

(1995) 01 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 2525 of 1986

Panchu Mahakud and Others

APPELLANT

Vs

P.C. Mohanty and Others

RESPONDENT

Date of Decision : 09-01-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1995) 2 LLJ 1203 : (1995) 1 OLR 355

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : R. Mukherjee and J.P. Choudhury, for the Appellant; S.P. Misra and S. Das for Respondent No. 1, S.C. Ghose and R.K. Shau for Respondent No. 2 and Additional Government Advocate, for the Respondent

Judgement

A. Pasayat, J.—A short, but interesting question has been raised in this case. Whether on the death of an employer, there is scope for substitution of his legal heirs, in a proceeding u/s 33C(2) of Industrial Disputes Act, 1947 (in short, the "Act") is that question.

2. A brief reference to the factual aspects is necessary for clearing the deck relating to the legal position. One B.C. Mohanty (hereinafter referred to as the "employer") was the lessee under State Government. In respect of chromite mine at Sukinda, and he was proprietor of his business concern. On account of advanced age, he sought for permission from the State Government to transfer the lease. Such permission was granted on October 30, 1980, On April 27, 1981 a transfer deed was executed, and the concern was taken over by a company incorporated under the Companies Act, 1956 styled as M/s. E.G. Mohanty and Co.Ltd. with effect from April 28, 1981. An application u/s 33C(2) of the Act was filed by the petitioner on April 28, 1981 before the Labour Court, Bhubaneswar. During its pendency, employer died on November 4, 1983. An application was filed by petitioner for substituting his legal heirs, which was rejected by the Labour Court on the ground that on the death of employer the proceeding

abated, and there was no scope for any substitution as provisions of Code of Civil Procedure, 1908 (in short, "CPC") were not applicable to a proceeding under Sec.33C(2) of the Act. Reliance was placed on a decision of this Court in *Haramani Naik and Ors. v. Management, Samaj* and another 46 (1978) CLT 283 where a Division Bench of this Court while dealing with the question "whether on the death of worker, the proceeding abate" held in the affirmative. It was held that same analogy can be applied in case of employer.

3. Mr. A. Mukherjee, learned counsel for petitioner submits that analogy accepted by the Labour Court is not in accordance with law, equity and fair play. Though application of CPC to a proceeding under the Act is to a limited extent, procedure which would further ends of justice can be adopted, as there would be no repugnancy. With reference to Sub-Sec. (8) of Section 10 of the Act introduced by Act 45 of 1982 it is submitted that a proceeding before the Labour Court, Criminal Court, National Tribunal in relation to an industrial dispute, does not lapse merely on the reason of death of party, being a workman. Reference is also made to Section 18 of the Act which deals with persons on whom settlement and awards are prescribed to be binding. Mr. S.P. Misra, learned counsel for opp. parties 1 and 2 however, submits that position is different so far as "employer" is concerned. According to him had it been legislative intent, Sub-section (6) of Section 10 would have provided for both the workman and employer, and not workman alone.

4. It is necessary to take note of view expressed by apex Court in *Rameshwar Manjhi (Deceased) through his son Lakhiram Manjhi Vs. Management of Sangramgarh Colliery and others*, . It was observed that on the death of a workman, his heirs and legal representatives can continue the reference or an application under Sec.33C(2) of the Act, before the Tribunal/Labour Court. Even when the reference is of an individual dispute under Sec.24 of the Act, on the death of workman the Tribunal does not become functus officio, and the reference does not abate merely because pending adjudication the workman concerned died. It is open to the heirs and legal representative of the deceased workman to have the matter agitated and decided. Decision of this Court in *Haramani Naik's case* (supra) was specifically overruled, being not in the line with the view expressed by apex Court. The scope of adjudication by the Tribunal under the Act is wider than determination of legal rights of parties involved of redressing grievance of an aggrieved workman in accordance with law. Adjudication by the Act is only an alternative form of settlement of industrial disputes on a fair and just basis. The primary duty of Industrial Tribunal or Labour Court, as the case may be, is to establish peace in the industry between employer and workman. Any unfair action by the management even against an individual worker might cast its shadow on the general body of the workers who might get perturbed by such action. A resolution of the dispute might then become necessary for industrial peace notwithstanding death of the workman concerned pending proceeding. Essential object of enacting the Act is to provide recourse to a given form of procedure for settlement of disputes in the interest of

maintenance of peaceful relations between the parties without apparent conflicts such as are likely to interrupt activities of the industry Proceedings before the Labour Court or the Industrial Tribunal under the Act cannot be stated to be (sic) a personal action in torts in a civil Court which would come to an end with the, death of the aggrieved party to the dispute. Even in respect of ordinary judicial proceedings the death of party to the proceedings does not terminate the action in all cases. Procedure which aims at furthering ends of justice cannot be faulted unless it is repugnant to any specific provision of a statute. In *Henry JM. Kandall v. Patter Macilton* 4 Appeal Cases 504, Lord Panzenze laid down the following principle.

"Procedure, is but the machinery of the law all the channel and means whereby law is administered and justice reached. It strongly departs from its office when in place of facilitating, it is permitted to obstruct and even extinguish legal rights, and is thus made to govern when it ought to subserve."

Procedure is something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. It is designed for furtherance of justice, and not frustrate it. By permitting substitution of the deceased workman or an employer, as the case may be, in a proceeding u/s 33C(2) of the Act the ends of justice shall be furthered. We are therefore, of the view that substitution is permissible in proceeding u/s 33C(2) of the Act, in case of death of workman or employer. It is stated that matter has been settled out of Court by the parties. Memorandums to that effect have been filed in this Court. The Labour Court, therefore, need not proceed further, which it would have been required to do in view of our conclusion on the substitution aspect.

5. The writ application is disposed of accordingly . No costs.

P.C.Naik, J.

I agree.