
(1968) 12 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No. 2289 of 1966

Damodardas Bhagavandas (Private) Ltd.

APPELLANT

Vs

Poona Labour Union and Another

RESPONDENT

Date of Decision : 04-12-1968

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(4)

Citation : (1969) 2 LLJ 496

Hon'ble Judges : N.L. Abhyankar, J;D.P. Madon, J

Bench : Division Bench

Judgement

Madon, J.—This is a petition under Art. 227 of the Constitution which seeks to set aside an award dated 11 July, 1966 made by respondent 2, the industrial tribunal, Bombay, and an order dated 13 September, 1966 made by respondent 2, holding that he had no jurisdiction to set aside the said award and dismissing the petitioner's application to set it aside.

2. Respondent 1 is a trade union which represents the workmen of the petitioner-company. On 12 April, 1965, certain demands were raised by respondent 1 on behalf of the petitioner's workmen. On 13 July, 1965 the demands of the petitioner's workmen relating to fixing of pay-scales, leave and permanency were admitted in conciliation by the conciliation officer. As the conciliation proceedings proved infructuous, the conciliation officer, on 31 December, 1965, made his report to the Government of Maharashtra under S. 12(4) of the Industrial Disputes Act, 1947. On 16 February, 1966, the Government of Maharashtra referred the said demands to respondents 2 for adjudication under S. 10(1)(d) of the Industrial Disputes Act. Thereafter, by a notice dated 22 February, 1966, the petitioner-company was called upon to file its written statement on or before 18 March, 1966. The time to file the written statement was subsequently extended on 10 March, 1966. By its notice dated 25 May, 1966 the tribunal intimated to the parties that the hearing would take place on 1 July, 1966. The petitioner-company neither filed its written statement nor remained

present at the time of hearing and an award was passed by respondent 2 on 26 July, 1966 and was published in the Maharashtra Government Gazette on 4 August, 1966. Thereafter the petitioner filed an application before respondent 2 requesting him to set aside the said award and to hear the matter afresh. Respondent 2 held that he had no jurisdiction to entertain the said application and, accordingly, he rejected the said application by his order dated 13 September 1966. It is against the said award and the said order that the petitioner has approached this Court under Art. 227.

3. We really do not think it necessary in this case to consider the question whether the industrial tribunal has jurisdiction to entertain an application to set aside an award passed in the absence of one of the parties in an application made by such party, since in our opinion no facts or circumstances are disclosed in the petition to induce this Court even to exercise his discretion and set aside the award and direct a rehearing of the dispute. The grounds for seeking to set aside the said award urged in the petition are :

"The petitioner humbly submits that the responsible person, V. P. Sugandhi on whose decision the entire affairs of the management are being conducted, was sick and down with heart-attack from 26 February, 1966 till 30 July, 1966 or there about and in view of his deteriorated condition of health, it was not possible for any other member of the management to either approach him or to seek any instructions in the matter, as a result of which the above matter went unattended. The management thought that it was the duty of the management to inform the tribunal the difficulty with the management, but the management could not intimate the same as they were totally unaware of the proceedings before this tribunal. On account of the weak financial position also the management was not in a position to seek legal advice in the matter in the absence of the consolation of the ailing member of the management. For the aforesaid reasons, the management could not attend the matter and the Court was pleased to decide it ex parte as a result of which the huge and heavy burden is imposed upon the management which burden the management cannot bear in view of the very weak and critical financial position."

4. This is the very same ground which was set out in the application to set aside the said award filed by the petitioner before respondent 2. Now it is somewhat surprising that neither the said application to set aside the award nor this petition contains any particular as would be requisite to satisfy the Court about the truth of these allegations. The exact position of the said V. P. Sugandhi in the petitioner-company is not mentioned. No medical certificate has been produced to show that the said Sugandhi was in fact suffering from a heart-attack as alleged. It is not mentioned who were the other members of the management and what work they were attending to. It is also difficult to understand how the management thought of taking legal advice but could not do so on account of its alleged weak financial position when it is alleged that it was wholly ignorant about the pending industrial dispute on account of the illness of the said

Sugandhi. There is also no explanation as to why the time to file written statement was extended by the tribunal. Presumably, it could have been only on an application made by the petitioner. In these circumstances, we do not think that the petitioner has made out any case at all for setting aside the said award and having the matter reheard.

5. So far as the attack on the said award is concerned, the material facts are that the petitioner-company which was started about fifty years ago, manufactures perfumed agarbathis. There are 35 workmen employed in the petitioner-company, out of whom 33 are women, most of them being widows. These workers are daily-rated and they get a salary of Rs. 1.25 per day which is consolidated at about Rs. 32 for 26 working days. The tribunal has held these wages to be below the starvation level. After referring to the affidavit filed on behalf of the union, the tribunal has set out the minimum wages received by workers in certain industries. The tribunal has also referred to the wages received by domestic servants and has held that, in the circumstances, a fair and proper wage-scale should be Rs. 75 - 2 - 99 per month in respect of unskilled workers, Rs. 90 - 3 - 114 per month for semiskilled workers, and Rs. 100 - 4 - 120 per month for skilled workers. It is the submission of Sri Agarwal, learned advocate for the petitioner, that the tribunal erred in law in directing its attention merely to the minimum wages for scheduled industries in the Greater Bombay area and that it ought really to have taken into consideration the minimum wages for scheduled industries in the Poona zone. We do not think that this is a proper reading of the award. The tribunal has not fixed the wage-scale on the basis alleged by the petitioner. The tribunal has merely referred to these minimum wages as also to wages received by domestic servants to show how far below the minimum wage-level were the wages received by the petitioner's employees and to bring out forcibly the fact that these wages were below the starvation level. We see nothing contrary to any established principle or the provisions of any law in the wage-scale fixed by the tribunal. The tribunal also awarded that workmen should get seven days' casual leave per year with full wages and ten days' sick leave with half wages with permission to accumulate it for twenty days and further that all the workers in the petitioner-company who had put in more than six months' service should be made permanent. No arguments have been advanced before us on this part of the award.

6. In the circumstances, the petition fails and is dismissed. The petitioner-company to pay to respondent 1 the costs of the petition. Rule discharged.