



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S. B. Civil Writ Petition No. 19575/2024

1. All India Institute of Medical Sciences, Jodhpur (AIIMS), through its Director, Basni, Second Phase, Jodhpur, Raj.-342005
2. All India Institute of Medical Sciences, Jodhpur (AIIMS), through its Deputy Director (Administration), Basni, Second Phase, Jodhpur, Raj.-342005
3. All India Institute of Medical Sciences, Jodhpur (AIIMS), through its Executive Director, AIIMS Jodhpur and Disciplinary Authority, Basni, Second Phase, Jodhpur, Raj.-342005
4. All India Institute of Medical Sciences, Jodhpur (AIIMS), through its President, Basni, Second Phase, Jodhpur, Raj.-342005

----Petitioners

Versus

Hansraj Sharma S/o Shri Navratan Sharma, Resident of Ugampura, Ward No. 2, Tehsil- Nokha, District Bikaner, Raj.-306401.

----Respondent

For Petitioners : Ms. Nidhi Singhvi Advocate on behalf of Mr. Deelip Kawadia Advocate.
For Respondent : Mr. Sunil Purohit Advocate.

HON'BLE MR. JUSTICE ANAND SHARMA
Judgment

REPORTABLE

Date of conclusion of arguments	::	01.04.2026
Date on which judgment was reserved	::	01.04.2026
Whether the full judgment or only the operative part is pronounced	::	Full Judgment
Date of pronouncement	::	07.04.2026

1. The present writ petition has been filed by the petitioners–All India Institute of Medical Sciences assailing order dated 16.05.2024 passed by the learned Industrial Disputes Tribunal and Labour Court, Jodhpur (hereinafter to be referred as



'the Tribunal'), whereby the application filed by the respondent-workman under Section 36 of the Industrial Disputes Act, 1947 (for short 'the Act of 1947') has been allowed and the petitioners has been restrained from being represented through a legal practitioner.

2. Facts of the case, in brief, are that the petitioners are a statutory body constituted under the All India Institutes of Medical Sciences Act, 1956. The respondent was appointed as a Nursing Officer in the petitioners-Institute and was subsequently removed from service vide order dated 23.03.2023 after conclusion of disciplinary proceedings.

3. Aggrieved thereof, the respondent invoked Section 33-A of the Act of 1947 before the learned Tribunal, challenging the order of termination. During pendency of the said proceedings, the respondent moved an application under Section 36 of the Act of 1947 objecting to the representation of the petitioners through its Advocate, namely Mr. K.S. Yadav.

4. The learned Tribunal, vide order dated 16.05.2024, allowed the said application and restrained the petitioners from being represented by a legal practitioner. Aggrieved thereby, the present writ petition has been preferred by the petitioners.

5. Ms. Nidhi Singhvi, learned counsel for the petitioners submits that the impugned order is ex facie illegal and contrary to the scheme of Section 36 of the Act of 1947, which does not impose an absolute bar on representation through legal practitioners. The respondent himself is being represented by a practicing advocate, namely Mr. Bhagirath Chandora, under the





guise of an office bearer of a Union; therefore, the respondent cannot be permitted to adopt a contradictory stand.

6. The petitioners, not being an individual and rather being a statutory body, is entitled to be represented through its duly authorised counsel. However, learned Tribunal has utterly failed to appreciate that denial of legal representation to the petitioners' results in serious prejudice and violates principles of natural justice, particularly when complex questions of law are involved.

7. Learned counsel for the petitioners, in support of her arguments, relied upon judgment of Orissa High Court in **G.M, IB Valley Area, Mahanadi Coalfields Ltd. vs. The P.O., Central Govt. Industrial Tribunal-cum-Labour Court, Bhubaneswar & Ors. (MANU/ OR/ 0970/2017)** and judgment of Bombay High Court in the case of **T.K. Varghese vs. Nichimen Corporation (MANU/MH/0414/2001)**.

