

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6586 OF 2019
(@ SLP (CIVIL) NO.12632 OF 2018)

THYSSEN KRUPP INDUSTRIES INDIA PRIVATE .. Appellant(s)
LIMITED

Versus

SURESH MARUTI CHOUGULE AND OTHERS ..
Respondent(s)

WITH

WRIT PETITION (CIVIL) NO.1169 OF 2018

AND

CIVIL APPEAL NO. 6587 OF 2019
(@ SLP (CIVIL) NO.27440 OF 2018)

O R D E R

Leave granted in SLP (C) Nos.12632 of 2018
and 27440 of 2018.

The writ petition challenging the
constitutional validity of Section 36(4) of the
Industrial Disputes Act, 1947 ('ID Act') was
dismissed by the High Court, aggrieved by which
the above appeal is filed. The High Court relied

upon a judgment of this Court in Paradip Port Trust, Paradip versus Their Workmen [(1977) 2 SCC 339] to hold that Section 36(4) of the ID Act has been interpreted by this Court. The High Court was also of the opinion that Section 30 of the Advocates Act, 1961 which was relied upon by the appellant was also taken into consideration by this Court.

Writ Petition (Civil) 1169 of 2018 is filed under Article 32 of the Constitution of India assailing the vires of Section 36(4) of the ID Act. Civil Appeal No. 6587 of 2019 is filed against the order of the Labour Court dismissing the application filed by the appellant seeking permission to engage an advocate.

After hearing the learned senior counsel appearing for the appellants in the two appeals and the petitioner in the writ petition, the learned Additional Solicitor General, the learned senior counsel appearing for the Bar Council of India and the learned senior counsel for the workmen, we are of the opinion that these matters

require consideration by a larger Bench.

Section 36(4) of the ID Act provides that a party to a dispute in a proceeding before a Labour Court, Tribunal or a National Tribunal 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. The scope of Section 36(4) of the ID Act was examined in *Paradip Port Trust (supra)*. In the said case, it was urged on behalf of the appellant therein that an advocate shall be entitled to practice in all courts including the Tribunal as of right. Such submission was dealt with by this Court by holding that Section 30 of the Advocates Act has not come into force in view of which there is no right that could be claimed by Advocates to appear before the Labour Courts. Moreover, this Court was of the opinion that the ID Act is a special piece of legislation with the avowed aim of labour welfare. It was further held that the ID Act being a 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.

During the course of arguments, we entertained a doubt regarding the correctness of the finding recorded by this Court that the Advocates Act is a general piece of legislation. We have heard the learned counsel on the point as to whether this matter has to be referred to a larger Bench to consider whether the Advocates Act can be treated as a general piece of legislation in respect of appearance of lawyers before all Courts, Tribunals and other authorities.

In Queen versus London County Council [(1893) 2 QB 454], Bowen, L.J. lucidly explained the difference between a General Act and a Special Act.

"Now, a general Act, prima facie, is that which applies to the whole community. In the natural meaning of the term it means an Act of Parliament which is unlimited both in its area and, as regards the individual, in its effects; and as opposed to that you get statutes which may well be public because of the

importance of the subjects with which they deal and their general interest to the community, but which are limited in respect of area - a limitation which makes them local - or limited in respect of individuals or persons - a limitation which makes them personal."

In LIC versus D.J. Bahadur [(1981) 1 SCC 315], this Court held that the ID Act is a special act vis-a-vis the Life Insurance Corporation Act, 1956. Krishna Iyer, J. was of the view that in determining whether a legislation is a general or a special legislation, focus should be on the principal subject matter and the particular perspective.

There can be a situation in law where the same statute is treated as a special statute vis-a-vis one legislation and as a general statute vis-a-vis another legislation. (see Allahabad Bank versus Canara Bank [(2000) 4 SCC 406].

Yet another perspective to the problem that can arise in a conflict between provisions of two different statutes has been dealt with in Ashoka Marketing versus Punjab National Bank [(1990) 4 SCC 406]. The question before this Court was

whether the Public Premises Act (Eviction of Unauthorised Occupants) was a special legislation vis-a-vis the Delhi Rent Control Act, 1958. After examining object of both the legislations carefully, this Court was of the opinion that both the Rent Control Act and the Public Premises Act are special statutes.

The learned senior counsel for the appellants and the Bar Council of India submitted that the Advocates Act is a special Act and that the ID Act is a general Act. According to them, Section 30 of the Advocates Act overrides Section 34 of the ID Act. As stated earlier, this Court in *Paradip Port Trust*, was of the opinion that the ID Act is a special piece of legislation and the Advocates Act is a general piece of legislation with regard to the subject matter of appearance of lawyers before the labour courts. In the context of matters pertaining to industrial disputes and the mechanism provided for resolution of the disputes, we have no doubt that the ID Act is a special piece of legislation. However, whether the

Advocates Act is a general piece of legislation with respect to the subject matter of appearance of lawyers in labour courts, needs a detailed consideration. Section 30 of the Advocates Act confers a right on an advocate to practice before any Tribunal. Applying the test laid down by this court in *Ashoka Marketing*, it is doubtful whether the Advocates Act can be termed a general piece of legislation in respect of the subject matter in dispute. As the judgement in *Paradip Port Trust* is by a Bench of 3 judges, and taking into account the importance of the issues raised in these cases, we are of the considered opinion that these matters be referred to a larger Bench.

