
(1954) 06 CAL CK 0024
In the Calcutta High Court
Case No : Civil Rule No. 3024 of 1953

Burma Shell Oil Storage Distributing Co. of India Ltd.	APPELLANT
Vs	
Labour Appellate Tribunal	RESPONDENT

Date of Decision : 15-06-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 1(1)
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 16, 9(1)

Citation : AIR 1955 Cal 92 : 58 CWN 791

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : H.N. Sanyal, Jinwalla and N.N. Dutt Roy, for the Appellant; Atul Gupta and Priti Bhusan Barman for Opposite Party (No. 3), for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—The petitioner is the Burma Shell Oil Storage and Distributing Company of India Ltd. (hereinafter referred to as the "Company") which deals in petroleum and petroleum products. It maintains a large clerical staff. At all material times prior to 1947, the Company in addition to paying its clerical employees their normal remuneration, and in addition to crediting their provident fund accounts with a normal contribution equivalent to 10 per cent, of their basic salaries, further credited annually to their provident fund accounts, a bonus equivalent to 7 1/2 per cent, of their basic salaries earned during the year. Such bonuses became available to the employees upon the retirement.

2. With effect from 1-1-1947, the Company Introduced a non-contributory pension scheme, by virtue of which the retiring clerical employees received substantial pensions in addition to the amounts standing to their credit in the provident fund accounts. The Company, however, discontinued the crediting of bonuses to the provident fund accounts, inasmuch as the pensions were found to be a greater and more valuable benefit than the bonuses previously paid. In other words, from 1947 onwards the clerical employees enjoyed the benefits of

pension but no bonus.

In March 1949, the clerical employees, through their trade union, the opposite party No. 3 (hereinafter called the "Association") made a demand for bonus. As the company did not concede this demand there developed an industrial dispute, which was, by an order of reference dated 19-8-1949, referred for adjudication to an Industrial Tribunal under the Industrial Disputes Act 1947. The Tribunal was constituted by Sri Asutosh Das Gupta. In their statement of case filed before the Tribunal, the employees claimed payment by way of bonus, retrospectively from 1947. On 2-2-1950, Sri Das Gupta made his Award. On the point of bonus he gave the following directions ; "I accordingly direct that the Company shall pay each and every clerk one-twelfth of his basic yearly earning as bonus, provided the trade conditions do not substantially deteriorate from the present position. This payment shall be made a fortnight before the Puja."

3. This direction has correctly been construed as meaning that the Tribunal rejected the claim for retrospective bonus for 1947. That this was an acknowledged fact appears from the minutes of a meeting held jointly between the company and its employees on 23-3-1950. The relevant part may be quoted hereunder :

"Bonus. The Association stated that although under the Award no bonus was payable in respect of any year prior to 1949 (the first bonus being payable a fortnight before the Puja in 1950) they would request the company to pay an extra bonus for 1947 and 1948. The company regretted their inability to deviate from the the Award and confirmed that bonus in respect of 1949 would be paid a fortnight before the Puja in 1950 as laid down in the Award."

In fact, payment was accepted in terms thereof. In July 1951, the employees through the Association made fresh demands which repeated the claim for bonus for 1947-48 and additional bonus for 1949 and 1950.

4. By an order of reference dated 17-4-1952, the Government of West Bengal referred the disputes for adjudication to an Industrial Tribunal consisting of Sri P.B. Mukherjee. The disputes that were referred were :

1. Bonus for the years 1947 and 1948.

2. Claim for additional bonus for 1950, The reason why the employees were re-agitating the question of bonus since 1947 was that, subsequent to the adjudication by Sri Das Gupta, bonuses for that period seem to have been awarded in the case of similar industrial disputes in Bombay and Madras. Sri Mukherjee inter alia stated as follows :

"The main pillar of argument on the part of the employees is that the sister companies like Standard Vacuum, Caltex and other branches of Burma Shell at Madras and Bombay are paying higher bonus and this should be a standard on which the bonus at Calcutta branch should be brought on a par with the rate of bonus granted outside this province by this Company & their sister concerns. So

far as the comparison of sister concerns with the present company is concerned, I must say that this comparison cannot be allowed on any good principle of justice and equity. Each company is a separate unit having separate condition of service.....