8. *Per contra*, Mr. Sunil Purohit, learned counsel for the respondent, while vehemently opposing the writ petition, submitted that the writ petition deserves dismissal on account of being wholly misconceived. Section 36 of the Act of 1947 clearly restricts representation through legal practitioners unless consent of the opposite party and leave of the Tribunal is obtained.

9. Mr. Purohit further submitted that the respondent is not represented by a legal practitioner in his professional capacity; rather, his representative is an office bearer of the Union, which is permissible under Section 36(1) of the Act of 1947. The petitioners' request to have representation before the Tribunal





through an advocate was in direct contravention to the legal provision, which was rightly disallowed by the Tribunal. The impugned order is well reasoned and does not warrant interference in writ jurisdiction.

10. Learned counsel for the respondent, in order to support his arguments, placed reliance upon judgments of Hon'ble Supreme Court in the case of **Thyssen Krupp Industries India Private Limited & Ors. vs. Suresh Maruti Chougule & Ors. (Civil Appeal No.6586/2019 decided on 04.10.2023)** and **Paradip Port Trust, Paradip vs. Their Workmen, (1977) 2 SCC 339** as well as judgment of Co-ordinate Bench of this Court in the case of **Ambuja Cements Limited vs Hema Ram & Anr. (S.B. Civil Writ Petition No. 13161/2022 decided on 19.12.2023)**.

11. Having heard learned counsel for the parties and perused the record, this Court finds that the controversy involved in this case revolves around Section 36 of the Act of 1947, which is being reproduced as under:

¹[**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) ²[any member of the executive or other office bearer] of a registered trade union of which he is a member;

(b) ²[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 ²[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.

(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 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 proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding ³[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 ⁴[with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be].”

12. In order to decide the controversy that whether the learned Tribunal was justified in restraining the petitioners from being represented by counsel in the facts of the present case, or not, the core question arises for consideration is as to whether Section 36 of the Act of 1947 imposes an absolute bar on representation by legal practitioners?

13. Bare perusal of Section 36 of the Act of 1947 would reveal that the aforesaid provision regulates representation of parties in industrial adjudication. The legislative intent is to maintain informality in industrial adjudication while ensuring fairness. A plain reading of Section 36(4) of the Act of 1947 reveals that representation by a legal practitioner is permissible with the consent of the other party and with the leave of the Tribunal. Thus, the provision does not create an absolute prohibition rather, it confers discretion upon the Tribunal. However, such discretion is required to be exercised judiciously and not mechanically.





14. In the present case, it is not disputed that the respondent is being represented by Shri Bhagirath Chandora, who is an enrolled advocate. The plea that he is appearing merely as an office bearer of the Union does not change his professional status, particularly when he, being an active legal practitioner and an advocate, in substance is rendering legal assistance.

15. This Court finds that permitting one party to avail legal expertise while denying the same to the opposite party results in manifest inequality and violates the principles of natural justice. Industrial adjudication, though less formal, cannot be rendered one-sided.

16. While examining the impugned order passed by the Tribunal, this Court found that the learned Tribunal has failed to consider that discretion under Section 36 of the Act of 1947 must be exercised on sound judicial principles. Therefore, in the light of the fact that the respondent was effectively availing legal assistance; no prejudice would have been caused by permitting the petitioners to be represented through counsel. Aforesaid aspect has not been properly appreciated by the Tribunal, hence, this court finds that the impugned order reflects a mechanical application of Section 36 of the Act of 1947 and ignores the requirement of parity and fairness.

17. This court has meticulously examined the judgments relied upon by the counsel for the respondent. In **Thyssen Krupp Industries India Private Limited & Ors. (supra)**, the Hon'ble Supreme Court upheld restriction on legal representation without following the conditions laid down in Section 36 of the Act of 1947.





Similarly, in **Paradip Port Trust, Paradip (supra)**, the Hon'ble Supreme Court emphasised the need to prevent domination of proceedings by legal practitioners. Co-ordinate Bench of this Court in the case of **Ambuja Cements Limited (supra)** relied upon the above two judgments of Hon'ble Supreme Court to deny legal representation by the employer before the Industrial Tribunal/Labour Court as objection was raised on behalf of the workman.

