BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM – LABOUR COURT NO. II, NEW DELHI

ID No. 118/2023, 119/2023

Sh. Suraj Kumar &Ors.and Sh. Narendra Singh Gill &Ors. vs. Chief Electoral Officer, Government of NCT of Delhi

Counsels:
For Applicants/ Claimants*:*
Ms. EktaTomar and Ms. SurbhiBagra, Ld. ARs.

For Management/ Respondent*:*
Sh. RiteshChaudhary, Ld. AR.

Order dated- 08.12.2025

This order shall dispose of an application filed by the Ld. AR for the claimants under section 36 (2) of the Industrial Disputes Act, 1947 (Hereinafter referred to as 'the Act').

The Ld. AR for the claimants in her application has submitted that as per section 36 (2) of the Act, an employer who is a party to a dispute shall be entitled to be represented in any proceeding under the Act only by-

> d. An officer of an association of employers of which he is a member;
> e. An officer of a federation of association of employers to which the association referred to in clause (a) is, affiliated;
> f. Where an 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 authorized in such manner as may be prescribed."

She further submitted that the management is being represented by Sh. RiteshChaudhary, a legal practitioner, who is neither an officer of any employers' association or federation, nor is the management a member of any such body, and that a counsel does not constitute an employee or officer so as to fall within the

permissible categories under Section 36(2) of the Act. The claimant further relies on Section 36(4) of the Act to submit that representation through a legal practitioner is permissible only with the consent of the opposite party and the leave of the Tribunal, neither of which has been sought or obtained by the management. She placed reliance on the judgment of the Hon'ble High Court of Delhi in *PrasarBharati Broadcasting Corporation of India vs. Suraj Pal Sharma &Ors.*, MANU/DE/0158/1999, wherein debarment of a legal practitioner was upheld in similar circumstances. The Ld. AR for the claimants further placed reliance on the judgment of Hon'ble Supreme Court in **Paradeep Port Trust, Paradeep and Ors. and their workmen, AIR 1977 SC 36,**whereby it was held in Para 22 that:

> *Consent of the opposite party is not an idle alternative but a ruling factor in Section 36(4). The question of hardship, pointed out by the Solicitor General, is a matter for the legislature to deal with and it is not for the courts to invoke the theory of injustice and other consequences to choose a rather strained interpretation when the language of Section 36 is clear and unambiguous.*

The Ld. AR for the claimants lastly prayed for issuance of appropriate directions to debar the said legal practitioner from appearing on behalf of the management.

In response, the management filed a reply stating that the counsel representing them has been appearing in the proceedings from the very inception of the case, and at no point did the workman or his representative raise any objection to such appearance. It is contended that the present objection has been raised belatedly, despite the workman having had full opportunity to do so at the earliest. The management argues that, in the circumstances, the workman must be deemed to have consented to the representation through a legal practitioner. It placed reliance on the judgment of the Hon'ble High Court of Delhi in ***M/s Bhagat Brothers vs. ParasNathUpadhyay***, LPA 212/2008, wherein it was held as under:

> *Section 36(4) does not prescribe that the consent must be given in a particular manner or in a particular form. In a given case the consent of a party, which is the basis for grant of leave to the other party for being represented by an advocate in a proceeding under the Industrial*

> *Disputes Act, could be inferred from the surrounding circumstances as also the conduct the consenting party. Section does not insist upon a written consent. Consent can be implied. Consent once given cannot be revoked at a later stage because there is no provision in the Industrial Disputes Act enabling such withdrawal or revocation.*

The management further relied upon another judgment of Hon'ble High Court of Bombay in ***T.K. Varghese vs. Nichimen Corporation*** (2002-IV-LLJ (Suppl) Bom 1018), where similar views were expressed by the Hon'ble court.