I therefore do not feel inclined to engraft the decision regarding bonus by Bombay and Madras Moreover, the Company had an early pension scheme for male members of Indian Provident Fund, the intention being to provide more security for old age of members of staff to the Indian Provident Fund by a definite scheme offering greater security under a non-contributory pension scheme. Accordingly the contribution in lieu of bonus had been paid by the Company and as such the claim of bonus for 1947-48 must be rejected.

Regarding claim of bonus for the years 1947-48 there had been a claim in Union's written statement dated 5-9-1949 before Sri Das Gupta previously. This claim was rejected and cannot now be revived and agitated afresh. Moreover, claim for past years' bonus cannot on principle be allowed as the budget and finances were all previously adjusted and granting of earlier bonus of 3 or 4 years will create difficulty in adjusting the budgets.

It is significant that in the charter of demands in March 1949 there had been no demand for bonus of 1947-48 presumably because, the above position was accepted and contribution by the company in lieu of bonus to the provident fund had been accepted without demur".

5. The clerical employees represented by the Association appealed against the said Award to the first respondent, the Labour Appellate Tribunal, constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950. The decision of the Appellate Tribunal was given on 29-5-1953. By its decision, the Labour Appellate Tribunal upheld the Award of Sri Mukherjee in so far as it related to bonus for 1947-48, but modified the Award in BO far as it related to bonus for 1950. With regard to the retrospective bonus for the years 1947 and 1948, the Appellate Tribunal proceeded on the footing that the Company had paid in cash, one month's basic wages for the years 1947 and 1948 as bonus.

It was of the opinion that the bonus that was claimed was really Puja Bonus and so far as the years 1947-48 were concerned, the Company had conceded the demand and paid bonus for the years 1947-48 at the rate of one month's basic wages and that this was received by the workmen unconditionally and without any protest. It was pointed out that it was only after some awards were made in favour of workmen at Bombay and Madras that the workmen in Calcutta repeated their demand for bonus for these two years. The Appellate Tribunal came to the conclusion that the matter having been agitated once before and the workmen having accepted one month's basic wages for the year 1947-48, the dispute had been concluded and could not be reopened.

6. It will thus be seen that Sri Mukherjee based his Award rejecting the claim for retrospective bonus on two grounds. Firstly, it was based on the ground that a

similar claim had been made earlier before Sri Das Gupta and was impliedly rejected and could not be revived and agitated afresh. The second ground was that the company had an early pension scheme in which the company made a contribution in lieu of bonus and this had been accepted by the workmen. Their additional claim for bonus should, therefore, be rejected.

7. The Appellate Tribunal however proceeded on the footing that the company had paid Puja bonus for the years 1947-48 in cash and this had been accepted by the employees. The Appellate Tribunal came to the same conclusion, namely, that the claim for bonus for the years 1947-48 should be rejected. It is not disputed that the Appellate Tribunal had made a mistake of fact and proceeded on the incorrect assumption that the company had paid Puja Bonus for years 1947-48 in cash. I do not see how it came to this conclusion, because the facts are clearly stated in Sri Mukherjee's Award. The fact remains however that it did make the mistake of assuming that for these two years the company had paid Puja Bonus in cash which was accepted by the employees.

By a petition dated 23-6-1953, the employees through the Association made an application before the Appellate Tribunal, pointing out that there was an error in the judgment and it should be corrected. Before the Appellate Tribunal, the application was objected to on the ground that it had no power to review its judgment already given. On 10-8-1953, the Appellate Tribunal came to the conclusion that it had the power to review its own judgment and order. It was pointed out that the foundation of the judgment was that certain payments had been made, while it appeared that the assumption was wrong in fact and indeed it was admitted by learned counsel for the Company that the assumption of fact, namely that a cash payment towards bonus had been made for 1947-48, was wrong.

