the Act without the consent of the other party and without the leave of the authority. According to the submissions of Ms. Gopal the Petitioner workman had not given his consent to the Respon-

dent Company to be represented by Shri Shetty as the legal practitioner and that even the Labour Court had not given leave to such legal practitioner to appear in the proceeding. It was further submitted by the learned Advocate that there was no question of there being an implied consent to the Respondent Company to be represented by a legal practitioner. Ms. Gopal has relied on the following judgments : 1. Management of Keonjhar Central Co-operative Bank Ltd. v. Workman ,: 2. Punjabi Ghasitaram Halwat Karachtwala v. Sahadeo Shivram Pawar and Ors.,; 3. Sandoz (India) Ltd. v. Association of Chemical Workers and Anr.,. 4. Prasar Bharatt Broadcasting Corporation of India v. Suraj Pal Sharma and Anr.,. 4. On the other hand Shri Palshikar, the learned Advocate for the Respondent Company, has submitted that from the Roznama maintained by the Labour Court in the normal course of the business it is clear that on 18.2.2000 which was the first date of the proceedings the Petitioner workman had filed his statement of claim through his representative Shri S.V. Gole, the General Secretary of his Union, who was personally present before the Labour Court. In his presence the Respondent Company filed its authority i.e., Vakalatnama of its legal practitioner Shri Padmanabh Shetty, an Advocate. Shri Palshikar pointed out that Shri Shetty. who was personally present in the Court and he had filed his Vakalatnama on behalf of the Respondent Companyln the presence of Shri Gole and the same was taken on record by the Labour Court. Shri Shetty had also filed his application for an adjournment to enable him to file the written statement of the Respondent Company in reply to the statement of claim filed by the Petitioner workman. Shri Palshikar pointed out that this was the first date on which Shri Gole could have taken objection to the filing of the Vakalatnama by Shri Shetty and could have noted his objection on the Vakalatnama as well as on the application for adjournment which was filed and signed by Shri Shetty as an Advocate for the Respondent Company. According to Shri Palshikar, the objection which was generally raised in the statement of claim was deemed to have been waived on that day Indicating an implied consent to the Respondent Company being represented by a legal practitioner Shri Padmanabh Shetty. Shri Palshikar also pointed out that on the next date i.e., on 3.4.2000 when Shri Shetty himself was present it appears from the Roznama that on that date Shri Shetty filed his reply and affidavit of the Company and also the written statement and a list of documents, which were received by the workman and the matter was adjourned to 19.4.2000 for documents and framing of issues. Shri Palshikar has pointed out that Shri Shetty himself has filed his affidavit-in-reply on behalf of the Respondent Company, In this petition, and has sworn on oath that on 3.4.2000 Shri Gole the representative of the workman was also personally present in the Court and had received the aforesaid reply, affidavit, written statement and a list of documents. Shri Shetty has further sworn on oath that even on that date Shri Gole himself had not raised any objection to the appearance of Shri Shetty as an Advocate for the Company. Shri Shetty has pointed out in his affidavit that the reference was adjourned from 3.4.2000 to 19.4.2000 and thereafter on 28.4.2000. It appears that on account of non-attendance of parties the reference was adjourned to 16.6.2000. It also appears that the Petitioner himself was present on 28.4.2000

