

(1996) 01 KL CK 0060
In the High Court Of Kerala
Case No : W.A. No. 1428 of 1995

Thankamma Ramakrishna Pillai

APPELLANT

Vs

Arbitrator and Others

RESPONDENT

Date of Decision : 18-01-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 23
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2A

Citation : (1996) 01 KL CK 0060

Hon'ble Judges : K.T. Thomas, Acting C.J.; T.V. Ramakrishnan, J

Bench : Division Bench

Advocate : M.R. Rajendran Nair and P.V. Asha, for the Appellant; Jose K. Kochupappu, Government Pleader for 1st Respondent and T.K.M. Unnithan, for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

T.V. Ramakrishnan, J.—Whether an Arbitrator functioning under the Co-operative Societies Act (for short "the Act") has power to implead the legal representatives of a deceased Petitioner in a proceeding pending before him, is the important question raised for consideration in this appeal. While arguing for the position that the Arbitrator has such power, Smt. P.V. Asha, learned Counsel for the Appellant has submitted that the decision of a learned Single Judge of this Court reported in 1976 KLT 18 (Bhaskaran Nair v. Co-operative Tribunal, Trivandrum) wherein it has been held that there is no such power for the Arbitrator, requires reconsideration.

2. The question has arisen on the following facts and circumstances: Appellant's husband applied for a plot of land under the "30 Acres Housing Scheme" of the second Respondent society in 1978. A plot of 10 cents was allotted to him on remittance of an amount of Rs. 50,000 as land value. Thereafter, the Society has cancelled the allotment. The cancellation was challenged before this Court and

the same was set aside and the matter was remitted for fresh decision by the Society. The Society again cancelled the order of allotment. The fresh order passed was challenged in A.R.C. 57/87. The Arbitrator ultimately upheld the cancellation and found that the Plaintiff is entitled to get only a refund of the amount deposited by him. The award so passed was challenged in A.P. No. 109 of 1991 before the Co-operative Tribunal. As per Ext. P-2 order, the Tribunal has set aside the award and remanded the matter to the Arbitrator for fresh disposal in accordance with law. While so, the Appellant's husband expired on 11th August 1992. On the death of the original Petitioner, the Appellant and her son has filed petition for impleading them as the legal representatives of the deceased and to permit them to continue the pending proceedings. They have also filed a fresh petition before the Arbitrator as A.R.C. No. 20 of 1993 for the reliefs similar to that claimed in A.R.C. 57 of 1987. The Arbitrator has rejected the impleading petition as per Ext. P-1 order holding that in the absence of a specific provision enabling him to implead the legal representatives he has no jurisdiction to allow the application following the decision of this Court in Bhaskaran Nair's case 1976 KLT 18 without prejudice to the right of the Appellant to raise a fresh dispute and to proceed with the same or to file an appeal against the order and get appropriate relief from the Appellate Authority. The Arbitrator has also referred to the judgment in W.A. 312/76 filed against judgment in Bhaskaran Nair's case 1976 KLT 18 which appeal was dismissed on facts, without going into the correctness of the legal questions decided by the learned Single Judge. In the Original Petition, the Petitioners have prayed for quashing Ext. P-1 award and directing the first Respondent to allow the application for impleadment filed by the Appellant and to dispose of A.R.C. 57 of 1987 in accordance with law. The learned Single Judge dismissed the O.P. taking the view that since the Petitioners have moved the Arbitrator by filing Anr. arbitration case u/s 69(i)(b) of the Act, there is no justification to interfere with the matter in these proceedings under Article 226 of the Constitution of India. The learned Judge further observed that the question whether the decision reported in 1976 KLT 18 (Bhaskaran Nair's case) requires reconsideration will be considered in appropriate cases.

3. From Ext. P-1 order, it is clear beyond any doubt that the Arbitrator has rejected the impleading application solely for the reason that there is no specific provision enabling him to implead the legal representatives and that he has no inherent power to implead the legal representatives since the Arbitrator exercising power under the Act is not a Civil Court. This is precisely the reason on the basis of which Bhaskaran Nair's case 1976 KLT 18 was decided. It is relevant to note that the Arbitrator has also found that the Appellant and her son are having a right to raise a similar dispute claiming similar relief u/s 69(i)(b) of the Act and since no time limit is prescribed for raising such a dispute, there is no question of any prejudice being caused to them by the rejection of their prayer for impleadment. Alternatively, it was also found that the Appellant and her son may seek impleadment in an appeal filed against Ext. P-1 award itself

before the Tribunal.

