
(1985) 10 KAR CK 0029
In the Karnataka High Court
Case No : Writ petition No. 22061/81

Prema

APPELLANT

Vs

Management Hulkah Group Service Cooperative Society Ltd.

RESPONDENT

Date of Decision : 18-10-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10 (1), 10 (8), 11, 12

Citation : (1986) 52 FLR 163 : (1986) ILR (Kar) 1273 : (1986) 2 LLJ 54

Hon'ble Judges : P.P. Bopanna, J

Bench : Single Bench

Judgement

1. The question for consideration in these Writ Petitions is whether on the death of a workman either during the stage of conciliation proceedings or at the stage of the proceedings before the State Government under S. 10 read with S. 12(5) of the Industrial Disputes Act, 1947 (for short the Act) or during the pendency of a dispute on the file of the Labour Court or the Industrial Tribunal, as the case may be, would put an end to the Industrial dispute between the parties. That is to say, whether the proceedings either before the Conciliation Officer or before the State Government or before the Labour Court or the Industrial Tribunal, as the case may be abate merely by reason of the death of one of the parties to the dispute if he is a workman. This question is of considerable significance to the claims of the workmen pending before the authorities under the Act at various stages. The Kerala High Court in a decision rendered in a proceeding under S. 33C(2) of the Act has held that after the death of a workman his legal representatives can be brought on record and they could continue the proceedings before the Labour Court. Likewise, the Bombay High Court and a Division Bench of the Patna High Court have taken the same view allowing the legal representatives of the workman to come on record and prosecute the proceedings under S. 33C of the Act. However, a Division Bench of the Madras High Court and the Full Bench of the Punjab & Haryana High Court have taken the view that it would be impermissible for the legal representatives to continue the proceedings. But it would not be necessary to consider those cases and

distinguish them in those petitions in view of the provisions of S. 10(8) of the Act which reads as under :

"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."

2. Sub-section (8) of S. 10 was brought into force with effect from 21st August, 1984, by Amendment Act 46 of 1982. Therefore, if it is held that this sub-section has retrospective effect to claims of persons pending consideration before the Labour Court, the Tribunal or the National Tribunal, as the case may be, it has to be held that the legal representatives of the deceased workman had a right to continue the proceedings before the Labour Court after the death of the workman. It is well settled that a procedural provision always has retrospective effect in the absence of anything to the contrary - *Memon Abdul Karim Haji Tayab Vs. Deputy Custodian General, New Delhi and Others*, and therefore in the light of Sub-s. (8) of S. 10 of the Act the legal representatives of a workman who dies during the pendency of a dispute before the Labour Court, the Tribunal or the National Tribunal are entitled to come on record and continue the proceedings for the benefit of the estate of the deceased workman.

3. So, the only point that arises for consideration is whether in the absence of any words pertaining to conciliation proceedings and proceedings before the Government in S. 10(8) of the Act, the proceedings pending before the Conciliation Officer or the Government would abate on the death of the workman. The Learned Counsel for the Managements relied on the literal construction of S. 10(8) but they fairly conceded that the intention of the Parliament as could be gathered from the scheme of the Act was not to put an end to the dispute on the death of the workman at the stage of conciliation or reference.

4. The conciliation proceeding that is contemplated under the Act is governed by the provisions of S. 12 of the Act. In the case of an individual dispute touching his dismissal, discharge or retrenchment or termination of his services, it is open to him to raise an industrial dispute under S. 2A of the Act and that dispute could be admitted in conciliation under S. 12 of the Act. Under S. 12(2) of the Act read with Rule 9 of the Industrial Disputes Rules, the Conciliation Officer Initiates conciliation by issuing notices to the workman and the employer. Under S. 12(3) of the Act, on the representation made by the workman and the employer, the Conciliation Officer if the matter is settled in his presence, sends a report to the appropriate Government together with the memorandum of settlement signed by the workman and the employer. If no such settlement is arrived at, under S. 12(4) of the Act, the Conciliation Officer sends a report to the Government setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof together with

