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**(2002) 07 CAL CK 0046**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 7884 (W) of 2002**

Haran Chandra Naskar

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 30-07-2002

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10  
West Bengal Industrial Disputes Rules, 1958 — Rule 17(3), 27, 27(3)

**Citation :** (2003) 1 CALLT 228 : 107 CWN 128 : (2003) 97 FLR 867

**Hon'ble Judges :** Pranab Kumar Chattopadhyay, J

**Bench :** Single Bench

**Advocate :** Kashinath Roy and Gopa Das Mukherjee, for the Appellant; Jayanti Dhar, for Respondent No. 1, Dipak Kumar Ghosh and Ranjay De, for the Respondent

**Final Decision :** Allowed

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## Judgement

P.K. Chattopadhyay, J.—The workmen, Shri Haran Chandra Naskar was permanently working under the Management of M/s. Switz Foods Private Limited. The Management of the said M/s. Switz Foods Private Limited dismissed Shri. Haran Chandra Naskar (hereinafter referred to as "the workmen") on and from 17th May 2000. The Union raised an industrial dispute on behalf of the workman.

2. After failure of the conciliation proceeding, the Government of West Bengal referred the matter to the First Industrial Tribunal, Kolkata for adjudication of the issues mentioned in the order of reference dated 4th September 2001.

3. It has been submitted on behalf of the petitioner that concerned Government though made the reference but no intimation was given to the Union in this regard. It has been submitted on behalf of the Union that no notice was also received by the said Union from the learned Tribunal regarding pendency of the reference as a result whereof the said Union could not take any step in the proceeding before the Tribunal.

4. It has been submitted on behalf of the petitioner that the Union remained absent before the Tribunal and could not take part in the proceeding as the said Union never received any intimation regarding the pendency of the reference before the first Industrial Tribunal, Kolkata. The learned Tribunal, however, after receipt of the reference issued notices upon the parties and it appears from the award passed by the learned first Industrial Tribunal, Kolkata on 31st January 2002 that inspite of granting repeated opportunities the Union remained absent and did not take any step before the Tribunal. The learned Judge of the Tribunal accordingly, believed that the Union is not willing to contest the case as there is not dispute between the parties and accordingly passed a "No Dispute Award".

5. The learned counsel of the petitioner, however, submitted that as summons were not received by the Union, it could not appear before the Tribunal to contest the case and the learned Judge of the Tribunal wrongly came to a conclusion that there is no dispute between the parties and passed a "No dispute Award" although according to the learned counsel of the petitioner, the workman concerned represented by the Union has been severely prejudiced by the said "No Dispute Award" as the concerned workman and the Union also were all along willing to participate and to contest the case before the Tribunal.

6. It has been submitted on behalf of the Union that the said Union came to know in respect of the reference of dispute before the Tribunal only on 11th February 2002 but since neither any order of reference nor any summon was received by the said Union it was not possible on the part of the Union to take appropriate steps in the matter immediately thereafter.

7. Ultimately on 26th February 2002 the Union filed a petition before the respondent Tribunal praying for setting aside of the "No Dispute Award" passed on 31st January 2002. The said petition was heard by the learned Tribunal and ultimately the learned Judge of the First Industrial Tribunal rejected the aforesaid petition of the Union by the order dated 17th April 2002 on the ground that the prayer made in the said petition is barred by limitation as provided in second proviso of Section 27(iii) of the West Bengal Industrial Disputes Rules, 1958. Furthermore, the learned judge of the Tribunal was also not satisfied with the explanations put forward by the Union in the said petition dated 26th February 2002 for setting aside the "No Dispute Award" passed on 31st January 2002.

8. The petitioner thereafter filed this writ petition before this Court challenging the "No Dispute Award" dated 31st January 2002 and the subsequent order dated 17th April 2002 rejecting the petition of the Union for setting aside the said "No Dispute Award".

9. The learned counsel of the petitioner submitted that the Union representing the workman herein was very much eager to contest the case before the Tribunal and it was not possible on the part of the Union to participate in the proceeding before the Tribunal and to contest the case only because no copy of reference was ever forwarded to the Union and also the summon issued by the Tribunal

was never received by the Union.

10. The learned counsel of the respondent Company, however, strongly opposed this petition mainly on the ground of maintainability. Mr. Ghosh, learned counsel of the respondent Company referred to the provision of Section 27(iii) of the West Bengal Industrial Disputes Rules, 1958 and submitted that in view of the second proviso of the said rule, no application for review under Clause (iii) can be entertained on the expiry of the 15th day from the date of the award.

