

[2023 LiveLaw \(SC\) 868](#)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
**SANJAY KISHAN KAUL; J., C.T. RAVIKUMAR; J., SUDHANSHU DHULIA; J.**  
CIVIL APPEAL NO. 6586/2019; OCTOBER 04, 2023

**THYSSEN KRUPP INDUSTRIES INDIA PRIVATE LIMITED & ORS.**

*versus*

**SURESH MARUTI CHOUGULE & ORS.**

**Industrial Disputes Act, 1947 - Advocate cannot claim the right of legal representation - No ground to revisit the well settled position of law which has prevailed for almost half a century. [Upheld: *Paradip Port Trust v. Their Workmen*, (1977) 2 SCC 339]**

WITH WRIT PETITION (CIVIL) NO. 1169/2018 CIVIL APPEAL NO. 6587/2019 CIVIL APPEAL NO. 3905/2022

*For Appellant(s) Mr. Vinay Navare, Sr. Adv. Mr. Pravartak Pathak, Adv. Ms. Abha R. Sharma, AOR Mr. J.P. Cama, Sr. Adv. Mr. Varun Rajeev Joshi, Adv. Mr. Soumik Ghosal, AOR Mr. Gaurav Singh, Adv. Mr. Anil B., Adv. Mr. Vivek P Gupta, Adv. Mr. J.P. Cama, Sr. Adv. Mr. Anand Pathak, Adv. Mr. Ravish Kumar, Adv. Mr. Vijay Purohit, Adv. Ms. Nidhi Raj Bindra, Adv. Mr. Surya Kapoor, Adv. Mr. Anil Bhat, Adv. Mr. Vivek P Gupta, Adv. Mr. Mohit Singh, AOR*

*For Respondent(s) Mr. Amol B. Karande, AOR Mr. Narender Rao Thaneer, Adv. Mr. Shuvang Singh, Adv. Mr. Aditya Yadav, Adv. Mr. Sanjay Singhvi, Sr. Adv. Mr. Rahul Kamerkar, Adv. Mr. Udayaditya Banerjee, AOR Ms. Aparajita Jha, Adv. Ms. Shreya Bhojnagarwala, Adv. Mrs. Parul Shukla, Adv. Mr. K.M. Nataraj, ASG Ms. Indira Bhakar, Adv. Mr. Akshay Amritanshu, Adv. Mr. Vinayak Sharma, Adv. Mr. Arvind Kumar Sharma, Adv. Mr. Vikramjit Banerjee, A.S.G. Mr. Nachiketa Joshi, Adv. Mrs. Bhakti Vardhan Singh, Adv. Mr. Sachin Sharma, Adv. Mrs. Sweksha, Adv. Mr. Amrish Kumar, AOR Mr. Ardhendumauli Kumar Prasad, AOR Mr. Ashish Madaan, Adv. Ms. Ananya Sahu, Adv. Mr. Siddharth Dharmadhikari, Adv. Mr. Aaditya Aniruddha Pande, AOR Mr. Bharat Bagla, Adv. Mr. Sourav Singh, Adv. Mr. Aditya Krishna, Adv. Ms. Yamini Singh, Adv. Mr. Anoop Raj, Adv. Mr. Seshatalpa Sai Bandaru, AOR*

**ORDER**

C.A. NO. 6586/2019

The present matter comes up before this Bench as a consequence of the order passed on 21.08.2019 by a Bench of two Judges who held that the judgment of three Judges' Bench of this Court in ***Paradip Port Trust, Paradip vs. Their Workmen (1977) 2 SCC 339*** is required to be re-looked.

We have heard learned counsel for parties at length.

Learned counsel for the appellants has endeavoured to point out that the appellants have also assailed the constitutional validity of certain provisions which was not done earlier, that Advocates have been impleaded as parties, that the legislature in making the provisions arbitrarily and/or the implementation of the legislation will result in a discrimination.

We have been taken through the judgment in ***Paradip Port Trust, Paradip*** (supra).

