
(2017) 09 CAL CK 0036
In the Calcutta High Court
Case No : 403of 2017

JAGANNATH DEY

APPELLANT

Vs

BHARAT SANCHAR NIGAM LTD.& ANR.

RESPONDENT

Date of Decision : 12-09-2017

Acts Referred:

Constitution of India, Article 226, Article 12 - Power of High Courts to Issue certain writs - Application of Acts of Parliament and of the Legislature of the State of Assam to autonomous distr

Citation : (2017) 09 CAL CK 0036

Hon'ble Judges : Sambuddha Chakrabarti

Bench : SINGLE BENCH

Advocate : A.K.Sanyal, Tarun Kumar Ghosh, Ujjal Kumar?Bhattacharyya, S.Ghosh, Bhaskar Sen, Anil Kumar Gupta

Judgement

1. The petitioner is praying for enforcement of the Award passed by the Central Government Industrial Tribunal in Reference No.3 of 1996, passed on January 2, 2002.
2. The point is very well settled that the writ jurisdiction of the Court cannot be invoked either for execution or for tribunal. implementation of an Award passed by an industrial The law has been settled about 50 years ago by a learned Judge of this Court in the case of K.M.Mukherjee versus Secretary and Treasurer, SBI and OtherRs.reported in AIR 1968 Cal 59.
3. The learned Judge has unambiguously held that the Award of an industrial tribunal is the decision arrived after an industrial adjudication and, therefore, cannot have more statutory force than the decree of a civil court.
4. Both of them may be executed or otherwise employed in the manner provided in the relevant law but cannot be enforced by a writ of mandamous as an instrument having the force of law of itself.

5. Mr.Sanyal, learned Advocate appearing for the petitioner initially submits that the law since then has undergone a vast change and since the scope of Article 226 of the Constitution of India is wider than issuing merely prerogative writs, there is no reason why the High Court in exercise of its power under Article 226 should not execute an Award.

6. In support of his contention Mr.Sanyal has relied on the judgment in the case of Dwarka Nath versus Income Tax Officer, reported in AIR 1966 SC 81 for a proposition that the High Court can issue writs in the nature of prerogative writs as understood in England but the scope of those writs is also widened by the expression nature which does not equate the writs that can be used in India with those in England. to issue even directions, prerogative writs. orders The High Court is entitled or writs other than the Mr.Sanyal further relied on the case of State of West Bengal and Others versus Committee for the Protection of Democratic Rights, West Bengal and Others, reported in AIR 2010 SC 1476 for a proposition that the power of judicial review conferred on the High Court is in a way wider in scope and the High Courts are authorised to issue directions, orders or writs to any person or authority to enforce fundamental rights for other purposes.

7. From those Mr.Sanyal wanted to build up the case that the powers of the Court under Article 226 is unfettered for undertaking any task of judicial review.

8. That the power of the High Court under Article 226 of the Constitution of India is not restricted to issuing merely prerogative writs only and that in an appropriate case High Court may issue orders or directions is a settled proposition of law requiring no authority for the same.

9. But that does not mean that a writ has to be issued merely on the asking irrespective of the circumstances justifying its issue. If the judicial decisions have conferred very wide power on the High Court to issue writs or orders in a deserving case, the limitations set on the power of judicial review are no less few.

10. The writ jurisdiction cannot be invoked in all matters merely because the Court is empowered to pass necessary orders and directions along with the writs.

11. The judgements relied on by the petitioner speak of High Courts power of judicial review.

12. For example, in the case of State of West Bengal and Others (supra).the Supreme Court has specifically held that the High Court is entitled to issue various orders or directions for the exercise of judicial review and for enforcement of any legal right conferred by a statute. can be said Execution of an Award by no stretch of imagination to be a judicial review of an act passed by a statutory authority or an inaction on the part of the State within the meaning of Article 12 of the Constitution of India.

13. Mr.Sanyal argued, without much force though, that if an Award of petition an he industrial finds no tribunal reason why can it be challenged cannot be in a writ

enforced.

14. The reasons are not very far to seek.

15. If an Award is vitiated by any of the well accepted factors for which an interference by Court is permitted, the Court can interfere in exercise of its power of judicial review, but when the Court is asked to execute the Award, it was not reviewing the Award passed by a statutory tribunal.

16. Mr.Sanyal submitted that the learned Single Judge (D.Basu, J.) was oblivious of the larger scope of Article 226 of the Constitution of India in not keeping in mind the High Courts power to issue orderRs.directions, etc., over and above the five writs.

17. Apart from the fact that these borders on near impossibility, I for one do not wish to buy such a sacrilegious statement.

18. When a judgement says something positively until and unless that is set aside or overruled by an equally positive judgement or a statute of law, the earlier judgement holds the field. even A judicial decision may be expressly overruled. be impliedly overruled by subsequent It may judgements.

19. But the positive finding of a court cannot be said to have been overruled or even overreached by the subsequent judgements on an altogether different point.

20. It has further been submitted by the petitioner that the judgement reported in A.I.R.1968 SC59is a obiter inasmuch as the High Court while dealing with Sastri Award which was not a statutory one, dealt with an Award passed by an industrial tribunal.

21. I am afraid, such a distinction cannot be sustained nor the judgement can be called an obiter as Justice Sastri(Retd.) was appointed as an industrial tribunal under Section 7 of the Act and certain disputes were referred to the tribunal for an adjudication under Section 102 of the Act. 1953 was known as Sastri The Award given by the tribunal in Award.

22. Subsequently, a National Industrial Tribunal was set up by the Government and the several disputes were referred to the tribunal under Section 10 of the Industrial Disputes Act.

23. It modified and substituted the terms of the Award in certain respects.

24. Therefore, it was definitely an Award passed by the tribunal which came up before this Court for execution.

25. The submission of Mr.Sanyal must be the result of non-appreciating the nature of the Sastri Award as if it was a private Award.

26. Further, after recording the factual aspect relating to that particular matter His Lordship decided to lay down the general law relating to enforceability of an Award passed by an industrial jurisdiction. tribunal through the modus of the writ

It is not a case that the discussion about the restraints on the power of the Court in exercise of the writ jurisdiction was not relevant for the disposal of the writ petition.

27. Mr.Sanyal lastly argued that the Industrial Disputes Act was an act, which did not contain any in-built mechanism for enforcement of an Award.

28. This again must be the result of non-appreciation of the scope of the Act in its entirety.

29. The Industrial Disputes Act itself provides the mode in which an Award may be enforced.

30. A party aggrieved by breach of it may most certainly have his relief under the general law.

31. Section 29 of the Act provides for penalties, both in the form of fine as well as imprisonment for breach of the Award.

32. Over and above that Section 33(c) provides adequate relief to a person complaining non-compliance of an Award passed under the Industrial Disputes Act.

33. That the substratum of the submission of the petitioner about the permissibility of the Writ Court to entertain a petition for enforcement of an Award has not been approved by superior Courts even in subsequent orders becomes obvious from the judgement in the case of Management of M/S.Mysore Structural Limited and Others versus State of Karnataka and Another, reported in (2002) 1 SCC477 The Supreme Court while disposing of the appeals held that the Award passed by the Labour Court had become final and the remedy available to the workman was under Section 29 of the Act.

34. The doors of the Writ Court, even about three and half later, decades were not thrown open for the purpose of enforcing an Award passed by an industrial tribunal.

35. Thus, I find no merit whatsoever in the writ petition as well as in the stand taken by the petitioner.

36. WP No.403 of 2017 is dismissed.

37. There shall be no order as to costs.