
(2015) 10 AHC CK 0139
In the Allahabad High Court
Case No : Misc. Single No. 4410 of 2015

Canara Bank

APPELLANT

Vs

Presiding Officer, Central Government Industrial and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11, 17-A

Citation : (2015) 10 ADJ 467 : (2016) 1 AWC 148 : (2015) 147 FLR 999

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : Vinay Shanker, for the Appellant; Birendra Prasad Singh, for the Respondent

Final Decision : Dismissed

Judgement

Rajan Roy, J.—Heard Sri Vinay Shanker learned counsel for petitioner and Sri Birendra Prasad Singh learned counsel for opposite party No. 2.

2. This writ petition has been filed by the employer Bank challenging the order dated 15.01.2015 passed by the Central Government Industrial Tribunal, Kanpur in I.D. No. 23/10 allowing the review application of opposite party No. 2 against the award dated 26.06.2012.

3. Short point raised by the petitioner herein is that the power to review can be exercised by judicial and quasi judicial officers only if there is a provision under the Statute for the same. Further an argument was advanced by the learned counsel for the petitioner that the application for review/recall having been filed more than 30 days after the award having been made on 26.06.2012, the same can not be modified by it in view of Section 17-A of the Industrial Disputes Act, 1947. In this regard he relied upon the decision of the Supreme Court in the case of Sangham Tape Company Vs. Hans Raj, , judgment of Delhi High Court in the case of Jagdamba Auto Industries Vs. Kamal Yadav, , the judgment of Supreme Court in the case of Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji

Arjunsinghji, .

4. Learned counsel for opposite party No. 2 on the other hand submitted that there is a difference between substantial review and procedural review. While power of substantive review, in a case decided on merit, can be exercised only if there is a provision in the Statute permitting the exercise of such power. As far as the procedural review is concerned, the same can be exercised inherently. If there is procedural defect arising out of an inadvertent error committed by the Tribunal, such as, inspite of evidence having been led the reference is answered otherwise in the workman's absence on the ground that no evidence had been led inspite of sufficient opportunity. In this regard he relied upon the decision of the Supreme Court in the case of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, and the Full bench decision of this Court dated 22.02.2015 passed in reference against Misc. Case No. 1/1993 Smt. Pushpa Sareen vs. State of U.P. And others. He invited the attention of the Court to the award dated 26.06.2012 wherein it had been stated that the claimant after filing his statement of claim and certain documents in the shape of photocopies had stopped putting appearance before the Tribunal. He did not turn up to adduce his evidence in support of his claim. It further recorded that it appears that the workman is not interested in prosecuting his claim, therefore, reference is to answered for want of proof. It accordingly answered the reference against the workman.

5. The contention of learned counsel for opposite party No. 2 is that after filing of claim statement/written statement, the workman had filed documentary evidence. He had also adduced his evidence through affidavit before the Tribunal and opportunity for cross-examination of the workman to the employer was given which was not availed, accordingly it was closed due to non appearance of employer/management, therefore, there was no way the Tribunal could have answered the reference against the workman on the ground that no evidence was led by him and he was not interested in prosecuting the case. The Tribunal committed an apparent error while passing the award dated 26.06.2012, therefore, an application for Review/recall dated 18.09.2012 was filed on 12.10.2012 and the Tribunal rightly recalled its award vide impugned order dated 15.01.2015 giving cogent reasons for the same. He submitted that no interference is called for in the matter as substantial justice had been done.

6. The Court has perused the award dated 26.06.2012. Apparently the Tribunal proceeded to pass the impugned award against the workman on the premise that after filing his statement of claim the workman had stopped putting his appearance before the Tribunal and did not turn up to adduce his evidence in support of his claim except filing certain documents in the shape of photocopies, therefore, it opined he was not interested in prosecuting his claim. Accordingly the Tribunal answered the reference against the workman for want of proof. On a perusal of the impugned order dated 15.01.2015 it is revealed that the workman had in fact filed documentary evidence and had also adduced his evidence

through affidavit before the Tribunal. Further, on account of non appearance of Management/employer opportunity to cross-examine the workman was closed by the Tribunal. There is nothing on record to indicate that the facts recorded in the impugned order regarding evidence having been led by the workman, affidavit having been filed by him, cross-examination having been closed for non appearance of the management, are incorrect.