a full statement of such facts and circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived at. It is only then or in some extraordinary cases when there is an immediate threat to industrial peace even without the mediation by Conciliation Officer, the State Government would be seized of the dispute between the parties and decides either to make a reference or not to make a reference. So, till the dispute between the parties is brought to the notice of the Government either by a conciliation report or otherwise the workman would be a party to the dispute. If in the course of the conciliation proceeding he dies, the point for consideration would be whether the dispute between the parties would come to an end by his death. Before the promulgation of the Act a workman had no security of tenure. He could be dismissed on a month's notice or a month's salary in lieu of notice although he might have served his master faithfully for a number of years. Whereas in common law the employer could dismiss an employee on a month's wages in lieu of notice, the employer after the promulgation of the Act cannot dismiss a workman even on good notice except at the risk or reinstating him with back wages should the Labour Court find that the dismissal was unfair. Had the workman gone to the Civil Court under common law for damages, the CPC which governs the procedure in the civil dispute, permitted his legal representatives to come on record and continue the proceedings against the master. But all because a special statute was created to give him better security of tenure by granting reliefs which could not be granted by the Civil Court, in the absence of a clear intention by the Parliament to exclude the right of the deceased workman to continue the right of the deceased workman to continue the proceedings in conciliation, it cannot be said that the dispute comes to an end by his death and therefore his legal representatives cannot be brought on record before the Conciliation Officer.

5. This conclusion could also be reached by a proper construction of the Act. As observed by Lord Denning in *Seaford Court Estate Ltd. v. Asher* 1949 (2) K.B. 481.

"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which it was passed to remedy, and then he must supplement the written word

so as to give "force and life" to the intention of the legislature."

6. In S. 10(8) the legislature had noticed the case of the workman pending before the Labour Court, the Tribunal or the National Tribunal but it did not make any provision for the continuation of the proceedings before the conciliation Officer or before the Government. But was it the intention of the legislature, having made a provision for the legal representatives to continue the proceedings before the Labour Court, Tribunal or the National Tribunal for the benefit of the estate of the deceased workman to exclude the same right to his estate if he were to die in the course of the conciliation proceedings or in the course of the proceedings before the State Government under S. 10 of the Act ? Is there anything in the scheme of the Act to indicate that the legislature had no intention of conferring a benefit to the estate of the deceased workman if he were to die in the course of the conciliation proceedings or the proceedings under S. 10 of the Act ?

7. As regards the conciliation proceedings, I am of the view, and it does not admit of any doubt that the Parliament had no such intention if the scheme of the Act is considered. It is not in dispute that the Conciliation Officer has power to entertain an application under Ss. 33(1)(b), 33(2)(b) and 33(3) of the Act for granting permission to or approval of the action taken by the employer against the workman if he is concerned in a dispute pending before him. Section 33(1) (b), 33(2)(b) and 33(3) read as under :

"Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings :-

(1) During the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall :-

(a) xxx xxx (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise any workman concerned in such a dispute save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, whether there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman :-

(a) xxx xxx (b) for any misconduct not connected with the dispute discharge or punish, whether by dismissal or otherwise that workman :

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of

the action taken the employer.

(3) Notwithstanding anything contained in Sub-s. (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute :-

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending."

Under the very same Section an application for permission or approval could also be pending before the Labour Court or the Tribunal or a National Tribunal in respect of an individual dispute. Applying the provisions of S. 10(8) of the Act, the legal representatives of the workman would be permitted to contest the proceedings before the Labour Court, the Tribunal or the National Tribunal under S. 33(1)(b) or (2)(b) or 33(3) of the Act. Therefore, it does not stand to reason why the very same legal representatives should be deprived of the right to contest the proceedings if an application is made before the Conciliation Officer under these three provisions of the Act. Therefore, the right of the legal representatives of the deceased workman to come on record in a conciliation proceeding could also be covered by interpreting the provisions of S. 10(8) of the Act liberally.

8. One more provision which requires to be noticed to understand the scheme of the Act is S. 18. Under S. 18(1) of the Act a statement arrived at by agreement between the employer and the workman otherwise than in the course of the conciliation proceedings would be binding on the parties to the agreement. That is to say, a settlement under S. 2(p) of the Act will be binding on the parties and in that settlement it will be open to the legal representatives of the deceased workman, in case the workman dies during the subsistence of the settlement, to take the benefit under such settlement.

9. If the settlement relates to payment of certain monetary benefits to the workman, it cannot be said that the death of workman brings an end to that settlement and the legal representatives would be precluded from claiming the benefits under that settlement. The workman can claim the monetary benefits, if he is denied, by an application under S. 33C(2) of the Act. That right could be worked out by his legal representatives in case he dies during the pendency of application under S. 33C(2) of the Act in view of the provisions of S. 10(8) of the Act. The rights of the workman flow from the settlement. He does not get a higher right under S. 33C(2). The loss to his estates is same when he dies during the subsistence of the settlement or when he dies during the pendency of his application under S. 33C(2) of the Act. Section 33C(1) of the Act also makes a provision for his legal heirs to claim any money due to the deceased workman

under an award, settlement or Chapters VA and VB of the Act.