when Shri Shetty was also present in the Court. Shri Palshikar pointed out that it was for the first time on 16.6.2000 that the Petitioner's representative Shri Gole appeared and objected to the appearance of Shri Shetty as a legal practitioner on behalf of the Respondent Company. The learned Advocate for the Respondent Company submitted that til! that date Shri Gole never objected to the appearance of Shri Shetty, who was appearing in the reference before the Labour Court. The conduct of the Petitioner workman and his representative, says the learned Advocate, certainly reflect that there was an implied consent to the Respondent Company being represented by a legal practitioner i.e., Shri Shetty, an Advocate. Shri Palshikar has submitted that it was an after thought for the reasons best known to Shri Gole, the representative of the workman to have raised such an objection to he appearance of Shri Shetty as an Advocate for the Company. Shri Palshikar has therefore supported the order of the Labour Court. Shri Palshikar further pointed out that the Respondent Company is a Japanese Company and its management did/does not know the Indian Laws, and therefore, initially considering this position the Union had fairly not objected to its engaging an advocate to represent the Company before the Labour Court. Shri Palshikar further pointed out that Shri Gole. who was representing the Petitioner workman before the Labour Court was the General Secretary of the Union and he was an old experienced very senior Trade Union Leader having vast knowledge and experience to his credit. Shri Gole has been in the field since last more than 40/50 years. In these circumstances Shri Palshikar has pointed out that it was in the Interest of justice that this Hon'ble Court in exercise of its extra ordinary jurisdiction should not interfere with the impugned order passed by the Labour Court. 5. In the facts and circumstances of this case it is not necessary for me to refer to the various authorities cited by both the learned Advocates. It has been held by several judgments of this Court that if there was no objection raised on the first date of the proceedings to the appearance of a legal practitioner on behalf of the other side the consent is to be taken as Implied consent. Since the Labour Court has also allowed Shri Shetty the legal practitioner to appear on behalf of the Respondent Company it, will have to be deemed that the Labour Court, has granted leave to Shri Shetty to appear for the Respondent Company. Though there was no specific or express consent given by the Petitioner workman or his representative Shri Gole and though the Labour Court had not specifically granted leave to Shri Shetty to appear for the Respondent Company. From the conduct of Shri Gole as well as from the fact that Shri Shetty was allowed to appear in the matter before the Labour Court, leave will have to be inferred having been granted. Shri Shetty filed his own affidavit as an Advocate and has set out verbatim the developments which took place before the Labour Court. The facts which have been set out by Shri Shetty have not been disputed by the Petitioner workman. I find from the record that till 16.6.2000 Shri Gole, the representative of the Petitioner workman, did not raise objection to the appearance of Shri Shetty, as the Advocate, for the Respondent Company. Shri Gole, with his large experience of 40/ 50 years in the field cannot be said to have lost sight of such an important objection being raised in such matters. It also can be inferred that Shri Gole in

his fair sense waived the objection raised in the statement of claim considering the fact that the Respondent Company was a Foreign Company and that all the Executive and Management were not at all conversant with the Labour Laws of India. In this background we have to consider the factual position which was before the Labour Court. Further, Shri Gole being a very senior Trade Union Leader did not feel any challenge from Shri Shetty, comparatively Junior legal practitioner at the Bar. 6. While interpreting Section 36(4) of the Act we must remember a crucial reality that when the Industrial Disputes Act was enacted in the year 1947 the Trade Union movement in this Country was in its infancy and was absolutely novice before the adjudication machinery. The Legislature had visualised the legal battle between the two unequals before the Industrial adjudicators. On the one hand the Trade Unions with scarce resources could not be pitted against the mighty employers, who had all the wealth at their command. They could hire the best lawyers at the Bar while the Trade Unions and/orworkmen did not have any trained persons to defend them. Their leaders had no necessary legal training and knowledge of Court functioning. The lawyers who had professionally acquired law training were rarely available for the Trade Unions and workmen who could hardly afford their profession fees. In order to bring about and maintain fairness and equality in the fight the Legislature provided under Section 36 of the Act how the parties would be represented in the proceedings under this Act. The parties, of course, could themselves appear in their own litigation. They were however not allowed to be represented by legal practitioners in the conciliation proceeding or in any proceedings before Labour Court/Tribunal. Section 36(4) however carves out an exception to the complete ban under Sub-section 3. A legal practitioner is permitted with the consent of the other party in the proceedings and with the leave of the Labour Court/Tribunal or National Tribunal as the case may be. It was left to the other party and also to the discretion of the forum before which the proceedings were instituted. The underlying principle of this section is just and fair trial. However, the Trade Union movement has become more than 50 years old after 1947. It has crossed its age of Infancy long back. It has also created a number of very good Trade Unionists who have acquired knowledge, legal acumen and skill to defend the working class In the proceedings under this Act. Very often these dedicated and reputed trade Union leaders are more than a match to even the best of the practitioners before the Labour Court or Tribunal or National Tribunal. Similarly there are many seasoned office-bearers of a number of Trade Unions functioning in this country, who have also acquired rich experience in the field of legal fight. Now let us consider the position of the employers in that context. Will it be a fair and equal fight between a powerful Trade Union represented by a very seasoned, senior and experienced Trade Union representative or a leader against an ordinary small or petty employer if he is not assisted by a legal practitioner? The Trade Unions are professional litigants under the Act while employers are not; they have to engage the services of legal practitioners to fight their battle. And if they are prevented from engaging legal practitioners as against the powerful representatives of the Trade Unions it will not be a fair, just and equal trial of strength between the two. In my humble opinion we have