It was held that there was an error which appeared on the face of the record and therefore the judgment ought to be reviewed. The Appellate Tribunal has not finally revised its judgment. It has merely directed that the mistaken statement of facts be deleted, and has set down the matter for further hearing upon the merits. This rule was issued on 7-9-1953, upon the opposite parties to show cause why a writ in the nature of certiorari should not be issued quashing and/or setting aside the said decision of the Appellate Tribunal dated 10-8-1953 and/or why a writ in the nature of prohibition should not be issued prohibiting the opposite parties Nos, 1 and 2 from exercising any further jurisdiction in respect thereto, and why a writ in the nature of mandamus should not issue upon the opposite parties Nos. 1 and 2 to forbear from hearing the said appeal, and for similar orders.

8. Mr. sanyal appearing on behalf of the petitioners has urged before me that the Appellate Tribunal had no jurisdiction to review its own "decision. Mr. Gupta, on the other hand, appears on behalf of the opposite party No. 3 and has argued that the Appellate Tribunal had the power to review. It will be convenient to deal with, the arguments put forward by Mr. Gupta in support and then consider the

objections thereto put forward by Mr. Sanyal.

9. Mr. Gupta first drew my attention to the provisions of Section 9(1) and (10), Industrial Disputes (Appellate Tribunal) Act 1950. It runs as follows:

"9(1). The Appellate Tribunal shall have the powers as are vested in a civil court, when hearing an appeal, under the Code of Civil Procedure, 1908, (Act V of 1908).

* * * 10. The Appellate Tribunal shall follow such procedure as may be prescribed and subject thereto, it may, by an order regulate its practice, and procedure and the provisions of the Code of Civil Procedure, 1908 (Act V of 1903) shall, so far as they are not inconsistent with this Act or the rules or orders made thereunder, apply to all proceedings before the Appellate Tribunal".

10. Mr. Gupta next takes me to Section 107, Civil p. C. which provides that subject to such conditions and limitations as may be prescribed, an appellate court shall have the same powers and shall perform, as nearly as may be, the same duties, as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein. The power of review in an original suit is contained in Section 114 of the Code as also in Order 47, Rule 1. One of the grounds for review is mistake or error apparent on the face of the record, which is the ground upon which the Appellate Tribunal has proceeded in the present case.

11. Alternatively, Mr. Gupta relies on Rule 23 which has been framed under the rule-making powers granted by Section 35, Industrial Disputes (Appellate Tribunal) Act 1950. This rule provides that the Tribunal may correct any clerical mistake or error arising from an accidental slip or omission in any order it makes.

12. Mr. Sanyal, on the other hand, argues that the error which has occurred in this case is not an error arising from an accidental slip or omission. According to him, it is not also an error which appears or is apparent on the face of the record. He then proceeds to argue that the Appellate Tribunal has undoubtedly been granted the same powers as the original court, but that in the context must mean the original Tribunal, namely, Sri P.R. Mukherjee. He points out that the powers of the original Tribunal are governed by the Industrial Disputes Act, and as the law stands at present, the original Tribunal has no power to review. He argues that if the original Court has no power of review, the Appellate Court can have none, particularly as, u/s 16, Industrial Disputes (Appellate Tribunal) Act, the finding of the Appellate Tribunal is deemed to be the finding of -the lower Tribunal.

13. Coming to the powers of the original Tribunal, it does seem that it has, as yet, no power of review. u/s 11, Industrial Disputes Act, the Tribunal has to follow such procedure as may be prescribed. Under Sub-rule (3), a Tribunal has been given the same power as are vested in a Civil Court under the Civil P. C. when trying a suit, but in respect of only certain prescribed matters, which do

not include a power to review its own decision. Rules have been prescribed under the Industrial Disputes Act. Rule 20 empowers the Tribunal to correct errors arising from an accidental slip or omission in any award made by it. There is no rule which grants a general power of review. Similarly, -under Rule 23 framed under the Industrial Disputes (Appellate Tribunal) Act, there is power to rectify an accidental slip or omission.