4. We may before dealing with the main question point out that the cause of action pursued by the deceased in the proceedings initiated by him before the Arbitrator was one based upon a contract entered into between him and the society and its alleged breach. The relief claimed in the proceedings was for restoration of the allotment of the plot of land which if allowed could have been enjoyed by the deceased during his lifetime and on his death by his legal representatives. Obviously, such a cause of action cannot legally be considered as one to which the maxim "*actio personalis moritur cum persona*" would apply. In other words, the cause of action in question cannot be treated as one dying with the death of the person concerned. In fact there was no contention also raised by the learned Counsel for the Respondents that by the death of the Petitioner, the cause of action has abated in this case.

5. The main contention advanced by the learned Counsel on behalf of the society, the contesting Respondent, was that in the absence of a specific provision empowering the Arbitrator to implead the legal representatives of a deceased party to the proceedings before it, the Arbitrator has no inherent power to allow the legal representatives to come on the record and to prosecute the same. In support of the above argument, the learned Counsel for the Respondent has mainly relied upon the decision in Bhaskaran Nair's case 1976 KLT 18 and the reasoning contained therein. The request for reconsideration of the decision in Bhaskaran Nair's case 1976 KLT 18 was met by the learned Counsel for the Respondent by contending that the legal question raised by the Appellant need not be considered in this case and as such reconsideration of the said decision may not also be necessary. In this connection, it was submitted that the Appellant and his son have already filed a petition praying for the same relief in exercise of their own right to claim such relief as provided u/s 69(i)(b) of the Act. It was also submitted that the above decision has ruled the field for more than 30 years and this Court may not overrule the said decision in a case like the one on hand where it is not absolutely necessary to consider the correctness of the decision for the disposal of the appeal.

6. We do not think that we can justifiably decline to go into the merits of the claim put forward the Appellant for the only reason that they have also filed a fresh petition claiming same or similar reliefs as the one contained in the proceedings initiated by the deceased. If they have a right to continue the original proceedings filed by the deceased, the fact that they have filed a fresh petition in their name may not stand in their way to prosecute the petition filed for impleading in the original proceedings. It is up to them to choose one of the two remedies available to them for their own reasons. In this case, we find that the deceased Petitioner had initiated proceedings as early as in 1987 and the proceedings have continued before the Arbitrator and the Appellate Tribunal for a considerably long time before the death of the allottee on 11th August 1992. On his death, proceedings were pending before the Arbitrator for fresh decision in

accordance with the order of remand passed by the Appellate Tribunal. As such, we feel that it is only legitimate and reasonable that the Appellant and her son should be allowed to continue the proceedings rather than driving them to the necessity of prosecuting the petition filed by them probably by way of abundant caution *de novo*, if they are in law entitled to continue the original proceedings. Such a course would enable them to take advantage of the various steps already taken by the deceased and to cut short considerably the extent of delay which is likely to occur if they are forced to continue the fresh proceedings. In this view, it is difficult to accept the above contention of the learned Counsel for the Respondents. Similarly, we are not impressed by the contention that the decision in Bhaskaran Nair's case 1976 KLT 18 has ruled the field for a period of 30 years and as such it should not be overruled if it is found liable to be overruled for compelling reasons.

7. We may now turn to the main question raised for our consideration.

8. In Gwalior Rayons Vs. Labour Court and Others, Chandrasekhara Menon, J. has in an illuminating judgment which was extensively quoted and approved by the Supreme Court in Rameshwar Manjhi (Deceased) through his son Lakhiram Manjhi Vs. Management of Sangramgarh Colliery and others, with encomiums being paid to the learned Judge, held that an adjudication proceedings relating to a termination of the service of an employee pending before a Labour Court which is only a statutory Tribunal and not a Civil Court will not come to an end by the death of the employee and the Labour Court has jurisdiction to allow the legal representatives to be impleaded in the proceedings and to continue the same in spite of the absence of a specific provision for impleadment of legal representatives in the Industrial Disputes Act. The approach made and the view taken by the learned Judge was that so long as the cause of action pursued by the deceased was not one dying with the death of the person concerned, the Tribunal should have power to do all that is necessary to continue the adjudication of the dispute raised by the deceased even after his death for the benefit of the fellow workmen in particular and the legal representatives of the deceased incidentally.