11. In the present case, admittedly the application for review was filed after the aforesaid period of limitation. Referring to the decision of the Division Bench of this Court reported in 1998 (1) CHN 266 (Ranigunj Chemical Works Majdoor Sangh and Anr. v. Ranigunj Chemical Work and Ors.), Mr. Ghosh submitted that by imposition of the aforesaid period of limitation. Rule Making Authority decided that the power vested u/s 27(iii) of the Rules can be exercised only within the period of limitation i.e. within 15th day from the date of passing of the award. Referring to the aforesaid decision of the Division Bench, Mr. Ghosh further submitted that the Tribunal cannot exercise any power inherent or otherwise for recalling and order or setting aside an order after the period mentioned in the second proviso the Rule 27(iii) of the West Bengal Industrial Disputes Rules, 1958 as the rule making authority has taken away the power of the Tribunal to entertain any application for recalling of an ex-parte order after expiry of 15 days from the date of the award.

12. Mr. Ghosh cited another decision of the Division Bench of this Court reported in Shiraz Golden Restaurant Vs. State of West Bengal and Others, and submitted that the Tribunal has no jurisdiction to recall its own order. According to Mr. Ghosh, learned Judge of the First Industrial Tribunal has rightly rejected the application of the Union for setting aside the "No Dispute Award" passed on 31st January 2002 as the said Tribunal had no jurisdiction to set aside and/or recall its order after the expiry of the prescribed period of limitation.

13. Before proceeding further, the provision of Rule 27 of the West Bengal Industrial Disputes Rules, 1958 should be carefully considered. The said Rule 27 of the West Bengal Industrial Disputes Rules, 1958 reads as follows :

Rule 27. Correction of errors and review of an award. -The Labour Court, industrial Tribunal or Arbitrator may -

(i) Correct any clerical or arithmetical mistake arising from an accidental slip or omission in ay award made by it or him, and

(ii) review an award on the ground of some mistake or error apparent on the face of the record, either of its/his own motion or on the application of any of the parties;

(iii) for sufficient cause set aside after notice to the opposite party or parties, as the case may be, the ex parte award or an award on the footing that the industrial dispute under reference is no longer in existence either of its/his own

motion or on the application of any of the parties.

Provided that no correction shall be made without previous notices to the parties or opposite party, as the case may be:

[Provided further that no application for review under Clause (iii) shall be entertained on the expiry of the 15th day from the date of the award].

14. Sub-rule (i) relates to correction of errors akin to circumstances envisaged in Section 152 of the Civil Procedure Code.

15. Sub-rule (ii) is concerned with review on the ground of mistake or error on the face of the award.

16. On a careful analysis of the Sub-rule (iii), it appears that power has been given to the Labour Court, Industrial Tribunal or Arbitrator to correct errors and review an order, award or to set aside an ex-parte award or an award on the footing i.e. on the ground that the industrial dispute under reference was no longer in existence. This can be done by the Labour Court, Industrial Tribunal or Arbitrator on its own motion or on the application of any of the parties.

17. It has to be noted that Sub-rule (iii) empowers the Labour Court, Industrial Tribunal or Arbitrator to set aside an ex parte award or an award provided on merits it appears that the Industrial Dispute under reference is no longer in existence. Therefore an exceptional or rather an extraordinary power has been conferred under the said Sub-rule (iii) to set aside an ex parte award or an award (although the proceeding may have been heard on contest) provided the condition laid down in Sub-rule (iii) is fulfilled.

18. Normally, the pronouncement of an adjudicating authority upon hearing the contesting parties is final and it cannot be reopened except under express provision of law.

19. The aforesaid sub-rules have been framed in connection with a beneficial legislation namely the Industrial Dispute Act, 1948. The object of the rule is to ensure that injustice is not done in the name of technicality.

20. The rules have to be constructed in order to promote the dominant purpose of the Act and in consonance with justice. I find that there is no reason to extend the scope of the said Rule 27 to any application other than the review application as contemplated under the said sub-rules to Rule 27.

21. One must keep in mind the distinction between an application for review and an application for recalling an order.

22. An application for review is made where a decision on merits is ought to be reconsidered on limited grounds enabling a review. Sub-rules of Rule 27 indicate the circumstances in which the review application can be filed. In a review application, the merits of the order proposed to be reviewed are always in issue though the grounds for review may be limited. The adjudicating authority or the

Court has to be convinced that the order, though passed on merits after considering the facts and circumstances of the case, requires to be reviewed and set aside or altered for specific reasons and on limited grounds.

23. In contrast, in an application for recalling an ex-parte order the merits of the order sought to be recalled are not in issue. The Court or the adjudicating authority is only concerned with the question whether there are sufficient causes for non-appearance of the party so as to set aside the ex-parte order. In other words, the Court or the adjudicating authority has to be satisfied that there was sufficient cause for non-appearance of parties when the matter was taken up for hearing. The Court is not required to go into the merits of the order proposed to be recalled since those are not in issue in an application for recalling an ex-parte order.

24. Circumstances are not unknown where an ex-parte order was set aside by the appellate Court on merits but was not recalled by the Court passing the order on the ground that there was no sufficient cause for non-appearance of the party when the matter was called on for hearing and vice-versa. Therefore, Rule 27, which deals with review, has no application whatsoever when a party applies for recalling of an ex-parte award.

25. In this connection one may also refer to the observation of the Hon'ble Supreme Court of India in the case reported in 1993 (4) SCC 595 (S. Nagaraj v. State of Karnataka) Paragraph 18.

