
(1987) 10 CAL CK 0004
In the Calcutta High Court
Case No : C.R. No. 10021 of 1982 (W)

Ganesh Chandra Sarkar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 27-10-1987

Acts Referred:

Industrial Disputes Act, 1947 — Section 15, 2, 20, 20(3)

Citation : (1994) 3 LLJ 157

Hon'ble Judges : A.K. Sen, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit Kumar Sen Gupta, J.—In this application under Article 226 of the Constitution the petitioner has challenged the award dated 19th May, 1981 and the order dated 25th May, 1982 passed by the First Labour Court. The facts of this case are stated hereinafter.

2. The petitioner was appointed as Driver in the Centre of Studies in Social Science, Calcutta in the time scale of Rs. 260-6-290-EB-6-326-8-EB-8-390-10-400/- by an Office Order dated 27th August, 1973. The petitioner was confirmed to the said post of Driver on 28th August, 1975. For the alleged failure to attend to duty on October 29, 1976, the services of the petitioner were terminated with effect from February 10, 1977.

3. The petitioner wrote a letter to the Deputy Labour Commissioner, Government of West Bengal, on 19th June, 1978 requesting him to intervene in the matter and to take appropriate steps for redressal of his grievances in accordance with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act). On 26th September, 1978 the petitioner wrote a letter to the Labour Commissioner, respondent No. 2 herein requesting him to intervene and to take effective action in view of the decision of the Supreme Court in Bangalore Water Supply v. Rajappa, (I): 1978 (1) LLJ 349. The Registrar of the said Centre wrote

a letter to the Labour Commissioner, contending that as the said Centre being an organisation where no production and/or distribution is carried on, it could not be legally deemed to be an industry and as such, there was no scope in law for the intervention of the Labour Commissioner in respect of the dispute sought to be raised by the petitioner.

4. On receipt of the representation of the petitioner, the Assistant Secretary to the Government of West Bengal, by his Order No. 4711-IR-IIL-439/79 dated 24-10-79 communicated the order of the Governor to refer the said dispute to the First Labour Court for adjudication. In the said Order of reference the First Labour Court was directed to examine the issue whether the termination of service of the petitioner was justified. If so, to what relief the petitioner was entitled to.

5. The First Labour Court, (hereinafter referred to as the said Labour Court) issued summons on 26-11-79 to the petitioner to appear before the said Labour Court on 18-12-1979 either personally or through an authorised representative for filing statement of case. It was mentioned in the said summons that in default of appearance of the petitioner at the hearing the matter would be liable to be heard and determined in his absence.

6. The petitioner filed an application before the Labour Court annexing therewith some relevant documents and papers requesting the Labour Court to rely on those documents and papers for effective determination of his case.

7. The said Centre filed a written statement on 5.2.1980 inter alia, stating that Labour Court should not entertain the claim of the petitioner to dismiss the petition filed by the petitioner.

8. The said Registrar of the Centre being respondent No. 7 herein, filed a petition before the Labour Court on 6.5.1980 setting out the aims and objects of the said Centre and also raised a preliminary objection as to the jurisdiction and competence of the Government of West Bengal to make the Order of Reference dated 24.10.1979. The Labour Court was directed not to entertain the reference.

9. The Labour Court submitted its purported award to the Government of West Bengal on 10.5.1981. The Labour Court held that the parties are no longer interested to proceed with the case and the industrial dispute between them ceased to exist. As such, the Labour Court passed an award on the footing that the industrial dispute under reference was no longer in existence. The instant reference was thus disposed of by a "no dispute award". By an order No. 1660-I.R./IR/IIL/433/79 dated 12th June, 1981 the Assistant Secretary to the Government of West Bengal, communicated the said purported Award passed by the Labour Court to the petitioner. The petitioner filed an application under Sub-rule (iii) of Rule 27 of the West Bengal Industrial Disputes Rules, 1958 (hereinafter referred to as the said Rules) before the Labour Court requesting it to set aside the said purported Award passed by the Labour Court on 19.5.1981 ex parte. The Registrar of the said Centre filed a written objection in answer to

the application filed by the petitioner dated 2.9.81 before the Labour Court. The petitioner filed additional statement in reply to the written objection filed by the employer on 9.12.1981 before the Labour Court on 15.1.1982.

