

(2005) 11 RAJ CK 0073

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 944 of 2001

Divisional Forest Officer

APPELLANT

Vs

Ram Kalyan and Another

RESPONDENT

Date of Decision : 21-11-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 11, 17A

Citation : (2006) 110 FLR 74 : (2006) 1 RLW 777 : (2006) 2 WLC 61

Hon'ble Judges : Shiv Kumar Sharma, J; Harbans Lal, J

Bench : Division Bench

Advocate : M. Rafiq, A.A.G, for the Appellant;

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—Heard.

It appears that the exparte award was passed by the learned Labour Court, Kota on May 31, 1995 and it was published in the gazette on September 11, 1995 and it became enforceable u/s 17A of the Industrial Disputes Act, 1947 on October 11, 1995 after the expiry of 30 days from the date of its publication. As application for setting aside the award was filed by the Divisional Forest Officer, Jhalawar on February 29, 1996 i.e. after 5-1/2 months from the date of publication of the award. Learned Labour Court, Kota vide order dated March 12, 2001 dismissed the application on the ground that the court became functus-officio and could not call in question the award in any manner. Against the said order of the Labour Court, the Divisional Forest Officer, Kota filed writ petition before the learned Single Judge which was dismissed on July 25, 2001. the aforequoted orders have been assailed by the Divisional forest Officer in the instant special appeal.

2. We are of the opinion that application for setting aside the ex parte award was maintainable even after it was published in the Gazette and became enforceable.

3. In Anil Sood Vs. Presiding Officer, Labour Court II, their lordships of the

Supreme Court indicated that "the aspect that the party against whom award is to be made has to be given due opportunity to defend is a manner of procedure and not that of power in the sense in which the language is adopted in Section 11. When matters are referred to the tribunal or court they have to be decided objectively and the tribunals/courts have to exercise their discretion in a judicial manner without arbitrariness by following the general principles of law and rules of natural justice. The power to proceed ex parte is available under Rule 22 of the Central Rules which also includes the power to inquire whether or not there was sufficient cause for the absence of a party at the hearing, and if there is sufficient cause shown which prevented a party from appearing, then if the party is visited with an awarded without a notice, that is a nullity and therefore the Tribunal will have no jurisdiction to proceed and consequently, it must necessarily have power to set aside the ex parte award.

4. The ratio indicated in Anil Sood (supra), is squarely applicable to the facts of the instant case and the Labour Court in our view has committed illegality in dismissing the application of the appellant seeking setting aside of the ex- parte award. Learned Single Judge has also not properly considered this legal aspect.

5. We, therefore, allow this special appeal and set aside the orders dated July 25, 2001 and May 31, 1995 respectively passed by the learned Single Judge and the Labour Court, Kota camp Jhalawar. We remit the case to the Labour Court, Kola to reconsider the application of the appellant whereby the prayer for setting aside the ex-parte award was made.