to reconsider, revise and review the position which existed in the year 1947 vis-a-vis and the position which is in the year 2001. There has been a sea change in the circumstances. A large number of small employers have also come on the industrial scene. They cannot be denied the services of legal practitioners when they are dragged in the Industrial litigation. There are number of good advocates or legal practitioners available now even for the workmen or Trade Unions. In the early 50's there was dearth of legal practitioners to appear for the Trade Unions as the Unions could not pay even a small fee. The legal profession has grown up to such an extent that the lawyers' services are available to all those who can pay a reasonable remuneration. There are number of such advocate who have dedicated themselves to the cause of the working class and who do not expect much return for the mission to which they have devoted. We have good number of advocates to stand for the cause of social justice. It would therefore be unreasonable and unfair to deny the same opportunity to the employer, the other side of the legal battle. It would however be for the Legislature to reconsider and review the position of Section 36 of the Industrial Disputes Act. Besides, the Trade Unions have also become financially well off to engage the services of good legal practitioners. 7. Moreover, the provision of Section 36 has given rise to formation and floating of bogus paper organisations of employers who engage and appoint some legal practitioners as their so-called office-bearers to circumvent the provisions of Section 36 as such "office-bearers" are permitted to appear in industrial proceedings with legal authority. The result is that very good legal practitioners are appointed as "office -bearers" of the employers' organisation or even as the employees of the employers to appear for the members-employers to circumvent the objections of the Trade Unions/workmen. To face the situation successfully, the employers like the Respondents are compelled to enroll themselves as the members of such organisations to be able to be defended by legal practitioners who are the officers or office-bearers of such organisations. 8. Moreover, if we consider the history of industrial litigation the legal fraternity has its major contribution to the development of this branch of law. It would be totally unjust to deny the legal community access to this field and the Courts and the Tribunals would face great handicap if they do not get proper assistance from the legally trained persons in their decisions which finally land in the higher Courts. The judgments of the Lower Courts do reflect the kind of assistance received by them. It facilitates even the higher Courts if the decisions are written after good assistance from the Bar. The foundation of the justice is the fair and equal fight between the parties. Ultimately, if the Court/Tribunal grants "Leave" to a legal practitioner to represent a party before it, such leave by the Court/Tribunal would be in the interest of justice and fair-play while the "consent" of the other party very often is actuated by malice or mala fides or motivated to try to get upper hand in the litigation. 9. At the same time we cannot forget that under Section 7(3)(d-1) of the Act an advocate or attorney is permitted to practise before the Industrial Court or Tribunal or Labour Court to become eligible for appointment as a Presiding Officer of a Labour Court. In the light of this provision what is more Important for a legal practitioner to be able to appear before the Labour Courts/Tribunal

