
(2014) 05 GAU CK 0026

In the Gauhati High Court

Case No : W.P. (C) Nos. 6962/2004 and 3462/2006

Orang Tea Estate

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 16-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 1
Industrial Disputes Act, 1947 — Section 10, 10(8), 2-A

Citation : (2014) 3 LLJ 729 : (2014) LLR 862

Hon'ble Judges : Abhay Manohar Sapre, C.J.;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : G. Uzir and M. Saikia, Advocate for the Appellant; S. Chakraborty and R. Sarma, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Abhay Manohar Sapre, C.J.—This decision rendered in this writ petition shall also govern the disposal of one connected writ petition being W.P.(C) No. 3462 of 2006 because both the writ petitions involve the same point. By filing this writ petition, the writ petitioner (employer) seeks to challenge the constitutional validity of Section 10(8) of the Industrial Dispute Act, 1947 (for short hereinafter called "The Act") which was inserted in the Act by way of an amendment by Act no 46 of 1982 w.e.f. 21.8.1984.

2. Section 10(8) whose validity is under challenge reads as under:--

10. Reference of disputes to Boards, Courts or Tribunals:- (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,-.....

(8) No proceedings pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour court, Tribunal or National Tribunal shall complete such proceedings and submit Its

award to the appropriate Government.

3. The aims, objects and the reasons that led to insertion of sub-section 8 in original sub-section 10 of the Act w.e.f. 21.8.1984 by the Parliament reads as under:--

(v) There have been conflicting decisions about the right of legal heirs of a workman in the event of the death of the latter pending proceedings before the authorities under the Act. Provision is being made to make it clear that pending disputes will not abate in the event of the death of the workman.

4. It may be pertinent to mention and indeed clear that there was a cleavage of opinion between several High court's in the country on the question as to what would be the status of the case filed by or against the employee (workman) in the labour/industrial court/tribunal under the labour laws on his death - whether it will abate or survive to enable his legal representatives/heirs to continue on merits for its adjudication. In other words, the question was whether tribunal becomes functus officio on the death of workman thereby loses its jurisdiction to decide the case/reference on merits.

5. Some High Courts took the view that consequent upon the death of the workman, the case/reference will abate and the tribunal will become functus officio whereas some High Courts were of the view that case/reference will survive and the tribunal/courts would continue to exercise its jurisdiction to decide the case/reference by allowing the legal representatives/heirs of the deceased workman to prosecute on merits.

6. Though this issue was already resolved by the Parliament in the year 1984 itself by Inserting subsection 8 by amending Act of 46/82 in original Section 10 thereby removing the doubts and clarifying the legal position, the Supreme Court in the year 1994 also on judicial side and Independent of Sub Section 10(8) resolved the conflict in conformity with the legislative intent-expressed by the parliament in the form of Section 10(8) *ibid*.

7. The Supreme Court resolved this conflict after taking note of all conflicting decisions of High Courts in the case reported in (1994) 1 SCC 292 *Shri Rameshwar Manjhi v. Management of Sangramgarh* in following words:

18. We, therefore, hold that on the death of the workman, even when the reference is of an individual dispute u/s 2-A of the Act, the Tribunal does not become functus officio or the reference does not abate merely because, pending adjudication, the workman concerned dies. It is open to the heirs and legal representatives of the deceased workman to have the matter agitated and decided.

8. In the light of authoritative decision rendered by the Supreme Court in the case of *Shri Ramseshwar Manjhi* (*supra*) resolving the conflict and clarifying the legal position, which arise on the death of a workman in a pending case/reference, we have no hesitation in upholding the constitutional validity of

section 10(8) as being intra vires the provisions of the Constitution.

9. In our opinion, the impugned provision - Section 10(8) is essentially in the nature of clarificatory and explain the legal consequences which arise in a case due to death of a workman in a pending reference cases between employer and employee before labour/Industrial Tribunal. A statute which is clarificatory in nature cannot be construed as being enacted for deciding the rights of the parties nor it can be construed so as to take away existing rights of parties. In other words, it is always considered to have been enacted to explain the legal effect emanating from provision already in the Statute. Such clarificatory statute cannot be declared unconstitutional as it neither offend any existing provision and violate any legal rights of the parties to the lis.

10. Indeed, the substantive law contained in Order 22 Rule 1 of the Code which provides that death of plaintiff or defendant shall not cause the suit to abate if the right to sue survives, applies equally to cases/references pending before the Labour/Industrial Courts/Tribunals between the employer and employee. In other words, if workman/employee dies during pending of his case before Tribunal/Courts then provisions of Order 22 would apply to his case as well thereby entitling his legal representatives/heirs to continue the lis (case/reference) so as to bring the lis to its logical conclusion in accordance with law on merits.

11. In the light of foregoing, discussion, we hold that Section 10(8) of the Act is constitutionally valid and is thus intra vires the provisions of the Constitution.

12. Learned counsel for the petitioner then wanted the court to examine the factual matrix of the case pending between the petitioner and the deceased workman. We are afraid; we can go into the factual matrix of the case pending before the labour/Industrial Courts/Tribunals in this writ petition.

13. It is now for the parties to approach the concern Labour/Industrial Tribunal before whom the case/reference is pending for proceeding with its trial on merits in accordance with law by permitting the legal representatives/heirs of deceased to continue the proceeding on merits and raise all possible pleas.

14. Let the concern Labour court/Industrial Tribunal decide the proceeding within 6 months from the date of production of this order on merits.

15. In the light of the forgoing discussions, the petitions fail and are hereby dismissed. All interim orders passed in the writ petitions are recalled.

No cost.