

## *RELEVANT TO KNOW*

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### RIGHT OF LEGAL REPRESENTATION

#### HON'BLE DELHI HIGH COURT

The issue of representation of a client through Advocates<sup>1</sup> before certain Courts in India such as labour Court, family court, consumer court, tribunals etc., has been a contentious issue for a long time since many statutes in India prohibit representation by lawyers before such courts/tribunal (s), etc. It is relevant to mention that there is an express prohibition against appearance of an advocate under the Family Courts Act, 1984, Industrial Disputes Act, 1947 or under the Co-operative Societies Act, 2003 etc.

Chapter-IV of the Advocates Act, 1961 (“**Advocates Act**”) deals with the “Right to practice” of law by an advocate in India. Section 29<sup>2</sup> of Advocates Act states that only advocates are entitled to practice the profession of law and Section 33 of the said Act provides that no person shall, be entitled to appear as an advocate before any court or before any authority unless he is enrolled as an advocate. The word “Advocate” is defined in section 2A to mean an advocate who is enrolled with any State Bar Council in India. Further, as held by Courts in India, the expression ‘to practice the profession of law’ is wide enough to cover the persons practicing in litigious matters as well as persons practicing in non-litigious matters.

Hon’ble Supreme Court of India has held that the right to practice is not only a statutory right but also a fundamental right under Article 19(1)(g) of the Constitution of India. Thus, right of an advocate to practice before any court or tribunal, contained in Section 30<sup>3</sup> of the Advocates Act necessarily means a litigant before any court, tribunal or authority having right to engage and avail the services of an advocate.

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<sup>1</sup> Registered under the Advocates Act, 1961. Section 24 of the Advocates Act, 1961 provides the grounds of eligibility for a person to be registered as an ‘Advocate’.

<sup>2</sup> Section 29- Advocates to be the only recognized class of persons entitled to practice law – Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.

<sup>3</sup> Section 30 has been part of the Advocates Act as passed by the Parliament in 1961. However, the said Section was not notified then on account of the conscious will of the Parliament to leave the aspect of its enforcement to the Executive and the Executive thereafter in its wisdom brought it into force only on June 15, 2011.

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Section 36 (3) of the Industrial Disputes Act, 1947 (“**ID Act**”) imposes a complete ban on representation, of a party to a dispute, by an advocate/ legal practitioner in any conciliation proceedings under the ID Act or in any proceedings before a labour court. Section 36(4) of the ID Act, however, carves out an exception by introducing prior consent of the opposite party and leave of the labour court or tribunal, as the case may be, to enable a party to be represented by a legal practitioner.<sup>4</sup>

The legal issue about right of representation by a legal practitioner before Labour Court recently came up before the Hon’ble Delhi High Court in the judgment titled “A and B Fashions Pvt. Ltd. (“the **Company/Management**”) versus Ramesh Kumar (“**Workman**”) & Ors.” decided on August 24, 2021. As per the facts of this case, basis the objections raised by the Workman, an advocate who was appearing for the Company/Management was not permitted by the Ld. Judge of labour court, Delhi to represent his client. The request made by the lawyer for conducting the cross-examination of the Workman’s witness was also rejected.

The said order passed by the labour court was challenged by the Company/Management before the Hon’ble Delhi High Court on the ground that the said order is completely contrary to the prevailing law on the issue in as much as advocates are legally permitted to represent the Company/Management in courts. Section 30 of the Advocates Act<sup>5</sup> confers the right on an advocate to practice before any court or tribunal in India. It was stated that it is the usual practice before labour courts that at the crucial stages of cases including cross examination and arguments, advocates appear and represent a company/management as well as a workman.

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<sup>4</sup> 36. Representation of parties.- (1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by- (a) any member of the executive or to her 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 authorized in such manner as may be prescribed.

(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) where 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 authorized 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 proceedings 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 proceeding and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be.

<sup>5</sup> Section 30- Right of Advocates to Practise:- Subject to the provisions of this Act, every advocate whose name is entered in the (State roll) shall be entitled as of right to practise throughout the territories to which this Act extends;

(i) in all courts including the Supreme Court;

(ii) before any tribunal or person legally authorized to take evidence; and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force to practise

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Workmen also engage labour law experts as authorized representative and representative of the trade union, though they may not be enrolled as advocates. It was submitted that the Company/Management would be enormously prejudiced if the Workman is permitted to be represented by an expert and the Company/ Management is not allowed to engage an advocate.

The Hon'ble Delhi High Court after analysing the cases laws about legal representation by advocates observed that the Hon'ble Supreme Court of India in the judgment of 'Paradip Port Trust, Paradip vs. Their Workmen' (1977) 2 SCC 339 had held that an advocate simpliciter, merely basis a power of attorney executed by a party, cannot appear before an industrial tribunal without the consent of the opposite party and leave of the tribunal. An advocate can though appear before the tribunal 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.

It was observed by the Hon'ble Delhi High Court that the said judgment in Paradip Port Trust (supra) has been re-considered in a judgment<sup>6</sup> passed in the year 2019 by the Hon'ble Supreme Court of India wherein the question as to whether the provisions of the ID Act or the Advocates Act would prevail had been referred to a larger Bench. In the said case, the Hon'ble Supreme Court clearly directed that the workman is at liberty to engage an advocate, so long as his fee is paid by the management, and the management can also be represented by an advocate.

