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**(1994) 03 GAU CK 0024**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 422 of 1990**

Ram Lakhan Singh

APPELLANT

Vs

Assam Beverage Co. and Another

RESPONDENT

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**Date of Decision :** 21-03-1994

**Acts Referred:**

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

**Citation :** (1995) 1 LLJ 574

**Hon'ble Judges :** J.N. Sharma, J

**Bench :** Single Bench

**Advocate :** D.N. Choudhury and D.P. Sarma, for the Appellant; G. Sarma, (G.A.), for the Respondent

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## Judgement

J.N. Sarma, J.—This Civil Rule has been filed to quash the impugned order dated December 13, 1989 Annexure-II passed by the learned Labour Court, Assam at Guwahati in Misc. Case No. 9/85 with a prayer for further direction that the Labour Court may be directed to proceed with the Reference Case No. 8/86 pending before it. By that impugned order, the Labour Court held that the application made by the petitioner u/s 33C(2) of The Industrial Disputes Act is not maintainable. The ground on which the petition was rejected will be discussed later on, 2. The brief facts are as follows:

The petitioner was appointed on April 1, 1979 as Office Asstt. by Assam Beverage Company, respondent No. 1. Earlier to it, he was serving in Aditi Sales & Marketing Corporation at Burnihat, a sister concern of the Respondent No. 1. Assam Beverages Company, the respondent No. 1, was earlier known as Assam Beverages Agency. Assam Beverages Agency was earlier run by Sankar Lal Agarwal and from the year 1982, it was run and managed by Shri H.K. Mittal. In August/September, 1985 the name of the Assam Beverage's Agency was changed to Assam Beverages Company by Shri H.K. Mittal. It is alleged that the respondent No. 1 did not pay the wages etc. to the petitioner from December, 1984 to May, 1985. Hence, the petitioner filed an application u/s 33(C)(2) of the

Industrial Disputes Act in the Labour Court for computation of money and claimed a sum of Rs. 13,339.00 and the same was registered as Misc. Case No. 9/85. Shri H.K. Mittal filed an application before the Labour Court praying time to file written statement as in-charge of Assam Beverages Agency. The petitioner filed an application to treat both the Assam Beverages Agency and Assam Beverages Company as Opposite Party and a prayer was made for the order for recommendation that the order may be passed jointly and severally. There was an amendment application for computation of money and additional claim was made from May 1985 to July 1985 and the total as stated earlier is Rs. 13,339/-. This amendment was allowed. Shri Mittal filed a petition stating that the petitioner was not an employee of Assam Beverages Company. The petitioner called for the following documents from the respondent No. 1 in the Labour Court, Gauhati.

Cash Book/Ledger Payment vouchers/Attendance Register of the Assam Beverages Company for the period from January 1, 1983 to December 31, 1985.

These records were not produced by the respondent No. 1 during the pendency of the Misc. Case No. 9/85. The respondent No. 1 dismissed the petitioner from service for which an Industrial Disputes was raised and which was pending in the Labour Court, Guwahati being Reference Case No. 8/86 but the Labour Court suo motu stayed the proceedings vide order dated December 13, 1989. The petitioner examined the following witnesses:

- (i) Shri K. Barman, Labour Inspector.
- (ii) The petitioner himself.

Shri R.K. Roy, Officer of the UBI, respondent No. 1 examined Shri H.K. Mittal on December 13, 1989. The Labour Court passed the order rejecting the claim of the petitioner u/s 33(C)(2) of the Industrial Disputes Act. The order of the Labour Court is at Annexure-II. The Labour Court in paragraph 4 of the judgment took up the following point for consideration.

Whether the applicant has existing right to claim his dues from the present opp. party Assam Beverages Company of which Sri H.K. Mittal is the proprietor?

The Labour Court on consideration of the materials on record came to the following finding:

- (i) There is no other evidence in support of the applicant's contention that the name Assam Beverages Agency has been changed into Assam Beverages Company and that these two are not separate companies. There is no evidence before me to show that the assets and liabilities of Assam Beverages Agency have been taken over by the Assam Beverages Company.
- (ii) It appears from the evidence of the applicant that he was an employee of Assam Beverages Agency and hence this case is not maintainable against Assam Beverages Company, the present Opp. Party in this case.

(iii) Shri H.K. Mittal cannot be regarded as the proprietor of Assam Beverages Agency. It appears that Shri Sankarlal Agarwal is the proprietor of Assam Beverages Agency under whom the applicant is working as an employee.