10. By an order dated 25th May, 1982 the Labour Court rejected the petition of the petitioner for setting aside of the award dated 19th May, 1981 on the ground that the said petition was barred by limitation. The petitioner has challenged as indicated earlier the said award dated 19th May, 1981 and said order dated May, 1982 passed by the Labour Court.

11. Two main contentions have been urged. The first contention is that the impugned award dated 19th May, 1981 is in fact no award within the meaning of the Industrial Disputes Act, 1947. On 24th October, 1979 a reference was made by the West Bengal Government u/s 10 read with Section 2A of the said Act raising the following issue:

"Whether the termination of service of Shri Ganesh Chandra Sarkar is justified? To what relief, if any, he is entitled?"

12. On 10th May, 1981 the First Labour Court, inter alia , awarded as follows:

"After receipt of the reference notices in D/2 form were issued upon the parties fixing 18.12.79 for appearance. On 18.12.1979 both the parties appeared and filed letters of authority. On 12.1.1980 the workman filed written statement. The company filed written statement on 5-2-1980. The company filed list of documents on 29.2.1980. Thereafter several dates were fixed for hearing but the workman did not appear and ultimately 11.5.1981 was fixed for hearing the case on merits. On 11.5.1981 the parties were found absent and no steps were taken and the case adjourned on 19.5.1981 to 19.6.1981 the parties did not take any step.

It appears to me that parties are no longer interested to proceed with the case and the Industrial dispute between them ceases to exist, I accordingly pass an award on the footing that the industrial dispute under reference is no longer in existence.

This is my Award. The instant reference is thus disposed of."

13. It appears that at the hearing none of the parties appeared and accordingly the Labour Court disposed of the matter holding that the dispute ceased to exist. The Labour Court, in fact, rejected the reference which the Labour Court did not have any jurisdiction to do. Although the said award was published by the Government, the dispute still existed. It was the duty of the Labour Court to dispose of the matter on the basis of the materials and evidence on record. A reference dismissed by the Labour Court for default of the workman, even though published in the Official Gazette does not become an award as defined in Section 2(b) of the Act inasmuch as no adjudication is made by the Labour Court of the dispute referred to it. Unless there is an interim or final determination of the dispute or question relating thereto as contemplated by Section 2(b) the

Order of the Labour dismissing the reference merely on the ground of non-prosecution would not be an award within the meaning of Section 2(b). The Labour Court could have proceeded ex pane on the basis of the materials and evidence on record. That was not done. The Division Bench in the case of B.R. Herman and Mohatta (I) (Pvt.) Ltd, v. Seventh Industrial Tribunal, West Bengal (2) 1977 Lab IC 13 has held that no dispute award will not constitute an award. The reason is that there is no interim or final determination of the industrial dispute referred to the Labour Court nor of any question relating thereto within the meaning of Section 2(b). If the dispute cannot be settled in the absence of both the parties there would be no materials before it to decide such dispute. In such event no award is possible to be made under Rule 22 to submit a suitable report to the State Government and to put an end to the proceeding before the Tribunal. When both the parties fail to appear nothing remain pending before the authority concerned to whom the dispute is referred although the dispute remains outstanding and not adjudicated. In such event, Section 20(3) of the Industrial Disputes Act which provides for the termination of the proceedings cannot be attracted because no final or any award can be made whereby the dispute can be resolved.

14. When in first reference u/s 10 in absence of both the parties the Tribunal proceeded u/s 22 of the W.B. Rules on the footing that dispute under reference no longer existed and after passing no dispute in award submitted the same to State Government for necessary action such an award was not an award within the meaning of Section 2(b) of the Act. The publication of such an award has no meaning and Section 15 to 20 would have no application.

15. Rule 22 under the circumstances could not come into play except for the purposes of making a report. The Tribunal's jurisdiction was limited to decide the dispute on merits and not by holding that there was no dispute between the parties. So long as the dispute remained unsettled and the proceedings came to an end without adjudicating upon the dispute between the parties there was no bar under the Industrial Disputes Act whereby the Government was precluded from referring the disputes over again so that there might be an industrial adjudication of the dispute as contemplated by the said Act.

