

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

APP. APPLN NO. CGIT- 2 /02 OF 2023

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

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

ORDER BELOW EX-16
(Delivered on 22-01-2025)

Read application filed by the original opponent. Perused the reply submitted by the original applicant. Heard both the parties.

2. According to the original opponent, in an Approval application, while hearing on application for interim relief filed by him, Mr. Lancy D'Souza Advocate and his team appeared for original applicant by impersonating themselves as an authorized representative, argued on behalf of the original applicant without filing Vakalatnama. The same is in violation of Rules and caused prejudice and financial loss to him. The Vakalatnama/Authority subsequently filed is also defective and incomplete therefore cannot be accepted. The act done by the counsel for the original applicant is a professional misconduct as per Advocate Act. Not only this but, there is delay in disposal of Approval application. Lastly, the original opponent urged that, the act done by the team of Advocate is illegal, fraudulent and in violation of Advocate Act thus the original opponent prays for discarding all written and oral submissions done by the Advocates named in Vakalatnama/Authority, dismissed the Approval application by granting all prayers made in CGIT-2/01 of 2024, to

start fresh proceeding by granting subsistence allowance alongwith necessary action against the advocates and also monetary compensation.

3. The original applicant resisted the application by reply. The original applicant contended that, Mr. Lancy D'Souza Advocate and his team was duly authorized to appear in the matter by an E-mail dated 13.07.2023 and requested him to do all that is required on behalf of the company, accordingly they filed Vakalatnama/Authority filed before the Tribunal, As per Section 36 of the ID Act, R/W Rule 36 of Central Rules in Form F the Vakalatnama/Authority is signed by Mrs. Meenakshi Kashyap, Vice President Employees Relations and thereby authorized by original applicant. Resolution of Board is not required for authorization under ID Act & Rules thereunder. The original applicant further contended that, the counsel/Advocate couldn't file Authority/Vakalatnama through oversight in the proceeding however he was appearing on behalf of original applicant. There is no delay on their part in progress of the matter. In fact, the evidence affidavit has been filed but the witness was not cross examined by original opponent. The original applicant denied that, there is any professional misconduct by the counsel/advocate and team and ultimately prayed for rejection of the application.

4. I have given anxious consideration to the oral submissions advanced on behalf of the parties. It seems that, the Approval application came to be filed by the original applicant on 10.05.2023. The First Party by E-mail dated 13.07.2023 requested Mr. Lancy D'Souza Advocate to appear in the proceeding of Approval application on 02.08.2023 and do all

necessary/incidental things in the matter. It shows that, the First Party authorized the Advocate to appear in this proceeding, however without filing Authority on record, Mr. Lancy D'Souza Advocate argued the application for interim relief filed by the original opponent on 07.06.2024 and subsequently filed Vakalatnama/Authority on 28.08.2024.

5. Mr. Lancy D'Souza Advocate for the First Party respectfully submitted that through mistake on his part the Vakalatnama/Authority remained to be filed before the Tribunal on any effective date of hearing, therefore I do not think that, there was any ill intention of the Advocate to appear on behalf of the original applicant but it does not mean that, the Advocate appeared without any authorization from the original opponent and thereby committed any fraud on the part of the Advocate. Not only this but, it cannot be said that, there was any impersonation as he was having Authority to appear in the matter and the same person appeared on behalf of the First Party, therefore it will be unsafe to say that, there was any fraud or impersonation as alleged by the original opponent.

I have gone through the decision of Supreme Court in **United India Insurance Co. v/s. Rajendra Singh & Ors. AIR 2000 (SC) 1165** relied by the original opponent, in which it has been observed that, fraud and justice never dwell together. Decree obtained by fraud is nullity however I have observed that there is no fraud in the matter therefore the said decision has no application to the present matter.

6. I have also carefully gone through the decision of Supreme Court in **Uday Shankar v/s. Ram Kelekar (2006) 1 SCC 75** relied by the original applicant. The said decision is under Civil procedure

Court, in which it has been observed that, "If there was an inadvertent technical violation of the rules in consequence of a bonafide mistake and the mistake is subsequently remedied the defect need not necessarily be fatal. The courts do not exist for the sake of discipline but for the sake of deciding matters in controversy." In view of this, merely due to mistake of Advocate in not filing the Authority earlier cannot be fatal to the original applicant nor there is any fraud, impersonation as alleged by the original opponent.

7. Much is argued on behalf of the original opponent that, the Vakalatnama/Authority which was filed subsequently is also improper form and incomplete as it does not contain necessary information about the original applicant, therefore the same cannot be accepted.

I have gone through the Vakalatnama/Authority place on record on behalf of the original applicant, which has been filed on 28th day of August 2024. The same has been signed by Vice President (Employees Relations) AIR India Limited. There appear the signatures of Advocates and his colleagues. Advocates who signed the same in acceptance of authorization given to them.

8. It is worthwhile to mention here that, Rule 36 of Industrial Dispute (Central) Rules 1957 deals with the Authority required to be filed in the matter. The said is reproduced below:-

"The Authority in favour of a person or persons to represent a workman or group of workmen or an employer in any proceeding under the Act shall be in Form F."

Similarly Rule 40 says that, the representative of the employer shall be nominated by the employer who is in direct touch with or associated with the working or the establishment.

9. It is clear from this Rule that, authorized person nominated by original applicant is authorized representative and he can authorize Advocate in the matter by signing the Authority as perform F of Rules. There is no whisper in the Rules about Resolution of Board of Directors for authorization for employer representative therefore Authority signed by authorized representative is certainly proper and in accordance with the Rules.

It is clear from the above discussion that, though the Advocate appearing in the matter argued the application for interim relief without any Vakalatnama/Authority however he was authorized by the original applicant and through mistake, the Vakalatnama/Authority remained to be filed before the Tribunal earlier therefore there is no fraud or impersonation on the part of the Advocate nor any mistake as alleged by the original opponent. Similarly the Authority filed before the Tribunal is also in accordance with the Industrial dispute (Central) Rules 1957 therefore the same is proper. The application filed by the original opponent is devoid of substance therefore rejected.

In the result, the application is rejected.

Sd/-

Date: 22-01-2025

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