is the unbiased leave of such forum than the interested and motivated denial of consent by the other party. The grant of "leave" would be more decisive rather than the "consent" of the party. In view of the above discussion, according to me, the leave granted by the Labour Court/Tribunal will have overriding effect as a party cannot be represented by a legal practitioner even when the other side consents without the leave of the Labour Court/Tribunal. Considering the vast development of law and the complications which arise in the litigation the Labour Court/Tribunal has an inherent right in the interest of justice to seek proper assistance in resolving the industrial dispute to the satisfaction of both the parties and in accordance with law and grant "leave" to a party before it to be represented by a legal practitioner. 10. There is no absolute bar for the legal practitioner to appear before the Labour Court/Tribunal as it is under Section 36(3) in the conciliation proceedings. No party can withhold appearance of a legal practitioner by denying "consent" without any justification and arbitrarily for no rhyme or reason. If a party is represented by an office-bearer etc. of a Trade Union or an Association, it cannot refuse to grant consent to the other side without any reasonable cause and justification to engage a legal practitioner and the Labour Court/Tribunal can always consider the bona fides of such a party withholding consent and can always grant "leave" to the other parties to be represented by a legal practitioner in the interest of justice notwithstanding the refusal of consent by the other side. No party to the proceedings has an unbridled and absolute right to refuse to give consent to the other party. No party can adopt unreasonable attitude to exploit the situation arising out of Section 36(4) of the Act to the deliberate disadvantage of the other side. This provision was enacted to help the budding Trade Union movement and it was never intended for them to take wrongful advantage of the same even after the Trade Unions have become capable of defending themselves and their workmen. The provision is always subject to the scrutiny of the Labour Court/Tribunal and it can always decide the question of refusal of consent by the other party and can overrule the refusal of the consent on merits independently while considering to grant or refuse the "leave" contemplated under Section 36(4) of the Act. 11. It will be useful to reproduce the Section 36 for ready reference, which reads as under : "36. Representation of parties.- (1) A workman who is a party to a dispute shall be entitled to be represented in any proceedings 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 : [Provided that, where there is a recognised union for any undertaking under any law for the time being in force, no workman in such undertaking shall be entitled to be represented as aforesaid in any such proceeding (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is

under consideration) except by such recognised union.] (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) whether 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 proceeding 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." It is crystal clear that the party to the dispute in any proceedings under this Act is specifically conferred a right or entitlement to be represented by a member of the Executive or an office-bearer of a registered union or a Federation or an officer of Association of employers or a Federation of the employer's associations. This right is totally denied under Section 36(3) in the proceedings before the conciliation proceedings or in any proceedings before the Court as far as the representation by a Legal Practitioner is concerned. However, Section 36(4) relaxes this total ban on the representation by the legal practitioner if the other party gives consent and the Labour Court/Tribunal grants leave to be represented by a legal practitioner. The bar on the legal practitioners' appearance is based on a general impression that they would contribute to the delay in disposal of the disputes. The impression might be correct to some extent but the legal fraternity alone cannot be held responsible for the delay as there are number of causes which also delay the disposal of the cases. Further very often, the parties-in-person create a number of problems from lack of knowledge and proper understanding and a deep sense of revenge against the other side and complete absence of detachment from the dispute and lack of knowledge of law and functioning of the Courts and techniques and niceties in the matters. For such and similar factors the parties-in-person are likely to suffer more in their own cause. In my considered opinion it is not always in the interest of the parties to deny them the legal assistance in the Courts/Tribunal of the legal practitioners. Denial of justice totally is worse than the delayed justice. 12. In the facts and circumstances of the present case according to me, the order of the Labour Court is legal and proper and it does not suffer from any infirmity. The Respondent Company which is a Japanese Company and which has admittedly no knowledge of the Indian Labour Laws would be at a great loss if it is deprived of the implied consent given by the Petitioner workman to allow the Respondent Company to be represented by a legal practitioner, Shri Padmanabh Shetty. There is no miscarriage of Justice to warrant any interference by this Court under the extraordinary Jurisdiction of Article 226 of the Constitution of India. The justice demands that there should be a fair and equal fight before the Court. The Petition is dismissed. Rules is discharged. No order as

to costs. 13. Parties to act on an ordinary copy of this order duly authenticated by the Associate of this Court.