

(1995) 07 MAD CK 0037

In the Madras High Court

Case No : Writ Petition No. 3728 of 1985

G. Ramalingam

APPELLANT

Vs

The Presiding Officer, I Additional Labour Court and Another

RESPONDENT

Date of Decision : 12-07-1995

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 48(2)

Industrial Disputes Act, 1947 — Section 17, 17(1), 17(A), 20(3), 33

Citation : (1995) 2 CTC 500 : (1995) 2 MLJ 541 : (1995) WritLR 719

Hon'ble Judges : Shivraj V. Patil, J

Bench : Single Bench

Advocate : Ms. S. Radha Gopalan, for the Appellant; R. Raghunathan, for the Respondent

Judgement

Shivraj V. Patil, J.—Heard the learned counsel for the parties.

2. The petitioner has filed this Writ Petition challenging the order dated November 24, 1984 passed by the first respondent in I. A. Nos. 452 and 453 of 1984 in I.D. No. 322 of 1981 and has sought for quashing the same.

3. Briefly stated, the facts which are considered necessary for the disposal of this writ petition are the following :

Petitioner is the owner of a Cinema Theatre by name Ramesh Theatre, Cudallore. The second respondent raised an industrial dispute over his non-

employment under sub-section (2) of Section 33-C of the Industrial Disputes Act, 1947 (for short, "the Act") and the same was referred for

adjudication to the first respondent in I.D. No. 322 of 1981. The petitioner had entrusted the management of the theatre temporarily to another

person and was living at Madras for certain domestic reasons beyond his control, and he was not posted with the information relating to the

hearing of the aforementioned industrial dispute before the first respondent. It is further stated that the first respondent had not sent any notice of

bearing under registered post-acknowledgment due, to the petitioner. However, the first respondent proceeded to pass an ex parte award on

January 24, 1983 which was published in the Tamil Nadu Government Gazette dated March 2, 1983.

4. According to the petitioner, one S. Regothama Rao son of T. Srinivasa Rao informed the petitioner at Madras about the award, as he had no

chance to know about the passing of the award. Thereafter the petitioner on June 27, 1984 filed I.A. Nos. 452 and 453 of 1984 for condonation

of delay in filing the application to set aside the ex parte award, and to set aside the ex parte award respectively. The first respondent dismissed the

said applications by a common order, which is impugned in this writ petition, placing reliance on the decision in "Grindlays Bank v. Central

Government Industrial Tribunal and Others" 1981 1 LLJ 327 SC and held that he had become functus officio when once the award had been

published. It is aggrieved by that order, the present writ petition is filed for quashing the same.

5. The second respondent has filed "a counter affidavit resisting the claim of the petitioner. It is contended that the affidavit sworn by one S.

Regothama Rao on behalf of the petitioner is not in order; and the writ petition filed by the petitioner is not maintainable on that account. It is

denied that no notice of hearing was sent to the petitioner by the first respondent. It is further submitted that the first respondent sent notices to the

petitioner for each adjourned date of hearing. The case was posted for enquiry before the first respondent on various dates and finally the award

was passed on January 24, 1983. The petitioner was fully aware of the award. It is further contended that after the publication of the award in the

official Gazette, the first respondent became functus officio and he had no jurisdiction to pass orders in I.A. Nos. 452 and 453 of 1984 having

regard to Section 17 of the Act. According to the second respondent, Rule 48(2) of the Tamil Nadu Industrial Disputes Rules, 1958 (for short,

"the Rules") has no application to the facts of the present case. Under the circumstances, the second respondent has prayed for the dismissal of the

writ petition.

6. Learned Counsel for the petitioner contended that the impugned order is unsustainable as the first respondent failed to take note of Rule 48(2)

of the Rules. The decision relied upon by the first respondent in dismissing the applications filed by the petitioner was the one passed without

reference to Rule 48(2) of the Rules. According to her, it is one thing to say that the delay could not be condoned, but it is yet another thing to say

that the first respondent had become functus officio and as such he had no jurisdiction to pass order. She prayed that the writ petition may be

allowed. the impugned order be set aside and the first respondent be directed to dispose of the application on merits having regard to Rule 48(2)

of the Rules.

7. Per contra, learned counsel representing the second respondent submitted that having regard to the plain and clear language of Sections 17 and

17-A of the Act, after publication of the award in the official Gazette, the first respondent became functus officio and he had no jurisdiction to

entertain the applications in I.A. Nos. 452 and 453 of 1984. According to him, the benefit of Rule 48(2) was available to the petitioner until the

time the award became enforceable, and if the argument of the learned counsel for the petitioner is to be accepted, then Rule 48(2) of the Rules

will have over-riding effect on Sections 17 and 17-A of the Act, which is not permissible. Thus, the impugned order, according to the learned

counsel for the second respondent, is perfectly valid and justified. In support of his submissions he placed reliance on the decision of the Supreme

Court in the case of "Grindlays Bank" referred to and relied on the impugned order itself.

8. I have considered the submissions of the learned counsel. The facts which are not in dispute are :

Ex parte order was passed by the first respondent on January 4, 1983 and thereafter an award was passed on January 24, 1983 pursuant to the

ex parte order. The award was published in the Tamil Nadu Government Gazette on March 2, 1983. The applications I.A. Nos. 452 and 453 of

1984 were filed by the petitioner before the first respondent on June 27, 1984 for condonation of delay and for setting aside the ex parte award

respectively. The said applications were dismissed by the first respondent by order dated November 24, 1984.

9. Section 17(1) of the Act states :

Every report of a Board or Court"" together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour

Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in

such manner as the appropriate Government thinks fit.

