

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-2, MUMBAI**

APPLN (REF) NO. CGIT- 2 /1 OF 2024

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

**M/s. AIR INDIA LTD.
AND
THEIR WORKMEN.
(Captain Devan Y. Kanani)**

ORDER BELOW EX-02
(Delivered on 22-01-2025)

Read application filed by the Second Party. Perused the reply submitted on behalf of the First Party. Heard both the parties.

2. According to the Second Party, he is appearing in person in the present application Reference, as per Section 36 (4) of the Industrial Dispute Act, 1947, he declines the consent to the First Party to represent by legal consultant/advocate in the present proceeding, accordingly prays for direction to the First Party not to be represented through non-employee of the company, practicing as a legal consultant/advisor, office bearer of any organization or registered member with Bar Counsel of any High Court.

3. As against this, the First Party submitted that, for the alleged termination of the Second Party an Approval application is pending, in which the Second Party is being represented by an advocate. The application Reference being in continuation of an Approval application, therefore objection raised u/s. 36 (4) of the I.D. Act is not tenable under Law, ultimately prayed for rejection of the application.

4. The present application has been filed by the Second Party alongwith statement of claim in the present application Reference at the first instance.

It is worthwhile to mention here that, though the present application is filed u/s. 36 (4) of the I.D. Act, however by this application the Second Party is objecting the appearance of legal practitioner or advocate for First Party in the application Reference and considering the nature of application as well as objection raised on behalf of the Second Party, the present application certainly falls u/s. 36(3) of the I.D. Act. As per that Section no party to a dispute shall be entitled to be represented by legal Practitioner in any conciliation proceeding under this Act or in any proceeding before the Court.

5. The relevant provision is mandatory in nature and it seems that, the intention of legislature behind enacting this Section must be that, there should not be Legal battle amongst the unequals. It means if the workman is appearing in person in the matter, then the employer should not be permitted to represent by legal practitioner/Advocate in the conciliation proceeding as well as in the proceeding before the Court under the I.D. Act therefore the consent of the Second Party and lieu of Tribunal will have to be secure.

6. Though it is contended on behalf of the First Party that, the present Reference application is in respect of dismissal and this proceeding is connected with the Approval Application filed by the First Party for seeking approval against the dismissal of the Second Party, in which the Second Party was represented by

legal practitioner/advocate therefore in this proceeding also the First Party should be permitted to be represented by counsel.

True it is that, in an Approval Applications both the parties are represented by advocate as there is Vakalatnama of Advocate for the opponent however the present Reference application though the same is against the dismissal of the Second Party, still this proceeding is separate and also independent proceeding, in which the Second Party himself appearing in person. In such circumstances merely on the ground that, in approval proceedings the Second Party is represented by an advocate, the legal practitioner/advocate cannot be permitted to appear in the present proceeding i.e., application Reference. However the First Party is certainly entitled to be represented in the present proceedings through authorized representative of the First Party Company.

In the result, the application is allowed. The First Party cannot be represented through legal practitioner/advocate in the present proceedings.

Sd/-

Date: 22-01-2025

(Shrikant K. Deshpande)
Presiding Officer
CGIT -2, Mumbai