The Hon'ble Delhi High Court held that any litigation before a labour court has various stages. Initially, the pleadings and other procedural formalities are completed between the parties. At that stage, the management and a workman (workmen) may choose not to expend their resources by engaging an advocate (s). However, as the matter reaches trial, it would be inapt to say that the company/management or a workman would not be entitled to engage advocates or legal practitioners to represent them, in accordance with law. If the company/management wishes to be represented by a legal practitioner, the court can consider the question of whether the workman has given consent or not, whether impliedly or otherwise. The court, upon finding consent, may also award litigation expenses to permit the legal practitioner to appear for the company/management.

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<sup>6</sup> *Thyssen Krupp Industries India Private Limited vs. Suresh Maruti Chougule and Ors.* 2020(2)SLR526(SC)

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The Hon'ble Delhi High Court held that the act of a judge to completely oust the opportunity for cross examination, even while the advocate for the Company/Management was present, would be contrary to the spirit of law and such an approach would cause irreparable prejudice to the Company/Management. The Hon'ble Court thus allowed the writ petition filed by the Company/Management set aside the order passed by the labour court and remanded the matter back to labour court while granting right to Company/Management to conduct cross examination of Workman's witnesses.

### *Anhad Law's Perspective*

The judgment passed by Hon'ble Delhi High Court is significant for companies or their management in India. Further, such a judgment shall not only have relevance in the matters covered under the ID Act but also in other legislations wherein the right to be represented through a legal representative has been restricted by the government and the said position has not still been rectified despite Section 30 of Advocates Act permitting right to an advocate to appear before any court / tribunal, etc.

In addition to the judicial precedents, there is an urgent need for a re-look at the provisions in the statutes which restrict the rights of a client to engage an advocate to assist before a court or tribunal, etc. The Hon'ble Supreme Court in the year 2011<sup>7</sup> had observed that the relevant provision in the ID Act debarring a legal practitioner from appearing before the labour court/industrial tribunal is unconstitutional being violative of Articles 14 and 19(1)(g) of the Constitution of India.

It is also a matter of fact that industrial laws in India are complex and it is difficult for a person not having in-depth knowledge of law and/or having practical experience to possibly present a case properly to the labour court/industrial tribunal in helping the court / tribunal in arriving at the correct conclusion.

The underlying principle of Section 36 of ID Act is just and fair trial and equal opportunity to both the parties. However, the basis on which the foundation of this Section was laid has changed over period of time. It can no more be argued that the trade union or the association of employees (or workmen) continue to be poor skilled and having lack of skills and/or knowledge and/or practice of industrial laws in defending interest of an individual and/ or of their members. There has been a sea change in the circumstances. The trade union movement has been active for more than 75 years and has crossed its age of infancy. The trade unions including some of

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<sup>7</sup> Hygienic Foods vs. Jasbir Singh and Ors. (06.05.2011 - SC) : MANU/SC/0708/2011

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the trade union leaders and/or employees have acquired significant knowledge, legal acumen and skills to initiate actions and defend interest, as the case may be.

Some of the office bearers or trade unions and/or employees associations and/or individuals have rich experience and/or knowledge of Indian industrial laws. Most trade unions nowadays are professional litigants and have rich experience including resources. Whereas, large number of employers including MSMEs and start-ups do not have in-depth knowledge of industrial laws and/or practices. Even several established corporates still find it difficult to travel through the maze of industrial laws including practices followed from conciliation officer to courts or tribunals. Employers/management cannot be denied or deprived of the services of trained legal practitioners when employers/ management are dragged into industrial litigations which several times have frivolous basis and especially in circumstances when industrial law is a complicated branch of law and the rights or interests of employers/ management can only be protected / defended by a person (s) who has good knowledge of industrial laws including practices involved.

It has been observed in several cases, especially a growing trend, that employees have the support of a trade union or association, wherein union leaders / office bearers have significant knowledge of law and/or practices and taking the benefit of the fact that a company / management cannot have the right to be represented by a legal practitioner (in this case advocates), such unions/ association tend to misuse the industrial laws to achieve their ill objectives. This becomes more relevant when an employer /company/ management, not having in-depth knowledge of industrial law or practical experience is deprived of legal representation merely on the basis of Section 36 of ID Act and placed in a disadvantageous position at any stage of a case. This is not the purpose or objective behind provisions in the ID Act or for that matter other relevant statutes.

In the garb of technicalities, Justice should not be a casualty. A hyper technical worker oriented approach in construing industrial laws unmindful of the interest of the employer or the owner of the industry and the public who are ultimate beneficiaries, would be a one sided approach and not in accordance with the provisions of the Act. The industrial laws need re-interpretation keeping in view the interests of the employers too, who put their capital and expertise in business and manpower not with the intent of being embroiled in an undesired litigation and also not getting the opportunity to defend their interest.

As the constitutional validity of aforesaid Section 36 of ID Act is already challenged before Hon'ble Supreme Court of India in the case of Thyssen Krupp Industries India Private Limited vs. Suresh Maruti Chougule and Ors. 2020(2)SLR526(SC) wherein the correctness of the judgment of Paradip Port Trust has been doubted by the Hon'ble Supreme Court, it is most likely that the larger bench of Supreme Court of India will take into consideration the contemporary ground

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realities and the practical situation. Till then, the progressive judgments like the one passed by the Hon'ble Delhi High Court shall hold the field.

Such an order shall also have ramifications on other statutes such as Section 13 of the Family Courts Act, 1984 which bars a legal practitioners from appearing before the Family Courts and the same is also likely to be declared unconstitutional because like industrial laws and other laws, family law has also become complex making it difficult for a person not having enough experience and knowledge to assist the Family Courts in arriving at the correct conclusion.

Given the fact that the purpose of law is to facilitate and not frustrate, it is imperative that the laws are suitably amended to allow parties to be represented through legal practitioners as justice should not only be done, but also seen to be done.

### ANHAD LAW

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