7. The main ground of challenge herein is that the power of review could not be exercised in absence of a statutory provision and the application for review/recall having been filed for more than 30 days after passing of the award, the award became enforceable and could not be reviewed in view of Section 17-A .

8. Firstly, this Court under Article 226 of the Constitution exercises extraordinary, discretionary and equitable jurisdiction. In a given case, if substantial justice has been done it would not interfere with the impugned action specially when in doing so another illegal action will be revived. As far as the first contention of learned counsel for petitioner is concerned, the Supreme Court in the case of Patel Narshi Thakershi (supra) enunciated the principle of law regarding review as under:-

"4. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order."

9. The aforesaid decision came up for consideration before the Supreme court in Grindlays Bank Ltd. (supra) wherein it made a distinction between procedural review which is inherent or implied in a Tribunal and substantive review on merits where the error which is said to be corrected is one of law and is apparent on the face of record. The decision in Patel Narshi thakershi (supra) was construed in the judgment of Grindlays Bank Ltd. (supra) to exclude a substantive power of review where there is no enabling provision. However, when a review is sought due to procedural defect arising out of an inadvertent error committed by the Tribunal, the power of review inheres in the authority. This principle has been referred by the Supreme Court in the case of Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Another, and has also been followed by the Full Bench decision of this Court dated 12.02.2015 passed in the case of Smt. Pushpa Sareen (supra).

10. Relevant paragraph 13 of the Grindlay's Bank (supra) is quoted below:-

"We are unable to appreciate the contention that merely because the ex-parte award was based on the statement of the manager of the appellant, the order setting aside the ex-parte award, in fact, amounts to review. The decision in Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, is distinguishable. It is an authority for the proposition that the power of review is

not an inherent power, it must be conferred either specifically or by necessary implication. Sub sections (1) and (3) of S. 11 of the Act themselves make a distinction between procedure and powers of the Tribunal under the Act, while the procedure is left to be devised by the Tribunal to suit carrying out its functions under the Act, the powers of civil court conferred upon it are clearly defined. The question whether a party must be heard before it is proceeded against is one of procedure and not of power in the sense in which the words are used in S. 11 . The answer to the question is, therefore, to be found in sub-s. (1) of S. 11 and not in sub-s. (3) of S. 11 . Furthermore, different considerations arise on review. The expression "review" is used in two distinct senses, namely, (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in *Narshi Thakershi's* case held that no review lies on merits unless a statute specifically provides for it, obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal."

11. Relevant paragraph 19 of the *Kapra Mazdoor Ekta Union* (supra) is quoted below:-

"19. Applying these principles it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order

passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding."

12. From a bare reading of the impugned order it is apparent that a procedural defect was committed by the Tribunal while passing the impugned award dated 26.06.2012 on the ground that the workman had not led the evidence to prove his claim whereas the fact was that not only documentary evidence was led, but evidence was also led through affidavit in respect of which an opportunity of cross examination of the workman was extended to by the Management but it was closed on account of non appearance of the Management. Therefore, in these circumstances apparently a procedural error was committed by the Tribunal in proceeding to answer the reference assuming the dis-interestedness of the workman in prosecuting the case and leading the evidence, which was clearly contrary to the material on record. In such a situation the exercise of review or recall of the Award by the Tribunal by means of impugned order dated 15.01.2015 was an exercise of procedural review and not a substantial review based on consideration of merits as observed by the Supreme Court in Grindlays Bank Ltd. (supra) and the Full Bench of this Court in the case of Smt. Pushpa Sareen. While recalling the award dated 26.06.2012, the Tribunal in its order dated 15.01.2015 which is impugned herein has observed as under:-

"As discussed earlier, it is apparently clear that workman has filed documentary evidence and has also adduced his evidence through affidavit in the Tribunal and for non-appearance of management, opportunity to cross examine the workman was closed and in the award made by predecessor has observed that the workman after filing his claim and certain documents has stopped personal appearance and did not turn-up to adduce his evidence in support of his claim. These observation made by the predecessor is totally against the record and without discussing the merit and evidence adduced by the workman, the award was made as no evidence has been adduced which definitely has caused prejudice to the workman and it is a error in passing the award, and there exists an error on face of the record.