10. Under the scheme of the Act, an adjudication of an individual dispute is preceded by certain statutory requirements, namely, a raising of the dispute either under S. 2A, conciliation proceedings under the Provisions of S. 12 and thereafter a reference by the State Government for adjudication of the dispute. If the workman is permitted to raise a dispute and initiate conciliation proceedings in view of the provisions of S. 2A of the Act, then his right to have an adjudication of the dispute, in case it is made to the Labour Court, cannot be taken away by his death since the award, if made in his favour, would enure to the benefit of his estate.

Section 18(3)(d) of the Act is an exception to the law of Contract. Under the law of Contract it is only the parties who are signatories to the contract will be bound by the terms of the contract. But, under S. 18(3)(d) in the case of a settlement in the course of conciliation, even workmen who subsequently become employees of the employer will get the benefit of the settlement and will be bound by the terms of the settlement. If this scheme of the Act is kept in view, the intention of the Parliament becomes clear. That is it had no intention to abrogate or cut down the rights of the workman when it concerned the benefits due from his employer when he raises an industrial dispute. Therefore, could it be said that the legislature had the intention to deny the legal representatives the right to claim the benefit due to the estate of the deceased workman by omitting the words "conciliation proceedings" under the amended provisions of S. 10(8) of the Act ? Conciliation is also a proceeding, the act of making a reference is also a proceeding as they are legal steps or measures which precede the adjudication of the dispute.

11. The intention of the legislature will have to be ascertained from the language of the statute, the scheme and the object sought to be achieved by the statute. The Supreme Court had adopted the rule of interpretation adopted by Lord Denning in *State of Karnataka and Another Vs. Hansa Corporation*, in favour of the State though at one time the judicial opinion was that taxing statutes must be construed strictly against the State. Therefore, the adoption of the same rule of interpretation in this case cannot be faulted. The judicial opinion even in England is also veering round towards liberal interpretation of statute as observed by Lord Diplock in *Kammins Ballrooms Co. Ltd. v. Zenith Investments (Torquay) Ltd.* (1971) A.C. 850. In that case the House of Lords was interpreting the provisions of rent control statute enacted for the benefit of the tenant. Lord Diplock observed :

"This can be done only by the purposive approach, viz., imputing to Parliament an intention not to impose a prohibition inconsistent with the objects which the statute was designed to achieve, though the draftsman has omitted to incorporate in express words any reference to that intention."

12. This rule of interpretation was considered by the House of Lords while dealing

with the provisions of the Trade Union and Labour Relations Act, 1974 (1978) 1 W.L.R. 231. *Stock v. Frank Jones (Tipton) Ltd.* I am relying on this case in preference to various other decisions on the point since this is a decision which relates to Industrial relations arising under the Trade Union and Labour Relations Act. In that case it was the employer who raised the plea that the literal meaning of the statute would result in obvious anomalies and therefore the Court should depart from the literal construction of the statute by not giving effect to the plain language of the statute. That plea was rejected by the House of Lords. But Viscount Dilhorne observed :

"It is now fashionable to talk of a purposive construction of a statute, but it has been recognised since the 17th century that it is the task of the judiciary in interpreting an Act to seek to interpret it "according to the intent of them that made it"."

He further observed that :

"If it were the case that it appeared that an Act might have been better drafted, or that amendment to it might be less productive of anomalies, it is not open to the Court to remedy the defect. That must be left to the Legislature."

He also referred to the observations of Lord Justice Stephenson of the Court of Appeal from which that case was taken to the House of Lords. What the Law Lord observed is as follows :

"It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do. . . We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself."

Lord Scarman, in the very same Judgment, observed as follows :

"If the words used by Parliament are plain, there is no room for the "anomalies" test, unless the consequences are so absurd that, without going outside the statute, one can see that Parliament must have made a drafting mistake. If words, "have been inadvertently used," it is legitimate for the Court to substitute what is apt to avoid the intention of the legislature being defeated... This is an acceptable exception to the general rule that plain language excludes a consideration of anomalies, i.e., mischievous or absurd consequences. If a study of the statute as a whole leads inexorably to the conclusion that Parliament has erred in its choice of words, e.g., used "and" when "or" was clearly intended, the Courts can, and must, eliminate the error by interpretation. But mere "manifest absurdity" is not enough : it must be an error (of commission or omission) which in its context defeats the intention of the Act."