9. Again in Cheru Ouseph v. Kunjipathumma 1981 KLT 495 in an erudite judgment, M.P. Menon, J. held that in respect of procedural matters "all powers which are not specifically denied by the statute or the statutory rules should be vouchsafed to a Tribunal so that it may effectively exercise its judicial function". Taking the above view, the learned Judge found the Rent Control Court which is not a Civil Court as having jurisdiction to restore in appropriate cases an application dismissed for default though there is no specific provision in the Kerala Buildings (Lease and Rent Control) Act enabling the Rent Control Court to do so. It is relevant to note that the approach made and the view taken by M.P. Menon, J. was diametrically opposite to that of Narendran, J. in Bhaskaran Nair's case 1976 KLT 18. In Bhaskaran Nair's case 1976 KLT 18 the approach made as already indicated was that unlike Civil Courts, Tribunals of limited jurisdiction has

no inherent power and they can only exercise such powers which are specifically conferred on them.

10. Still later in Ebrahim Ismail Kunu v. Phasila Beevi 1991 (1) KLT 861 we find that Sukumaran, J. speaking for a Division Bench of this Court has also taken a more liberal and wider approach similar to the one taken by M.P. Menon, J. regarding the powers of the Tribunals in dealing with the proceedings pending before them. The learned Judge has forcefully expressed the view of the Bench in the following passage pregnant with pragmatism, legal acumen and literary flair:

A Tribunal should be facilitated to do all that a Court could do in similar situations and much more than that. Greater speed and a total liberation from the tentacles of technicalities, give a better look and greater efficiency for effectively manned Tribunals. If there be no statutory prohibition, the Tribunal should therefore normally be in a position to ordain its affairs and modulate its procedures in such a manner as to best subserve the interest of the public, and in particular the litigant public. Looked that way, even in the absence of an enumerated head of statutory power on the conjoint reading of Section 23 and the enumerated provisions of the CPC referred to in that section, this Court would have permitted the Tribunal to pass an order which would better serve the interest of the litigant and of the Tribunal.

Adopting the above approach, the Division Bench held that the Rent Control Court has power to order joint trial of petition before it in appropriate cases even though there is no specific conferment of power to order joint trial of petitions in the Kerala Buildings (Lease and Rent Control) Act.

11. In Rameshwar Manjhi (Deceased) through his son Lakhiram Manjhi Vs. Management of Sangramgarh Colliery and others, to which we have already referred, the specific questions considered are more or less similar to the questions arising for consideration in this case. The only difference is that the questions considered in that decision arose u/s 2A of the Industrial Disputes Act. The two questions posed for and considered by the learned Judges are the following:

(i) Whether an industrial dispute survives when the workman concerned dies during its pendency?

(ii) Can the proceedings before the Tribunal/Labour Court be continued by the legal heirs/representatives of the deceased workman?

Justice Kuldip Singh speaking for himself and Jeevan Reddy, J. has answered both questions in the affirmative specifically referring to and resolving the conflict in the views expressed by different High Courts on the two questions. The learned Judge has quoted elaborately from the judgment of Justice Chandrasekhara Menon in Gwalior Rayon's case (1978) 2 LLJ 188 and the Gujarat decision in Bank of Baroda Vs. Workmen, and approved the reasoning and conclusion in those two decisions overruling the decisions rendered by the

High Courts of Assam, Patna, Delhi and Orissa in the decisions referred to in the judgment of Their Lordships.

12. On a detailed analysis, it was held thus in paragraphs 16 and 18 of the judgment Rameshwar Manjhi (Deceased) through his son Lakhiram Manjhi Vs. Management of Sangramgarh Colliery and others, :

16. We have quoted in extenso the reasoning of the Kerala High Court in Gwalior Rayons Vs. Labour Court and Others, and of the Gujarat High Court in Bank of Baroda's case (1980 Lab. I.C. 77). We agree with and approve the reasoning and the conclusions reached therein.

17. * * * * 18. We, therefore, hold that on the death of the workman, even when the reference is of an individual dispute u/s 2A 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.

What is particularly important to note, as far as the case on hand is concerned is that it is in the absence of a specific provision enabling the Tribunal to implead the legal representatives, that the Supreme Court has taken the view that the legal representatives are entitled to continue the proceedings and to get the matter adjudicated finally.