Mr. B.H. Marlapalle, learned senior counsel appearing for the workman in the appeal arising out of SLP (Civil) No.12632 of 2018 submitted that the reference has been pending in the Labour Court since 2009. In spite of there being no interim order by the High Court, the Labour Court did not proceed with the reference. There is an interim order passed by this Court staying the proceedings

before the Labour Court on 13th November, 2018. He submitted that notwithstanding the pendency of the matter before this Court, the reference No.IDA No.121 of 2016 may be decided. Mr. J.P. Cama, learned senior counsel appearing for the Management fairly submitted that they will bear the expenses of the lawyer who can be engaged by the workmen provided that the appellant is permitted to engage an advocate.

The workman is at liberty to engage an advocate, and the fee of the said advocate shall be paid by the Management. The appellant shall be permitted to be represented by an Advocate. As this direction is being given in view of the complaint of the workman that he is suffering due to the delay it is deemed that the workman has no objection to the appellant engaging an advocate. The Labour Court is directed to proceed with Reference IDA No.121 of 2016 expeditiously and decide the matter within a period of six months from today.

IA No.52218 of 2019 in Civil Appeal No.6586

of 2019 for impleadment of appellant Nos.2 and 3 (Rajendra Sinh Nageshkar and Varun R. Joshi) is allowed.

Place the papers before Hon'ble the Chief Justice of India for suitable orders.

.....J.
(L.NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

NEW DELHI;
21st August, 2019

ITEM NO.11

COURT NO.10

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal(C) No(s).
12632/2018

(Arising out of impugned final judgment and order dated
01-03-2018 in WP No. 7755/2017 passed by the High Court
Of Judicature At Bombay)

THYSSEN KRUPP INDUSTRIES INDIA PRIVATE
LIMITED

Petitioner(s)

VERSUS

SURESH MARUTI CHOUGULE

Respondent(s)

(IA No. 155429/2018 - INTERVENTION APPLICATION
(IA No. 52218/2019 - INTERVENTION/IMPLEADMENT)

WITH

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

SLP(C) No. 27440/2018 (IX)

Date : 21-08-2019 These matters were called on for
hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE HEMANT GUPTA

For Petitioner(s) Mr. Jamshed P.cama, Sr. Adv.

Mr. Soumik Ghosal, AOR

Mr. Mayan Prasad, Adv.

Ms. Suruchi, Adv.

Mr. Gaurav Singh, Adv.

Mr. R.Y. Joshi, Adv.

Mr. Varun Joshi, Adv.

Ms. Shruti P, Adv.

Mr. C.U. Singh, Sr. Adv.

Mr. Vinay Navare, Sr. Adv.
Ms. Gwen Kartika, Adv.
Ms. Abha R. Sharma, AOR

For Respondent(s) Ms. Madhavi Divan, ASG
Mr. Nachiketa Joshi, Adv.
Mr. Sachin Sharma, Adv.
Mr. Bhakti Vardhan Singh, Adv.
Mr. Vibhu Shanker Mishra, Adv.
Mr. Raj Bahadur Yadav, AOR
Mrs. Anil Katiyar, AOR

Mr. C.U. Singh, Sr. Adv.
Ms. Nutan R. Patankar, Adv.
Mr. Nitin S. Tambwekar, Adv.
Mr. Seshatalpa Sai Bandaru, AOR

Mr. B.H. Marlapalle, Sr. Adv.
Mr. Amol B. Karande, AOR
Mr. Vijay S. Khamkar, Adv.
Mr. Pulkit Tyagi, Adv.

Mr. Siddhartha Dave, Sr. Adv.
Mr. Ardhendumauli Kumar Prasad, Adv.
Mr. Amritesh Raj, Adv.
Mr. Nitesh Ranjan, Adv.
Mr. Piyush Singh, Adv.
Mr. Vaibhav Shrivastava, Adv.
Mr. Sashank Saxena, Adv.

For State of
Maharashtra

Mr. Nishant R. Katneshwarkar, Adv.
Mr. Anoop Kandari, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted in SLP (C) Nos.12632 of 2018 and
27440 of 2018.

IA No.52218 of 2019 in Civil Appeal No.6586 of 2019 (@ SLP (Civil) No.12632 of 2018) for impleadment of appellant Nos.2 and 3 (Rajendra Sinh Nageshkar and Varun R. Joshi) is allowed.

As the judgement in *Paradip Port Trust* is by a Bench of 3 judges, and taking into account the importance of the issues raised in these cases, we are of the considered opinion that these matters be referred to a larger Bench.

Place the papers before Hon'ble the Chief Justice of India for suitable orders.

(GEETA AHUJA)
COURT MASTER (SH)

(The Signed Order is placed on the file)

(SUNIL KUMAR RAJVANSHI)
BRANCH OFFICER