The Judgment of Lord Simon of Glaisdale should also be noticed since he has very succinctly and lucidly given the instances where the Court should go by the literal words and where the Court should go by the intention of the statute. He observed as under :

"It is idle to debate whether, in so acting, the Court is making law. As has been cogently observed, it depends on what you mean by "make" and "law" in this context. What is incontestable is that the Court is a mediating influence between the executive and the legislature, on the one hand, and the citizen on the other. Nevertheless, it is essential to the proper judicial function in the Constitution to bear in mind : (1) modern legislation is a difficult and complicated process, in which, even before a bill is introduced in a House of Parliament, successive drafts are considered and their possible repercussions on all envisage able situations are weighed by people bringing to bear a very wide range of experience : the judge cannot match such experience or envisage all such repercussions, either by training or by specific forensic aid : (2) the bill is liable to be modified in a Parliament dominated by a House of commons whose members are answerable to the citizens who will be affected by the legislation : an English judge is not so answerable; (3) in a society living under the rule of law citizens are entitled to regulate their conduct according to what a statute has said rather than by what it was meant to say or by what it would have otherwise said if a newly considered situation had been envisaged; (4) a stark contradistinction between the letter and the spirit of the law may be very well in the sphere of ethics, but in the forensic process St. John is a safer guide than St. Paul, the logos being the informing spirit; and it should be left to people's courts in totalitarian regimes to stretch the law to meet the forensic situation in response to a gut reaction; (5) Parliament may well be prepared to tolerate some anomaly in the interest of an overriding objective; (6) what strikes the lawyer as an injustice may well have seemed to the legislature as no more than the correction of a now unjustifiable privilege or as a particular misfortune necessarily or acceptably involved in the vindication of some supervening general social benefit; (7) the parliamentary draftsman knows what objective the legislative promoter wishes to attain, and he will normally and desirably try to achieve that objective by using language of the appropriate register in its natural, ordinary and primary sense : to reject such an approach on the grounds that it gives rise to an anomaly is liable to encourage complication and anfractuositities in drafting; (8) Parliament is nowadays in continuous session, so that an unlooked for and unsupportable injustice or anomaly can be readily rectified by legislation; this is far preferable to judicial contortion of the law to meet apparently hard cases with the result that ordinary citizens and their advisers hardly know where they stand.

All this is not to advocate judicial supineness : it is merely respectfully to commend a self-knowledge of judicial limitations, both personal and constitutional. To apply it to the argument on behalf of the appellant based on anomaly, a Court would only be justified in departing from the plain words of the statute were it satisfied that : (1) there is clear and gross balance of anomaly; (2) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly, could not have been prepared to accept it in the interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to such legislative objective; (4) the language of the statute is

susceptible of the modification required to obviate the anomaly."

13. The purposive rule of interpretation is also gaining ground in the highly industrialised countries of the Western Europe which are governed by the European Economic Community laws. The method of interpretation that is adopted by the European Courts is what is known as "schematic and teleological." What it "means is that the judges do not go by the literal meaning of the words or by the grammatical structure of the sentence. They go by the design or purpose which lies behind it. When they come upon a situation which is to their minds within the spirit - but not the letter - of the legislation, they solve the problem by looking at the design and purpose of the legislature - at the effect which it was sought to achieve. They then interpret the legislation so as to produce the desired effect. This means that they fill in gaps, quite unashamedly, without hesitation. They ask simply : what is the sensible way of dealing with this situation so as to give effect to the presumed purpose of the legislation ? They lay down the law accordingly". (Discipline of Law by Lord Denning, pp. 20 and 21). If these rules of interpretation are good for highly industrialised societies, they should be readily adopted for the interpretation of welfare legislation in our statute book. In the light of the language of S. 10(8) of the Act, the scheme of the Act relating to conciliation proceedings and reference, the consequences of the failure in conciliation or the failure to make a reference to the estate of the deceased workman, the purpose of conciliation, the provisions of S. 33 of the Act which enables the legal representatives of the deceased workman to contest the proceedings before the Labour Court or Tribunal during the pendency of an industrial dispute, the intention of the Parliament was not to end the dispute between the parties on the death of the workman at the stage of conciliation or reference. Even in a criminal proceeding under the provisions of the Criminal Procedure Code where on the death of the accused appellant, the appeal abates, the Supreme Court ruled that :

"But where the appeal is against sentence of fine the appeal may be permitted to be continued by the legal representatives of the deceased appellant-accused. There is no provision making such appeals abate. If they can be continued when arising under the Code, there is no reason why they should not be continued when arising under the Constitution. If revision petitions may be allowed to be continued after the death of the accused so should appeals, for between them no distinction in principle is possible for the purpose of continuance. The principle on which the hearing of a proceeding may be continued after the death of an accused would appear to be the effect of the sentence on his property in the hands of his legal representatives. If the sentence affects that property, the legal representatives can be said to be interested in the proceeding and allowed to continue it.

