
(1998) 06 GUJ CK 0022

In the Gujarat High Court

Case No : Special Civil Application No. 3405 of 1996

Executive Engineer and Kheda District Panchayat

APPELLANT

Vs

Govt. Labour Officer

RESPONDENT

Date of Decision : 19-06-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468
Industrial Disputes Act, 1947 — Section 17

Citation : (1998) 06 GUJ CK 0022

Hon'ble Judges : S.D. Pandit, J

Bench : Single Bench

Advocate : P.J. Patel, for the Appellant; V.B. Gerania and D.S. Vasavada, for the Respondent

Judgement

S.D. Pandit, J.—This SCA is on the board for final hearing since 16.6.96. Though intimations are sent to the learned advocate for the petitioners and though the matter was being adjourned every day from 15.6.96 till today, learned advocate for the petitioners as well as the petitioners have not turned out. Learned advocate for the respondents are present. The petitioners have already obtained stay against the implementation of the award and said stay is in operation for nearly ten months. I therefore, proceed to consider this petition finally on merits.

2. Respondent no. 2 S.U. Solanki had raised an industrial dispute and on account of his raising the said industrial dispute, a reference was made to the Labour Court at Nadiad bearing Ref. (LCN) No. 262 of 1984. Said reference was decided by the Labour Court, Nadiad on 28.2.91. As the said award passed by the Labour Court in the said Reference was not executed and implemented by the present petitioners, respondent no. 2 took up proceedings u/s 29 read with section 17-A of the I.D. Act before the Appropriate Authority i.e. respondent no. 1. In the said proceedings u/s 29 of the I.D. Act, a notice was issued to the present petitioners and hence present petitioners have come before this Court by this petition and the petitioners seek quashing of the said proceedings under sections 29 and 17-A

of the I.D. Act and to set aside the notice issued against them in the said proceedings.

3. It is contended by the petitioners that the said proceedings u/s 29 is barred by the provisions of section 468 Cr. P.C. in view of the fact that the award is dated 28.2.91 and therefore, the same deserves to be quashed and set aside.

4. When this petition came up before this Court for admission and getting interim stay of the said proceedings, my learned predecessor passed an order dated 27.8.97 granting interim stay ex-parte on condition that the orders in Reference (LCN) No. 262/84 should be implemented by issuing orders covering reliefs of reinstatement, continuity of service and back wages from the date of termination till the date of award dated 28.2.91. Learned advocate for the respondent no. 2 states that there is compliance of the said condition partly. He says that there is reinstatement of respondent no. 2 vide order dated 4.9.97 and there is also payment of back wages till 20.2.91.

5. In the petition one of the contentions raised was that against the award in Ref. (LCN) No. 262/84, the petitioners had filed writ petition No. 1942/96 and because of the pendency of the said petition, the respondent no. 2 was not justified in taking the recourse to the provisions of section 27 read with section 17-A of the I.D. Act. But it is very pertinent to note that it is not the claim of the petitioners that in the SCA No. 1942/96 the petitioners had obtained any stay order against the execution and implementation of the award passed by the Labour Court, Nadiad. Therefore, merely because the petitioners had filed a writ petition would not create an embargo against the respondent no. 2 to take proceedings u/s 29 read with section 17-A of the I.D. Act.

6. Now apart from this, as the position stands today, SCA No. 1942 has been dismissed on 13.8.96. Therefore, the statement made by the petitioners in their petition that said petition was pending when the matter came up for hearing on the first date, is not correct. No doubt the petitioners have filed the petition on 12.3.96. Therefore, on the date of petition, said earlier petition bearing SCA No. 1942 of 1996 was pending. But as said SCA has been ultimately dismissed, the continuation of the proceedings u/s 29 read with section 17-A could not be said to be improper or illegal. Not only that said SCA No. 1942 of 1996 is dismissed on 13.8.96, but appeal preferred against the said order is also dismissed. The petitioners had filed LPA being LPA No. 302/97 before this Court which is dismissed on 7.5.97. Therefore, it is quite obvious that the award passed by the Labour Court has now become final.

7. The main contention raised on behalf of the petitioners regarding maintainability of the proceedings u/s 29 read with section 17-A of the I.D. Act is the question of limitation. According to the petitioner in view of the provisions of section 468 Cr. P.C. the offence u/s 29 I.D. Act is punishable with imprisonment of 6 months and therefore, a complaint ought to have been lodged within one year from the date of publication of the award. But the offence u/s 29 I.D. Act

could not be said to be complete and concluded, (sic) if there is no compliance of the award or there is breach of the award within a period of one year only. The non-compliance of the award and commission of the breach of the award is a continuous wrong. A person who commits the breach of the award commits a continuing wrong and he commits the offence every day till the date he complies with the terms of the award passed by the Labour Court. Therefore, it is not correct to hold that the action u/s 29 could not be taken beyond a period of one year from the date of publication of the award. Therefore, I am unable to accept the contention raised by the petitioner that the action taken by the respondent no. 2 as well as respondent no. 1 is barred by law of limitation.

8. Therefore, in view of the above discussion it is quite clear that the petition is not tenable in law and the same deserves to be rejected. As there is no compliance of the terms of the award i.e. payment of back wages, and other benefits to the workman as per the award, the proceedings pending before the respondent no. 1 will have to continue. Therefore, the stay order granted on 18.11.97 will have to be vacated. Accordingly present petition is dismissed. Stay order issued by this court on 18.11.97 stands vacated forthwith. Rule discharged. No order as to costs.