In a nutshell, the issue is whether the provisions of the Industrial Disputes Act, 1947, dealing with the aspects of representation by either of the parties through a specific lawyer and limitation put thereon, needs to be re-looked. The ***Paradip Port Trust, Paradip*** (supra) is clearly of the view as enunciated in para 16 as under :

"16. If, however, a legal practitioner is appointed as an officer of a company or corporation and is in their pay and under their control and is not a practising advocate the fact that he was

earlier a legal practitioner or has a legal degree will not stand in the way of the company or the corporation being represented by him. Similarly if a legal practitioner is an officer of an association of employers or of a federation of such associations, there is nothing in Section 36(4) to prevent him from appearing before the tribunal under the provisions of Section 36(2) of the Act. Again, an office-bearer of a trade union or a member of its executive, even though he is a legal practitioner, will be entitled to represent the workmen before the tribunal under Section 36(1) in the former capacity. The legal practitioner in the above two cases will appear in the capacity of an officer of the association in the case of an employer and in the capacity of an office-bearer of the union in the case of workmen and not in the capacity of a legal practitioner. The fact that a person is a legal practitioner will not affect the position if the qualifications specified in Section 36(1) and Section 36(2) are fulfilled by him.”

Another aspect to the discussion dealing with Section 30 of the Advocates Act, 1961 (then not in force but examined in the context that even if it was in force, what will be the consequence) has been discussed in paras 23 and 24 as under:

“23. Besides, it is also urged by the appellant that under Section 30 of the Advocates Act, 1961, every advocate shall be entitled "as of right" to practise in all courts and before any tribunal [Section 30(i) and (ii)]. This right conferred upon the advocates by a later law will be properly safeguarded by reading the word "and" as "or" in Section 36(4), says counsel. We do not fail to see some difference in language in Section 30 (ii) from the provision in Section 14(1) (b) of the Indian Bar Councils Act, 1926, relating to the right of advocates to appear before courts and tribunals. For example, under Section 14(1) (b) of the Bar Councils Act, an advocate shall be entitled as of right to practise save as otherwise provided by or under any other law in any courts (other than High Court) and tribunal. There is, however, no reference to “any other law” in Section 30(ii) of the Advocates Act. This need not detain us. We are informed that Section 30 has not yet come into force. Even otherwise, we are not to be trammelled by Section 30 of the Advocates Act for more than one reason. First, the Industrial Disputes Act is a special piece of legislation with the avowed aim of labour welfare and representation before adjudicatory authorities therein has been specifically provided for with a clear object in view. This special Act will prevail over the Advocates Act which is a general piece of legislation with regard to the subject-matter of appearance of lawyers before all courts, tribunals and other authorities. The Industrial Disputes Act is concerned with representation by legal practitioners under certain conditions only before the authorities mentioned under the Act. *Generalia specialibus non derogant*. As Maxwell puts it:

Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the special one. (Maxwell on Interpretation of Statutes, 11<sup>th</sup> Edition, page 169.)

“24. Second, the matter is not to be viewed from the point of view of legal practitioners but from that of the employer and workmen who are the principal contestants in an industrial dispute. It is only when a party engages a legal practitioner as such that the latter is enabled to enter appearance before Courts or tribunals. Here, under the Act, the restriction is upon a party as such and the occasion to consider the right of the legal practitioner may not arise.”

We are in agreement with the view adopted in ***Paradip Port Trust, Paradip's*** case (supra). As emphasized, the matter is not to be reviewed from the point of view of the legal practitioner but from the aspect of the employer and workmen who are the principal contestants in an industrial dispute as observed in the aforesaid judgment.

We really find no ground to revisit the well settled position of law which has prevailed for almost half a century.

We answer the reference accordingly.

Insofar as the merits of the civil appeal are concerned, we are told that the matter already stands compromised and thus civil appeal does not require consideration on merits.

The appeal stands disposed of accordingly.

Intervention application also stands disposed of.

C.A. NO. 6587/2019

It is stated that the Civil Appeal directed against the order of the Industrial Tribunal has abated on account of demise of the workman.

The appeal stands disposed of as abated.

W.P.(C) No. 1169/2018

Challenge has been laid to the provisions of Section 36(4) of the Industrial Disputes Act, 1947. We are conscious of the fact that the judgment in **Paradip Port Trust, Paradip's** case (supra) did not consider the aspect of constitutional validity, but then in the separate order passed today in C.A. NO. 6586/2019 we have dealt with that aspect to some extent. The substratum of the issue has been discussed in **Paradip Port Trust, Paradip's** case (supra) and merely because it is sought to be given a colour of a constitutional challenge to a provision makes no difference.

We may also say that the constitutional challenge has to be examined within a very narrow compass and certainly those parameters are not satisfied.

The writ petition is accordingly dismissed.

C.A. NO. 3905/2022

In view of the order passed today in C.A. NO. 6586/2019, **Thyssen Krupp Industries India Private Limited & Ors. Vs. Suresh Maruti Chougule & Ors.**, this appeal is dismissed.

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