14. I do not think that we are concerned in, this case with an accidental slip or omission. It is not the ground on which the review has been justified, The review order has been made on the ground of an error appearing on the face of the record. If it was a mistake or an error, I do not see how there was any accident by which it could have happened. It is a plain mistake on the part of the members of the Appellate Tribunal in gathering the facts.

15. The argument put forward by Mr. Sanyal is certainly weighty. But having given the matter my anxious consideration I do not see how I can ignore the plain wordings of Section 9, Industrial Disputes (Appellate Tribunal) Act 1950. The "Court referred to therein is a civil court when hearing an appeal under the Civil P. C. Therefore, it is impossible to read it as a Court functioning otherwise than as a court under the Civil P. C. Mr. Sanyal has argued that the provisions of Section 9 take us to the provisions of the Code and the Appellate Tribunal has been granted the same powers as the original Court, which must mean the de facto original court, namely the Industrial Tribunal.

If the Appellate Tribunal is to be considered as a civil court hearing an appeal under the Civil P. C., it follows that it must assume the nature of a Court which is hearing an appeal from another Court, which is a Civil Court under the Civil P. C. A Court hearing an appeal under the Civil P. C. must necessarily be deemed to be hearing an appeal from an original Court which is a civil court under the Civil P. C., inasmuch as such an Appellate Court would have no jurisdiction to hear appeals from a court of any other description. After all, Section 9(1) is based on an assumption, and therefore logically we must follow the assumption as far as it can go.

The matter may be looked at from another point of view. If I accept the argument of Mr. Sanyal, it would come to this, that a court when hearing appeals under the Civil P. G. would have the power to review but the Appellate Tribunal which has been expressly given the same powers of such a Court will be deprived of the power of review. Such a construction does not appear to me to be possible.

16. It is true that this conclusion leads to certain anomalous results. Mr. Sanyal argues that u/s 16, Industrial Disputes (Appellate Tribunal) Act, the decision of the Appellate Tribunal is to be "deemed to be substituted" for that of the Industrial Tribunal. He says that the Appellate Tribunal can have no higher powers because these findings are to be substituted as that of the original Court. I do not think that Section 16 by itself offers much difficulty.

Under Section 16, the findings of the Appellate Tribunal are deemed to be

substituted for that of the original Tribunal; but that does not mean that once the Appellate Tribunal has made a finding it becomes a finding of the original Tribunal to such an extent that the Appellate Tribunal can no longer review it. If the Appellate Tribunal has the power to review, it only means that the original finding of the Appellate Tribunal would cease to exist, to be replaced by the finding that the Appellate Tribunal may arrive at by reviewing the same. When that is done, the decision of the Appellate Tribunal as reviewed would be the decision which will be considered as substituted for the decision of the original Tribunal.

17. Mr. Sanyal pertinently argues that if the Appellate Tribunal is held to be possessing all the powers of an appellate Court under the Civil P. O., it might appoint a Receiver or do many other things which one does not ordinarily attribute to an Industrial Tribunal. This is a point which would require a much more serious consideration and I do not intend to decide the same at present. It is sufficient for the purpose of this application to hold that the Appellate Tribunal has the power of reviewing its own judgment in the same way as a civil court acting under the Civil P. C.

18. Mr. Sanyal also draws my attention to several sections of the Industrial Disputes (Appellate Tribunal) Act, which contain provisions seemingly inconsistent with the power of review being vested in the Appellate Tribunal. u/s 18, the Award becomes enforceable after the expiry of thirty days, but even before the period of 30 days, under certain specified circumstances, the Government may either reject or modify the Award. He points out that the period of limitation for a review is ninety days.

Supposing if the Award made or decision arrived at is varied by Government and then the Appellate Tribunal decides to review it. This would give rise to an anomalous position. This, however, may be an inconsistency that arises out of a defect in the provisions of the Act, but, in my opinion, it cannot be an argument for holding that the provisions of Section 9 can in any way be curtailed by reasons of this inconsistency. A possible answer may be that if the original finding has been modified by Government, the power of review can no longer be exercised because the Tribunal can only review its own judgment or order.