But where the sentence is not one of fine but of imprisonment, which on the death of the accused becomes infructuous, the sentence does not affect the property of the deceased-accused in the hands of his legal representatives, and

therefore the appeal, in such a case, would abate, upon the death of the accused."

(Bondada Gajapathy Rao Vs. State of Andhra Pradesh,

14. So, the emphasis laid by the Supreme Court is the loss to the estate of the deceased if the sentence is one of fine. Therefore, in the light of the foregoing discussion, the intention of the Parliament was not to take away the benefit to the estate of the deceased workman, and a fortiori to give to the legal representatives the right to continue the proceedings at the stage of conciliation and reference and that right cannot be taken away by the misfortune that falls on the workman. But it is for the Courts to mould the reliefs sought for to suit the requirements of the case. That relief would depend on the facts and circumstances of each case. The relief which is personal to the employment of the deceased workman could not be granted but the relief which could be granted in terms of money in the event of reinstatement of the workman or in lieu of reinstatement could always be granted.

15. In England, the Parliament has stepped in and enacted the necessary provisions in the Employment (Consolidation) Act, 1978. The death of the workman whilst under notice of dismissal under the contract of employment does not take away his rights to redundancy payment. Schedule 12 to Employment Protection (Consolidation) Act, 1978 deals with the effect of death of Employer or Employee on the institution or continuation of Tribunal proceedings, Rights and Liabilities accruing in regard to unfair dismissal after the death of the workman, redundancy payment after the death of the workman etc., as mentioned in Part II, III (1) and (2), V, VIII etc., etc.

16. Section 10(8) of the Act, as it is worded will throw up a host of problems since the provisions of O, XXII, R. 1 C.P.C., are not applicable to proceedings under the Act (See S. 11 of the Act). Therefore, the Parliament must step in and make suitable provisions for personal representation after the death of the employer or the employee as the case may be. Who should be the representatives of the deceased workman will pose another problem ? S. 18(3) (c) may not provide an answer to all questions relating to representation in the case of employer, be it a company, firm or an individual. Till such time, the Courts in order to advance the cause of social justice and industrial peace which are the twin objects of the Act, must make law as and when these problems come up, Under the slogan "Judges should interpret, not make, law," the Senate Judiciary Committee in USA repeatedly probed Justice O'Connor about her judicial attitudes and her views about specific legal and political issues, "Indeed, Attorney-General William French Smith, in explaining the criteria used by the United States Justice Department for the screening of potential Supreme Court appointees indicated that this test of judicial attitude was a prime criterion. Senator Grassley of Iowa and others repeatedly used this phrase or some variant of it in their public statements about the appointment and their questioning of the appointee during the hearings. This litmus test, which has attracted recent

adherents, superficially seems to have captured a fundamental concern about the appropriate role of the judiciary in the democratic society. Nevertheless, no observation about judicial behaviour could be further from the truth. The plain and simple fact is that judges, of necessity, must from time to time make, rather than interpret, law and that they are perfectly justified in so doing. Indeed, no clear line actually can be drawn between making and interpreting law and the distinction is therefore illusory." (67 LOW A LAW REVIEW, 711-JUDGES MUST MAKE LAW Prof. Robert L. Clinton).

17. For the foregoing reasons, the legal representatives of the workman who dies either during the conciliation proceedings or during the proceedings under S. 10(1) of the Act or before the Labour Court or Tribunal during the pendency of the adjudication could come on record and continue/contest the proceedings for the benefit of the deceased workman.

Accordingly, in W.P. No. 22061/1981 the Labour Court is directed to take the reference on file, issue notices to the legal representatives of the deceased workman and adjudicate the dispute on merits in the light of the observations made above.

In W.P. No. 9652/1984, the Conciliation Officer is directed to take the dispute on file, issue notices to the legal representatives of the deceased workman and also to the management and submit his report as required under S. 12(4) of the Act.

18. In W.P. No. 3730/1985, the Government is directed to take the case on file, issue notices to the legal representatives of the deceased workman and consider the expediency of referring the dispute raised by the workman for adjudication.