16. The expression "or of any question relating thereto" in Section 2(b) means any matter incidental to the industrial dispute. Therefore to constitute an award the main dispute might be decided first and thereafter any such matter or question relating to the main dispute might be decided or adjudicated upon, and "no dispute award" accordingly is not an award.

17. Even assuming that the First Labour Court made the award even then the said award suffered from infirmity. Rule 21 of the West Bengal Industrial Disputes Rules, 1958 provides as follows:-

"If without sufficient cause being shown both the parties fail to appear before a Board, Court, Labour Court, Tribunal or Arbitrator, the Board, Court, Labour

Court, Tribunal or Arbitrator may submit a suitable report to the State Government and the Labour Court, Tribunal or an Arbitrator may submit an award to the State Government on the footing that the Industrial Dispute under reference is no longer in existence".

18. It was, therefore, the duty of the Labour Court to consider the evidence or materials on record and to pass appropriate award. However, the Labour Court did not consider any of the documents or papers which were filed before it and accordingly the award is contrary to the provisions of Rule 21 of the said Rule and cannot be sustained.

19. The next question which calls for determination is whether the Labour Court should have recalled the "award" passed on 19th May, 1981. On 2nd September, 1981 the petitioner filed an application before the Labour Court, inter alia , praying for setting aside the said "no dispute award". The ground was that the workman was confined to bed since 15th April, 1981 in his native village and he could not contact his advocate or his representative on record, as a result whereof no steps could be taken by his learned advocate or representative at the hearing. It was also submitted in the said application that "no dispute award" was no award at all. He, therefore, requested the Labour Court to set aside the award dated 19th May, 1981 and hear the matter afresh on merits. A written statement was filed on behalf of the employer in December, 1981. The said application was heard by First Labour Court. The First Labour Court considered the judgment of the Division Bench of this Court in B.R. Herman and Mohatta (I) Pvt. Ltd. (supra) and held that "no dispute award" passed on 19th May, 1981 was not an award at all and the publication of such an award had no meaning and Section 15 to 20 of the said Act would have no application. The First Labour Court, however, held as follows:

"The award in this case was passed on 19.5.81 and application for setting aside the same was filed on 2.9.81. Therefore, this application for setting aside the award was filed long after 15th day from the date of the award. If it is assumed that 15th day from the date of the award means 15th day from the date of the publication of the award then also the application for setting aside the award was filed long after 15th day from the date of publication of the award as the award was published on 12.6.81. In any view of the matter this application for setting aside the award passed on 19.5.81 filed by the workman cannot be allowed as the same is time-barred. Accordingly the petition for setting aside the award filed by the workman is rejected".

20. The First Labour Court relied on Rule 27 (iii) of the West Bengal Industrial Disputes Rules, 1958 which reads as follows:

"The Labour Court, Industrial Tribunal or Arbitrator may for sufficient cause set aside after notice to the opposite party or parties as the case may be, the exparte award or an award on the footing that the industrial dispute under reference is no longer in existence of its/his own motion or on the application of

any of the parties".

21. The First Labour Court held that the award was made on 14th May, 1981 and it was published on 12th June, 1981 whereas an application was made for setting aside the award on 2nd September, 1981. So, it was filed long after 15th day from the date of publication of the award. Accordingly, the petition for setting aside the award was time-barred. It was, therefore, rejected. There is a fallacy in the conclusion of the First Labour Court. If it is held that no dispute award is not an award at all within the meaning of Section 2(b) of the Act then such an award could not have been published at all. In any event, it is immaterial whether such an award was published or not. There was no award and accordingly it could not have been acted upon. It is only when an award within the meaning of Section 2(b) is made and published, the question of limitation prescribed by the Rules of setting aside such an award arise. Where there is no such award, consequently there is no publication and the limitation of 15 days will not apply. The First Labour Court should have proceeded on the footing that there is no award and dispute did not cease to exist. The Labour Court had the jurisdiction to proceed on merits.