19. The next question is, whether on the facts of this case it can be said that there is an error on the face of the record. Where a judgment proceeds on an erroneous assumption as to the material facts, that has been held to be a mistake or an error apparent on the face of the record.) In the Privy Council case, -- AIR 1949 112 (Privy Council) , a judgment was delivered by the Judicial Committee on the assumption that the Police; pules of 1937 were operative on 25-4-1948 when the respondent was dismissed from the police force.

Subsequent to the delivery of the judgment and before the Judicial Committee had tendered their advice to His Majesty, the respondent submitted a petition wherein he prayed that their Lordships may reconsider their decision, mainly on the ground that it had been ascertained that the police Rules of 1937 were in fact

printed and published on 29-4-1938, that is to say, 4 days after the dismissal of the respondent. The decision was reviewed and the Judicial Committee came to a conclusion which was exactly the opposite to what it had arrived at previously.

20. In the Federal Court decision of -- "Jamna Kuer v. Lal Bahadur", AIR. 1950 FC 131 , the Court had made a mistake of fact with regard to the nature of certain immovable properties. Mahajan J. (as he then was) said as follows : "There can be no doubt that this appeal must be allowed. The mistake as to the items of property regarding which Mt. Jamna Kuer had. laid claim is apparent on the face of the record. The trial Judge had clearly stated in his judgment that Jamna Kuer's claim related to the properties 3 to 27 of the gazette notifications. In para. 15 of her amended objection petition, she had laid claims to all the properties left by Kunja Behari. On 29-4-1942, it was admitted by the pleader of the applicant that all these properties related to the estate of Kunja Behari and that so far as the debtors were concerned, they were owners of only two properties mentioned in the gazette notifications. In this situation it would have been appropriate if the High Court had corrected this error on the review petition and saved the appellant the trouble and expenses of an appeal to the privy Council or to this Court.

Whether the error occurred by reason of counsel's mistake or had crept in by reason of oversight on the part of the Court was not a circumstance which could affect the exercise of jurisdiction by the Court to review its decision. We have no doubt that the error was apparent on the face of the record and, in our opinion, the question as to how the error occurred is not relevant to this enquiry. A mere look at the trial Court's decision indicates the error apart from anything else."

21. In this particular case, the record generally shows that the Appellate Tribunal made a mistaken assumption as to a fact. As I have pointed out above, the judgment of the original Tribunal clearly stated that the payments for 1947-48 were not cash payments but payments in the shape of contribution by the company towards a pension fund which was made in lieu of bonus. Nowhere on the record has it ever been stated by any one that bonus for 1947-48 was made or received In cash. The error is consequently apparent on the ace of the record; the Appellate Tribunal has the power to review its own judgment which contains the error, Mr. Sanyal argued that it is at best a mistaken appraisal of facts by the Appellate Tribunal. I do not think that it can be said to be a mistaken appraisal of facts. If there existed two conflicting statements of fact and the Court came to a particular conclusion, that could be characterised as an appraisal of facts and would not be the subject-matter of review. Here, there is no conflicting statements of fact. It is nobody's case and never has been that payments of bonus had been made for the year 1947-48 in cash. No such evidence has ever been given, and it is an admitted fact that no such payment had ever been made. Anybody looking carefully into the record would discover that the payment that was alleged was in some other shape.

A Court, however, is not infallible and may make a mistake and be guilty of an

error which becomes apparent from the record itself. In my I opinion, the mistake was such as can be described as an error on the face of the record, and for the reasons mentioned above, the Appellate Tribunal has the power to review its judgment and put the matter right. It is not necessary for me to say anything with regard to the merits. The Appellate Tribunal has not decided whether it would come to any different conclusion even upon the correct facts. That is a matter which must be left entirely to the Appellate Tribunal.

22. For the reasons stated, this application fails and must be dismissed. The Rule is dis-charged and all interim, orders are vacated. In the facts and circumstances of this case, I make no order as to costs.

23. The operation of this order will remain stayed for a fortnight from date, as prayed for. Further stay, if any, must be obtained from the Appeal Court.