The management further submits that the claimant's reliance on *PrasarBharati Broadcasting Corporation of India vs. Suraj Pal Sharma &Ors.*(MANU/DE/0158/1999) is misplaced, as that decision pertained to a situation where objections were raised at the earliest opportunity and the statutory framework was not complied with. The management further submits that since there was no objection raised by the workman or their representative to the appearance of the management's counsel at the first instance, the consent is to be taken as implied consent as per the ratio of *Bhagat Brothers* case.

On these grounds, the management prayed for dismissal of the application seeking debarment of their counsel from further appearance.

I have perused the application and gone through the judgments relied upon by both parties. It is a matter of fact that Para 14 of the judgment relied upon by the Ld. AR for the claimants itself states that :

> *"Again, although under Section 36(2)(c) there is provision for the contingency of an employer not being a member of an association of employers, the device of representation provided therein would not fit in the case of a government department or a public corporation as an employer. These categories of employers, known to the Act, will be put to the most unnatural exercise of enlisting the aid of an outside association, albeit connected with the same type of industry, to defend their cases before tribunals. Such an absurd intent cannot be attributed to the legislature in enacting Section 36, which will be, if that section is the be-all and end-all of the types of representations envisaged under the Act. The impossibility of the position indicated*

above is a crucial pointer to Section 36 being not exhaustive but only supplemental to any other lawful mode of representation of parties.

The above said Para of the judgment clearly states that Section 36(2)(c) of the Act isnot exhaustive in prescribing who may represent an employer before the Labour Court or Tribunal. The Supreme Court specifically points out that Section 36(2)(c),which allows representation through an association of employers, is designed for the typical case of private employers who are members of employer associations. Such mechanism cannot apply naturally to government departments or public corporations, because a government department cannot become a member of an "association of employers", which is generally an external, industry-based private association, as It would be illogical and impractical to expect a government department to seek help of an outside private association merely to defend its case before an industrial adjudicatory body.

Therefore, the Hon'ble Court decided that Section 36 of the Act is only supplemental, meaning government employers can be represented in other lawful manners, even outside the strict wording of Section 36.

In the present matter, the management is the 'Chief Electoral Officer, GNCTD who is a government authority, functions as part of the State administrative machinery, and is not a private employer or an 'association member' of any employer organization envisaged under Section 36(2)(c) of the Act. Accordingly, Section 36(2)(c) of the Act cannot apply to the Chief Electoral Officer because the statutory mechanism of being represented through an 'association of employers' is not compatible with a government department.

However, Para 22 of the same judgment stated that consent of the opposite party is not an idle alternative but a crucial factor in Section 36(4), and this requirement cannot be lightly disregarded even if it causes hardship.Although, the Hon'ble Supreme Court in*New India Assurance Co. Ltd. v. Kerala State Co-operative Marketing Federation Ltd., (1988) 3 SCC 371*had held that:

> *…The consent contemplated under Section 36(4) of the Industrial Disputes Act must be obtained at the commencement of the proceedings. If no objection is taken at that stage, the appearance of a legal practitioner shall be deemed to have been with the consent of the parties. Once the proceedings have advanced, it is not open to a party to turn around and object to such representation."*

It is evident that the present application has been filed at a belated stage, despite the fact that the management has been represented in the same manner from the very beginning of the proceedings. The claimant never raised any objection at the initial stage. Having allowed the representation to continue without protest, the claimants are deemed to have accepted the mode of appearance adopted by the management. A party cannot be permitted to wait until a large portion of the proceedings has been completed and then seek to raise objections which should have been raised at the outset. Such delayed objections are not permissible and contrary to the settled law that procedural objections must be raisedat the outset. Therefore, the application, having been moved at a belated stage, and the proceedings have already advanced on the basis of implied consent, is not maintainable and cannot be allowed.

Consequently, the application filed by the claimants, being devoid of any merit, stands dismissed.

ATUL KUMAR GARG
Presiding Officer
CGIT-cum-labour court-II

Dated 08.12.2025