For the reasons mentioned above application of workman B-1-3 is liable to be allowed and award dated 26.06.2012 is liable to be recalled and it is recalled."

13. Apparently the impugned order dated 15.01.2015 is in consonance with the dictum of Supreme court in Grindlays Bank Ltd. (supra) and the Full Bench of this Court in the case of Smt. Pushpa Sareen (supra) and also the decision of Supreme Court in Kapra Mazdoor Ekta Union (supra). In the facts of the present case the Tribunal had inherent power to recall the award dated 26.06.2012.

14. This Court has no doubt in its mind that the Tribunal has done substantial justice between the parties by recalling the award dated 26.06.2012 and it had inherent power to do so. No prejudice has been caused to the petitioner

management which itself was not interested in the proceedings, yet, it now has an opportunity to do so subject to the closure of its evidence as ordered by the Tribunal earlier. It is indeed surprising that in these circumstance the management has chosen to challenge the impugned order before this court by filing writ petition under Article 226 of the Constitution instead of participating in the proceedings which are going on before the Tribunal in pursuance to the impugned award which has not been stayed. It clearly reveals that the management does not want adjudication on merits and wants to take advantage of the erroneous award dated 26.06.2012, without an adjudication on merits.

15. As far as the contention of learned counsel for petitioner that the application for review having been filed after 30 days was not maintainable in view of Section 17-A it may be mentioned that in the case of M/s. Sangham Tape Co. (supra) the Supreme Court did hold that in view of Section 17-A the Industrial Tribunal became functus officio after expiry of 30 days from the date of the publication of the award and could not recall the same but in a subsequent decision in the case of Radhakrishna Mani Tripathi Vs. L.H. Patel and Another, the Supreme Court took a contrary view and rejected the pleas raised under Section 17-A of the Industrial Disputes Act, 1947 and upheld the decision of the Tribunal to recall its ex-parte award. In both the decisions, the Supreme Court considered the earlier decisions in the case of Grindlays Bank Ltd. (supra) and Anil Sood Vs. Presiding Officer, Labour Court II, as also other earlier decisions. The matter again came up before the Supreme Court in the case of Haryana Suraj Malting Limited vs. Phool Chand reported in (2012) 8 SCC 579 wherein conflicting views expressed by two Division Benches of the Supreme Court in the aforesaid cases was noticed and accordingly the matter was referred for consideration by a larger Bench. Neither of the parties have placed before the Court any decision of the larger Bench on the said issue, therefore, this Court has reason to believe that the issue based on Section 17-A is still pending consideration before the Supreme Court. In these circumstances reliance placed by the learned counsel for the petitioner on the decision referred in the earlier part of the judgment is not of much help. There can be no two views about the fact that the said award dated 26.06.2012 suffered from an apparent procedural error as noticed hereinabove. In these circumstances if the matter is deferred on account of pendency of the reference before the Supreme court the workmen would suffer grave injustice. As no stay was granted in these proceedings the Tribunal is already proceeding to adjudicate the Industrial dispute, wherein, the petitioner-employer can participate and defend itself thus no prejudice is being caused to it. Even if this Court were to quash the impugned order dated 15.01.2015 in view of Section 17-A , it would not stop at that but would also have to quash the award dated 26.06.2012, as, it could not by its action revive an illegal award and fail to do substantial and complete justice between the parties, therefore, pendency of the reference before the Supreme Court does not make much of a difference in facts of the present case.

16. Considering the aforesaid facts and reasons, as, substantial justice has been

done between the parties, no interference is called for in the instant writ petition. This order has been passed in the peculiar facts and circumstances of the case so as to secure the ends of justice and to avoid grave miscarriage of justice to the workman on account of the apparent error committed by the Tribunal while passing the award dated 26.06.2012.

17. The writ petition is accordingly dismissed.