22. In *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, the Supreme Court considered the question whether the Tribunal had any jurisdiction to set aside an ex parte award particularly when it was based on no evidence. There the Supreme Court observed as follows:

"We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary".

"When Sub-section 1 of Section 11 expressly and in clear terms confer power upon the Tribunal to regulate its own procedure, it must necessarily be endowed with all powers which bring about an adjudication of an existing industrial dispute, after affording all the parties an opportunity of hearing. We are inclined to view that where a party is prevented from appearing at the hearing due to a sufficient cause, and is faced with an ex parte award, it is as if the party is visited with an award without a notice of the proceedings. It is needless to stress that where the Tribunal proceeds to make an award without notice to a party, the award is nothing but a nullity. In such circumstances, the Tribunal has not only the power but also the duty to set aside the ex parte award and to direct the matter to be heard afresh".

23. In view of the decision of the Supreme Court in *Grindlays Bank Ltd.* (supra) even if there is no express provision empowering the Labour Court to set aside an order or "no dispute award", the Labour Court is endowed with such power, which is necessary to discharge its functions effectively for the ends of justice. In such view of the matter the Labour Court should have set aside the impugned award and heard the reference on merits. The decision of *Grindlays Bank Ltd.* (supra) came up for consideration by the Supreme Court in *Satnam Verma v. Union of India* (3) : 1985 (1) LLJ 79. There the Supreme Court held as follows:

"In the case of *Grindlays Bank Ltd.*, the specific contention canvassed was whether where an ex parte award is made and published in the Official Gazette, the Industrial Tribunal has the jurisdiction to entertain the application for setting it aside if sufficient cause is shown for absence of appearance on the date on which an ex parte award was made and it was made and it was answered in the affirmative. This Court referred to Rule 22 and Rule 24 (b) of the Industrial Disputes (Central) Rules, 1957 and held that the Industrial Tribunal had the power to pass an order setting aside the ex parte order. In reaching this conclusion the Court observed that if the Tribunal has the power to proceed ex parte as provided by Rule 22 it should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. The Court then proceeded to examine the scheme of the relevant rules and observed that Rule 22, unequivocally confers jurisdiction on the Tribunal to proceed ex parte. The Tribunal can proceed ex parte if no sufficient cause for absence of a party is shown. This power was interpreted to comprehend that if sufficient cause was shown which prevented a party from appearing, then in the term of Rule 22 the Tribunal will have had no jurisdiction to proceed ex parte and consequently, it must necessarily have power to set aside the ex parte award. The Court in terms observed that the power to proceed ex parte is subject to the fulfilment of the condition laid down in Rule 22 and therefore it carried with it the power to enquire whether or not there was sufficient cause for the absence of a party at the hearing. The Court then referred to Rule 24(b) and held that where the Tribunal or other body makes an ex parte award, the provisions of O IX, Rule 13 of the CPC are clearly attracted and it logically follows that the Tribunal was competent to entertain an application to set aside an ex parte award. The Court then proceeded to examine the contention that once an award is published in the Official Gazette be it an ex parte one, does the Tribunal become functus officio and therefore, will have no jurisdiction to set aside the ex parte award and that as contended before us the appropriate Government alone could set it aside and reject it holding that no finality is attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Court held that the Tribunal had the power to deal with an application properly made before it for setting aside the ex parte award and pass suitable orders. We have extensively referred to this decision because it effectively answers all the limbs of the contention canvassed before us and which unfortunately, found favour with

the Labour Court and the High Court."

24. In my judgment the First Labour Court proceeded erroneously in not allowing the application for setting aside the "no dispute award" which in fact, is not an award within the meaning of this Section 2(b) of the Act.

25. For the reasons aforesaid this application is allowed. The rule is made absolute. The award dated 19th May, 1981 and the order dated 25th May, 1982 are set aside and quashed. Let appropriate writs be issued. Let the First Labour Court dispose of the case on merits within four weeks from the date of communication of this order.

26. Let a plain copy of this order and judgment countersigned by an officer of this Court be given to the learned Advocate appearing for the petitioner upon his undertaking to apply for and obtain a certified copy of this order.