18. Upon a careful consideration of the aforesaid judgments, this Court finds that none of the authorities cited by the respondent deal with a factual situation akin to the present case, wherein one of the parties to the proceedings was already being represented through a legal practitioner, yet the Labour Court/ Tribunal declined to extend a similar opportunity of legal representation to the opposite party.

19. Certainly, there can be no dispute with regard to the legal proposition enunciated in the judgments relied upon by learned counsel for the respondents that Section 36 of the Act of 1947 places a restriction on representation through legal practitioners in proceedings before the Labour Court/Tribunal. However, it is equally well settled that a precedent is an authority only for what it actually decides and is applicable only when the facts of the case are substantially similar. In the present case, the factual matrix stands on an entirely different footing, inasmuch as one of the parties has already engaged a legal practitioner and is being represented through an advocate, and yet seeks to object to similar representation being availed by the opposite party. Such a stance, if accepted, would result in manifest inequality and would





run contrary to the fundamental principle of parity embedded in the concept of fairness and equality before law. The statutory restriction under Section 36 of the Act of 1947 cannot be interpreted in a manner so as to permit one party to enjoy the benefit of legal assistance while denying the same to the other, particularly when such objection emanates from a party who is itself in breach of the said norm. In these circumstances, the judgments relied upon by the respondent, being distinguishable on facts, do not advance his case and are, thus, inapplicable to the controversy at hand.

20. This Court finds supports from the judgment of the Bombay High Court in **T.K. Varghese (supra)**, wherein, in the similar circumstances, it has been held that discretion under Section 36 of the Act of 1947 must be exercised to ensure fairness and parity between parties. Similarly, the Orissa High Court in **G.M, IB Valley Area, Mahanadi Coalfields Ltd. (supra)**, has held that denial of legal representation to one party, when the other is effectively assisted by a legally trained person, is unjust and unsustainable. Para 7 of the above judgment reads as under:

“7. In the case at hand, the Workers’ Union is being represented by Mr. D. Mohanta in the capacity of its Vice-President, who is none other than a seasoned Practitioner of this Court having specialty in Labour Laws. Thus, possibility of putting the Management-petitioner in a difficult position while interpreting the provisions of law, cannot be ruled out. Thus, in order to maintain equity, learned CGIT ought to have allowed the prayer of the Management-petitioner for being represented by a Legal Practitioner. Even otherwise, the impugned order under Annexure-2 is a non speaking order.”

21. It is significant to note that the Madras High Court in the case of **The Registrar, Anna University & Ors. Vs. The**





Presiding Officer, First Additional Labour Court & Ors.

(MANU/TN/3946/2023) has held as under:-

"14. Further held that if the same benefit is denied to the management on the basis of the workmen not giving consent in terms of Section 36(4) of the Industrial Dispute Act, certainly it will result in an imbalance being created in defending the case before the quasi-judicial body and it will violate Article 14 of the Constitution of India. Therefore, in the above case, this Court held that in the case of the workmen engaging a trained reasoned lawyer in the garb of a trade union leader, the management should not be denied the very same right by relying upon the Section 36(4) of the Industrial Dispute Act."

22. In view of the aforesaid discussion, this Court is of the considered opinion that the learned Tribunal has failed to exercise its discretion under Section 36 of the Act of 1947 in a judicious manner and the impugned order results in denial of fair opportunity to the petitioners. Hence, the order impugned suffers from illegality and perversity warranting interference under writ jurisdiction.

23. Accordingly, the writ petition is allowed. Impugned order dated 16.05.2024 passed by the learned Industrial Disputes Tribunal and Labour Court, Jodhpur is hereby quashed and set aside. The petitioners are permitted to be represented through their Advocate, Mr. K.S. Yadav, or any other Advocate of their choice before the Tribunal in the aforesaid case. The learned Tribunal is directed to proceed further in accordance with law, expeditiously.

24. Pending applications, if any, stand disposed of.

(ANAND SHARMA),J

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