The award having been received, the same was published in the Tamil Nadu Government Gazette on March 2, 1983 as stated above in the case

on hand.

10. Section 17(2) states

Subject to the provisions of Section 17-A, the award published under sub-section (1) shall be final and shall not be called in question by any

Court in any manner whatsoever.

As per Section 17-A of the Act, the award shall become enforceable on the expiry of thirty days from the date of its publication u/s 17 of the Act

subject to certain conditions mentioned u/s 17-A. But none of these conditions exist in this case. In other words, the award became enforceable on

April 2, 1983. This being the position, the first respondent had become functus officio inasmuch as even the ex-parte award could not be called in

question before the first respondent for setting aside the same.

11. Rule 8(2) of the Rules read thus :

The Board, Court, Labour Court, or Tribunal or an Arbitrator may, for sufficient cause, set aside after notice to the opposite party, the ex parts

decision either wholly or in part, on an application made"" within 15 days of the ex-parte decision :

Provided that an application may be admitted after the said period of 15 days, if the applicant satisfies the Board, Court, Labour Court or Tribunal

or Arbitrator, as the case may be, that he had sufficient cause for not preferring the application within that period.

As could be seen from the Rule extracted above, the Board, Court or Tribunal may, for sufficient cause, set aside ex parts decision after notice to

the opposite party on an application made within 15 days from the date of the expatte decision, provided that an application may be admitted after

the said period of 15 days, if the applicant satisfies that he had sufficient cause

for the delay. This Rule does not advance the case of the petitioner

to state that such an application for condonation of delay can be filed even after the award was published in the official Gazette and became enforceable.

12. A harmonious construction has to be made between Sections 17, 17-A and 20(3) of the Act and Rule 48(2) of the Rules. The application has

to be filed under Rule 48(2) of the Rules before the award became enforceable u/s 17-A of the Act. In the instant case, having regard to the dates

mentioned above, the award became enforceable on April 2, 1983. The petitioner could not make the applications I.A. Nos. 452 and 453 of

1984 before the first respondent, inasmuch as the first respondent had become functus officio. This view gets support from the decision of the

Supreme Court in the case of "Grindlay Bank". (supra)

13. Sub-section (3) of Section 20 of the Act reads thus :

Proceedings before an arbitrator u/s 10-A or before a Labour Court, Tribunal or National Tribunal shall be deemed to have concluded on the date

of the reference of the dispute for arbitration or adjudication, as the case may be, and such proceedings shall be deemed to have concluded on the

date on which the award becomes enforceable u/s 17-A".

In this regard it is useful to extract a portion of paragraph 14 of the Judgment in "Grindlays Bank Limited" referred to above, which reads as

follows :

The contention that the Tribunal had become functus officio and, therefore, had no jurisdiction to set aside the award and that the Central

Government alone could set it aside, does not commend to us. Sub-section (3) of 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 under Sec. 17A. Under Sec. 17A of the Act, an

award becomes enforceable on the expiry of 30 days, from the date of its publication under Sec. 17. The proceedings with regard to a reference

under Sec. 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 that date it has the power to entertain an application in

connection with such dispute. That state is not reached till the award becomes enforceable under Sec. 17A.

14. Under Rule 48(2) the Board, the Court, Labour Court or Tribunal or an Arbitrator may, for sufficient cause, set aside, after notice to the

opposite party, the ex-parte decision either wholly or in part, on an application made within 15 days of the ex-parte decision, provided that an

application may be admitted after the said period of 15 days on satisfaction that the applicant had sufficient cause for not preferring such

application within that period. The reference in this Rule is to the ex-parte decision and not the Award. In view of Section 17(2), subject to the

provisions of Section (1) becomes final and shall not be called in question by any Court in any manner whatsoever. Further as per Section 17-A,

the award becomes enforceable on the expiry of 30 days from the date of its publication u/s 17 of the Act subject to certain conditions. As already

stated above, none of the conditions are attracted to the facts of this case. In the instant case the award became enforceable on April 2, 1983 as it

was published u/s 17(1) of the Act on March 2, 1983.

15. Thus having regard to the facts of the case on hand, in the light of the provisions of the Act and Rules extracted above, and in the light of the

decision of the Supreme Court aforementioned, without any hesitation, I hold that the benefit of Rule 48(2) of the Rules cannot be availed after the

award became enforceable in terms of Section 17-A of the Act. The proceedings before the first respondent (The Presiding Officer, First

Additional Labour Court, Madras) could be deemed to continue u/s 20(3) of the Act till the Award became enforceable on April 2, 1983. Thus

the first respondent retained jurisdiction over the dispute referred to it for adjudication until the expiry of 30 days from the publication of the Award

and not beyond that date. In this view the first respondent was right in dismissing the applications I.A. Nos. 452 and 453 of 1984 by the impugned

order which is unassailable.

16. In the result, for the reasons stated above, the writ petition is liable to be dismissed. Accordingly it is dismissed, but with no order as to costs.

17. At this stage, learned counsel for the petitioner submits that the second respondent is gainfully employed in some other cinema theatre. If that is

so, it is open to the petitioner to raise such plea and establish the same when the

second respondent makes a claim for back wages.

18. The learned counsel for the Respondent No. 2 submitted that in W.M.P. Nos. 6043 of 1985 and 282 of 1987 this Court passed an order on

April 21, 1987 making the interim stay absolute subject to the condition that the petitioner deposited to the credit of 1. D. No. 322 of 1981 a sum

of Rs. 15,8201- stated to represent the arrears of salary, bonus etc. upto date within four weeks from that date. It is stated that the petitioner had

deposited the said amount. If that be so, in view of the order passed dismissing the writ petition, the second respondent is entitled to withdraw the

said amount with accrued interest.