
(2010) 08 JH CK 0098
In the Jharkhand High Court
Case No : W. P. (L) No. 2168 of 2006

Central Mine Planning and Design Institute Ltd.	APPELLANT
Vs	
Union of India (UOI) and Their workman Sri Bahrain Tiwari	RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 17, 17A, 20

Citation : (2010) 08 JH CK 0098

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pradeep Kumar, J.—Heard learned Counsel for the Petitioner and learned Counsel for the Respondent.

2. Learned Counsel for the Petitioner-CMPDI by this writ application has prayed for issuance of an appropriate writ/writ(s) in the nature of certiorari for quashing the order dated 8.6.2005 passed by the Central Govt. Industrial Tribunal No. II, Dhanbad in Miscellaneous No. 3 arising out of Reference Case No. 9/1994 whereby the Presiding Officer, Industrial Tribunal No. II has recalled the ex parte Award passed on 31.3.2003 after publication in the official Gazette and when the court became functus officio; and for issuing another writ or writs as may be deem fit and proper.

3. Learned Counsel for the Petitioner submits that it has been held by Hon"ble Supreme Court in the case of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, that the Industrial Tribunal has an inherent power to set aside an ex-parte award subject of course to the condition that the same has not been published in the Gazette and the same has also been followed in the case of Sangham Tape Company Vs. Hans Raj, . It is further submitted that in Sangham Tape Company also it was held that it has been laid down in the case of Grindlays Bank that "such jurisdiction could be exercised by the Labour Court

after thirty days. It was held that once an award becomes enforceable in terms of Section 17A of the Act, the Labour Court or the Tribunal, as the case may be, does not retain any jurisdiction in relation to setting aside of an award and as such the impugned order is bad in law and fit to be quashed."

4. On the other hand, learned Counsel for the Respondents submits that both the judgments relied on by the Petitioner, are not applicable in the instant case since in the instant case the application for setting aside the award was filed within 30 days of the ex-parte award passed by the Tribunal. It will appear from the impugned order dated 8.6.2005 itself that the award was passed in Reference Case No. 9/94 vide Order No. 30 dated 31.3.2003 and just after three days the petition for setting aside the said order and recalling the same was filed on 3.4.2003, therefore, the case relied upon by the Petitioner is not applicable.

5. Learned Counsel for the Respondents has relied upon a decision reported in 2001 LLR 257 in the case of Anil Sood v. Presiding Officer, Labour Court II wherein it was held that if an application has been made within 30 days and the courts find that there is sufficient ground then the same can be entertained and the Tribunal can set aside the award, in accordance with law. He has also relied upon a decision reported in Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, itself wherein it was held that since application was made within 30 days, Tribunal was competent to entertain it.

6. After hearing both the parties and going through the judgments relied upon by the parties, it is crystal clear that both the parties have relied on the judgments of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, as also reported in Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, and in para 14 of the said judgment the Hon"ble Supreme Court has laid down the ruling as under:

The contention that the Tribunal had become functus officio and, therefore, had no jurisdiction to set aside the ex pane award and that the Central Government alone could set it aside does not commend to under Sub-section Section 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable u/s 17A u/s 17A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication u/s 17. The proceedings with regard to a reference u/s 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and up to dud date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable u/s 17A. In that instant case, the Tribunal made the ex parte award on 9.12.1976. That award was published by the Central Government in the Gazette of India dated Dec 25, 1976. The application for setting aside the ex parte award was filed by Respondent No. 3, acting on behalf of Respondents Nos. 5 to 1 on 7.01.1977 I.e. before the expiry of 30 days of its publication and was, therefore, rightly entertained by the

Tribunal It had jurisdiction to entertain it and decide it on merits.

7. In that view of the matter, since the case of the Petitioner is similar to the case of the Grindlays Bank and in the instant case also since an application for setting aside the ex parte award, for the reasons stated therein, was filed just after three days of the passing of the award i.e. on 3.4.2003.

8. In that view of the matter, the learned Tribunal rightly passed the award in both the cases relied on by the Petitioner i.e. in the case of Sunitadevi Singhania Hospital Trust and Anr. No. doubt, the court relied on the same judgment of Grindlays Bank (Supra) and, found at para-9 of the case that "it is not in dispute that in the instant case, the High Court found as of fact that the application for setting aside the award was filed before the Labour Court after one month of the publication of the award" and in that case rightly the prayer for setting aside the award was refused.

9. In the case of Sangham Tape Co. v. Hans Raj, also it has been found by the Court at para-9 that "it is not in dispute that in the instant case, the High Court found as of fact that the application for setting aside the award was filed before the Labour Court after one month of the publication of the award".

10. Both the cases relied on by the Petitioner are irrelevant and the instant case is similar to that of Grindlays Bank wherein also the application for setting aside the award was filed within 30 days and in the instant case since it has been find within 3 days, hence there is no illegality or perversity in the impugned order dated 8.6.2005 passed by the Central Government Industrial Tribunal No. II, Dhanbad in Misc. Appeal No. 3 arising out of Ref. Case No. 9 of 1994.

11. I find no merit in the writ application and the same is accordingly dismissed.