"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher Courts is founded on equity and fairness....."

26. In the case reported in United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, the Supreme court observed as follows:

"17.....No Court or Tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim."

27. In the case reported in Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, , the Supreme Court observed as follows:

"10.....We are inclined to the 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."

"6. ....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 purpose of doing justice between the parties....."

"14.....There is no finality attached to an ex-parte award because it is always subject to it being set aside on sufficient cause being shown. 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."

28. Supreme Court has thus made it abundantly clear that the Courts of law have to do justice. The interpretation by which the scope of Rule 27 (which deals with review applications only) is sought to be applied in respect of recalling applications is not acceptable as otherwise it would amount to using procedural law to prevent justice being done. One cannot narrate nor visualise all circumstances which may amount to sufficient causes for filing an application for recalling of an ex-parte order or award and I also do not propose to do so. Sufficient cause is a phrase which is incapable of precise definition. Courts have not attempted to rigidly define what is "sufficient cause" and rightly so. Sufficient cause varies from case to case and the Court will have to decide whether sufficient cause exists in the facts and circumstances of each case.

29. The petition filed by the Union representing the workman for recalling the "No Dispute Award" cannot be treated as an application by the Union under Rule 27 (iii) of the West Bengal Industrial Disputes Rules, 1958 and as such the prescribed period of limitation for filing an application under Clause (iii) cannot be made applicable in respect of the aforesaid petition filed by the Union for recalling of the " No Dispute Award".

30. For the aforementioned reasons, I am of the view that the decisions of the Division Bench of this Court as cited by Mr. Ghosh namely Raniganj Chemical Works Mazdoor Sangh and Anr. (supra) and Shiraz Golden Restaurant (supra) have no manner of applications in the facts of the present case.

31. Furthermore, it has neither been established nor even the learned Judge of the Tribunal held that the petitioner Union had ever received any intimation from the State Government in respect of the order of reference nor the said Union received any summon from the Tribunal in connection to the proceeding. So, it can be said without any hesitation that the Tribunal passed the award without notice to the petitioner Union and as such the award is nothing but a nullity as observed by the Supreme Court in the case of Grtndlays Bank Ltd.(supra).

32. Accordingly, the Tribunal should have set aside the ex-parte award and the matter should have been directed to be heard afresh. By not doing so, the

Tribunal has committed a serious error as it has already been observed by the Supreme Court in the case of Grindlays Bank Ltd. (supra) that there is no finality attached to an ex-parte award as the same is always subject to be set aside on sufficient cause being shown.

33. In the present case, admittedly, it has not been established before the Tribunal that the petitioner Union had any knowledge and/or information in respect of the order of reference or the pendency of the proceeding before the Tribunal and as such the learned Judge of the Tribunal should have treated the explanations put forward by the petitioner in the petition for recalling the ex-parte award as sufficient cause and without any hesitation the said learned Judge of the Tribunal should have set aside the ex-parte award as the said award was made without notice to the most vital party.

34. Furthermore, on behalf of the workman, Union filed an application for recalling of the "No Dispute Award" passed by the Tribunal and thereafter this writ petition has been filed before this Court challenging the orders passed by the said Tribunal which demonstrates that the workman and the Union are very much keen for adjudication of the issues referred before the Tribunal on merits.

35. Unfortunately, the issues referred before the Tribunal were never adjudicated on merits although in order to prevent injustice and to ensure justice those issues should be decided by the appropriate legal forum on merits. Accordingly, in the instant case, the learned Judge of the Tribunal should decide the issues referred before it on merits avoiding any technicality.

36. Considering the facts as mentioned in this petition, it cannot be said that the workman concerned or the Union were not at all interested to contest the case and/or to participate in the proceeding before the Tribunal. Accordingly, the learned Judge of the Tribunal erroneously came to a conclusion that the Union is not willing to contest the case as there is no dispute between the parties. The subsequent finding of the learned Judge of the Tribunal rejecting the explanations made on behalf of the Union and dismissing the petition filed by the said Union on 26th February 2003 is also not acceptable to this Court. It has not been established before the Tribunal that the Union or the workman concerned in spite of having specific knowledge did not participate in the proceeding as a result whereof the Tribunal had to pass the "No Dispute Award". Thus, I am of the view that the "No Dispute Award" passed by the learned Tribunal on 31st January 2002 and the subsequent order passed by the said Tribunal on 17th April 2002 are devoid of any merits and cannot be sustained.

37. For the aforementioned reasons, the "No Dispute Award" passed by the learned Tribunal on 31st January 2002 and the subsequent order dated 17th April 2002 are set aside. The Tribunal is directed to decide the issues referred before it on merits and strictly in accordance with law after giving adequate opportunity of hearing to the respective parties. The Tribunal is also directed to issue fresh notice to the parties intimating the next date of hearing.

The writ Petition is thus allowed.

There will be, however, no order as to costs.

Let xerox certified copy of this judgment be made available to the respective parties, if applied for, on urgent basis.