13. In an earlier decision in Dhani Devi Vs. Sant Bihari and Others, the Supreme Court has held thus:

In the case of death of the applicant before the final disposal of his application for the grant of a permit in respect of his vehicles the Regional Transport Authority has power to substitute the person succeeding to the possession of the vehicles in place of the deceased applicant and to allow the successor to prosecute the application.

The reasoning of the Supreme Court was that "as the relief sought for in the application is dependent upon and related to the possession of the vehicles, the application is capable of being revived at the instance of the person succeeding to the possession of the vehicles". This decision is particularly important for the reason that it deals with a relevant incidental question regarding the time limit within which such application for impleadment is to be filed. Supreme Court has laid down as law on the point that in the absence of any statute or any statutory rule prescribing any time for making an application for substitution of the successor, the Regional Transport Authority may devise any reasonable procedure for dealing with the situation. As authority for the legal position, Supreme Court has relied upon the following passage from the American Jurisprudence [Volume (2) Administrative Law]:

Where the statute does not require any particular method of procedure to be followed by an administrative agency, the agency may adopt any reasonable

method to carry out its functions.

14. In the light of the above legal position on the point settled by the Supreme Court after resolving the conflict of views regarding the power of the Tribunals/ Labour Court in the matter of allowing legal representatives to continue the proceedings, the only question to be considered further is whether the Arbitrator functioning under the Act is an adjudicatory body coming within the meaning of the term "Tribunal". Justice V.R. Krishna Iyer in *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, has unequivocally held that "a Tribunal, in its wider connotation, embraced every adjudicatory organ including an Arbitrator." In paragraph 86 it was further explained thus: "Then what is the natural meaning of the expression 'Tribunal'? A 'Tribunal' literally means a seat of justice. May be, justice is dispensed by a quasi-judicial body, an arbitrator, a commission, a Court or other adjudicatory organ created by the State. All these are tribunals and naturally the import of the word embraces an arbitration tribunal". In his own inimitable style, the learned Judge went on to observe that "a caste distinction between Court, Tribunals, Arbitrators, and Ors. is functionally fallacious". In the light of the above exposition of the import of the word "Tribunal" by the Supreme Court, we have no hesitation in holding that the Arbitrator functioning under the Act is a quasi-judicial adjudicatory body falling within the term "Tribunal" and as such, the principles laid down by the Supreme Court in *Rameshwar Manjhi (Deceased) through his son Lakhiram Manjhi Vs. Management of Sangramgarh Colliery and others*, are equally applicable to a proceeding pending before the Arbitrator in the matter of impleading the legal heirs of a deceased party to such proceedings.

15. We would accordingly overrule the decision in 1976 KLT 18 (*Bhaskaran Nair v. Co-operative Tribunal, Trivandrum*) being contrary to the law on the point laid down by the Supreme Court in *Rameshwar Manjhi (Deceased) through his son Lakhiram Manjhi Vs. Management of Sangramgarh Colliery and others*, . If the decision is allowed to stand on the principle of stare decisis as contended by the learned Counsel for the Respondent it will only impede the due course of justice and will not in any way advance the course of justice. The legal effect of the decision is to stultify the entire proceedings initiated and continued by a person immediately on his death, merely for want of a specific provision enabling his legal representatives to continue the proceedings even in cases where the cause of action survives the death of the person concerned. As such, we have no hesitation in overruling the above decision. We do so with a sense of satisfaction that by doing so, we are only advancing the cause of justice.

16. Turning to the facts of the case, we are definitely of the view that if law permits, it is a prominently fit case where the legal representatives are to be allowed to continue the proceedings, since the proceedings related to a dispute which arose in the year 1982 and the deceased was continuing the proceedings till his death in 1992. It was pending before the Arbitrator after a remand from the Appellate Tribunal. It will in the circumstances be too harsh, and unjust to

compel the legal representatives to initiate fresh proceedings once again and to undergo all the vicissitudes naturally associated with such proceedings. Now since we have held that the legal representatives have a right to continue the proceedings before Arbitrator even in the absence of an enabling provision in the statute under which the Arbitrator functions the application filed by the legal representatives in this case has only to be allowed. We would accordingly set aside Ext. P-1 award and direct the 1st Respondent Arbitrator/Joint Registrar of Co-operative Societies, Ernakulam to allow the application filed by the Appellant and her son and implead the legal representatives of deceased Petitioner in the arbitration proceedings A.R.C. 57/87 and to dispose of the case in accordance with law after giving the parties an opportunity to substantiate their respective contentions.

Writ appeal is thus allowed. Parties will bear their respective costs.