(iv) The claim for computation is from December, 1984 to June, 1985 but from admission in his evidence in cross-examination the present opp. party Assam Beverages Company was not existing at that point of time. The applicant cannot therefore claim any dues from Assam Beverages Company.

(v) He has no existing right to claim his dues if any from the Assam Beverages Company, the present Opp. Party in this case.

(vi) I cannot also hold from the evidence on record that Shri H.K. Mittal was the proprietor of Assam Beverages Agency.

3. I have heard Shri D.P. Sarma, Learned Advocate for the petitioner. None appears for the respondents No. 1. No affidavit-in- opposition has been filed on behalf of the respondent No. 1. Shri G. Sarma appeared for the respondent No. 2.

4. It is settled law that if any matter or claim is to be entertained u/s 33(C)(2), there must be an existing right and the right must arise under an award, settlement or under provision of Chapter V (A) or it must be the benefit provided by the statute and the claim made thereunder and there must be nothing contrary under subsidy or Section 33(C)(2) Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, In Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, the Supreme Court pointed out as follows in paragraphs 12 and 13:

Para 12:

"It is now well settled that a proceeding u/s 33(C)(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise duly provided for. In Chief Mining Engineer East India Coal Co. Ltd. v. Rameswar, (supra) it was reiterated that proceedings u/s 33(C)(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by workmen is in such cases in the position of an executing court. It was also reiterated that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an Industrial workman and his employer".

Para 13.

"In a suit, a claim for relief made by the plaintiff against the defendant involves

an investigation directed to the determination of (i) the plaintiffs right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is at all, liable or not; and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant's liability, may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding u/s 33(C) (2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is normally, outside its scope. It is true that in a proceeding u/s 33(C)(2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely "incidental". To call determinations (i) and (ii) "incidental" to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential Upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court u/s 33(C) (2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions - say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as "incidental" to its main business of computation. In such cases determinations (i) and (ii) are not "incidental" to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in *State Bank of Bikaner and Jaipur v. R.L. Khandelwal* 1968 II LLJ 589 that a workman cannot put forward a claim in an application u/s 33(C)(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject matter of an Industrial Dispute which requires a reference u/s 10 of the Act."

5. In *The Central Inland Water Transport Corporation Ltd. Vs. Their Workmen*, the Supreme Court took up what is the meaning of successor-in-interest and what are the factors to be considered in such a case and in the facts and circumstances of that case, the Supreme Court came to the finding that Rajabagan Dockyard was taken over by the Corporation and it was not a new establishment, it was the same establishment, same manufacturing apparatus was operated by the company prior to its taking over by the Corporation. That was a case regarding payment of bonus and it was urged that u/s 16 of the Payment of Bonus Act, Rajabagan Dockyard which was taken over by the Corporation was the successor-in-interest and liable to pay the bonus.

6. Under the facts and circumstances of the law as laid down above, let us have a look at the present case. In the instant case also though the name was

changed from Assam Beverages, Agency to Assam Beverages Company, the Office and place of business of both are same. In the instant case also there was a claim for bonus along with the salary etc.

7. Exts. 5, 6, 7 and 10 produced by Shri Ranjit Kr. Roy, Officer of the United Bank of India categorically shows that Shri H.K. Mittal was the proprietor of Assam Beverages Agency. These are the documents produced by the officer of the Bank. These documents were rejected by the Labour Court holding as follows:

"Shri Hrishikesh Mittal says in his evidence that rubber seals were put behind his back in the bank document without his knowledge by somebody else to cause him harm. The bank documents are not important for me....."

It is not understood as to why the Bank documents are not given importance inasmuch as the Ext. 7 shows that there is special instruction to the effect that the account will be operated by the proprietor Shri H.K. Mittal and Ext. 8 is the Account No. 170 which was closed on September 9, 1985. So, this finding that Shri H.K. Mittal was not the proprietor of Assam Beverages Agency is absolutely perverse finding on the face of the document in the present case and his further finding that Shri Sankarlal Agarwal was the proprietor of the Assam Beverages Agency under whom the applicant was working as an employee is also a perverse finding. It appears that there is error apparent on the face of the record and the Labour Court arrived at the findings as indicated above without applying its mind to the document and other evidence on record.

8. In that view of the matter, the award dated December 13, 1989 is quashed. The matter shall go back to the Labour Court at Guwahati who shall decide the matter afresh after considering the materials on record.

9. The parties shall appear before the Labour Court Guwahati on May 19, 1994 and as it is an old pending case the matter shall be decided by the Labour Court, Guwahati as expeditiously as possible.