

(2010) 03 MAD CK 0099

In the Madras High Court

Case No : Writ Petition No. 4195 of 2010 and M.P. No. 1 of 2010

M. Kumarasan

APPELLANT

Vs

The Presiding Officer, Additional Labour Court and A.
Ramachandran

RESPONDENT

Date of Decision : 02-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1, Order 17 Rule 2, Order 17 Rule 3, Order 9 Rule 13
Constitution of India, 1950 — Article 226
Industrial Disputes (Central) Rules, 1957 — Rule 22, 24
Industrial Disputes Act, 1947 — Section 11(1), 17A, 38
Tamil Nadu Industrial Disputes Rules, 1958 — Rule 43(1), 48

Citation : (2010) 03 MAD CK 0099

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : John, for T.S. Gopalan and Co, for the Appellant;

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner is the management. He has come forward to file a present writ petition, seeking to challenge an Award of

the first respondent Labour Court made in I.D. No. 134 of 2006, dated 29.10.2009. The said Award was an ex-parte Award. After setting the

petitioner management ex-parte, the Labour Court examined the workmen second respondent and marked Exs.W.1 and W.2 and allowed the

claim made by him.

2. It is the claim of the management that the second respondent has filed an application before the Labour Officer, Vellore, seeking prosecution of

management for non implementation of the Award. The petitioner relied upon a judgment of this Court in 1997-1-LLJ 923 and stated that even the

impugned order did not give any reasons and therefore, it is liable to be set aside. It was also claimed that they have no other remedy except to approach this Court under Article 226 of the Constitution.

3. Heard Mr. John, learned Counsel appearing for M/s. T.S. Gopalan and Co. The statement that there is no other alternative remedy cannot be countenanced by this Court. Such a statement is incorrect in view of Rule 48 of the Tamil Nadu Industrial Dispute Rules, 1958. For the sake of convenience, the entire rule may be reproduced as below:

48. Ex-parte proceedings.-(1)If, without showing sufficient cause any party to proceedings before a Board, Court, Labour Court, Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal or the Arbitrator may proceed as if the party had duly attended or had been represented.

(2) The Board, 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, 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.

(3) An application under Sub-rule (2) shall be supported by an affidavit.

4. Even then, the learned Counsel for the petitioner contended that since the Award might have been published, the Tribunal would have become functus officio after 30 days" from the date of publication of the Award and hence he cannot approach the Labour Court. The said contention does not stand to reason as the doubt expressed by the petitioner has been allayed by the three judgments of the Supreme Court.

5. In the first judgment of the Supreme court in Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, , the Supreme Court dealt with a similar issue arose out of Industrial Disputes (Central) Rules, 1957. Rule 22 of the Industrial Disputes (Central) Rules, 1957 reads as follows:

22. If without sufficient cause being shown, any party to proceedings before a Board, Court, Labour Court, Tribunal, National Tribunal or

Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.

Rule 24(b) provides that the Tribunal or other body shall have the power of a civil court under the Code of Civil Procedure, 1908 in the matter of grant of adjournments. It runs thus:

24. In addition to the powers conferred by the Act, Boards, Courts, Labour Courts, Tribunals and National Tribunals shall have the same powers

as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely?

(a) (omitted)

(b) granting adjournment.

6. The Supreme Court in its judgment in paragraphs 10 to 12 observed as follows:

10. When Sub-section (1) of Section 11 expressly and in clear terms confers 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 a hearing. 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.

11. The language of Rule 22 unequivocally makes the jurisdiction of the Tribunal to render an ex parte award conditional upon the fulfilment of its

requirements. If there is no sufficient cause for the absence of a party, the Tribunal undoubtedly has jurisdiction to proceed ex parte. But if there

was sufficient cause shown which prevented a party from appearing, then under the terms of Rule 22, the Tribunal will have had no jurisdiction to

proceed and consequently, it must necessarily have power to set aside the ex parte award. In other words, there is power to proceed ex parte, but

such power is subject to the fulfilment of the condition laid down in Rule 22. The

power to proceed ex parte under Rule 22 carries with it the

power to enquire whether or not there was sufficient cause for the absence of a party at the hearing.

12. Under Rule 24(b) a Tribunal or other body has the powers of a civil court under Order 17 of the Code of Civil Procedure, relating to the grant

of adjournments. Under Order 17, Rule 1, a civil court has the discretion to grant or refuse an adjournment. Where it refuses to adjourn the

hearing of a suit, it may proceed either under Order 17, Rule 2 or Rule 3. When it decides to proceed under Order 17, Rule 2, it may proceed to

dispose of the suit in one of the modes directed in that behalf by Order 9, or to make such other order as it thinks fit. As a necessary corollary,

when the Tribunal or other body refuses to adjourn the hearing, it may proceed ex parte. In a case in which the Tribunal or other body makes an

ex parte award, the provisions of Order 9, Rule 13 of the Code are clearly attracted. It logically follows that the Tribunal was competent to

entertain an application to set aside an ex parte award.

7. On the question of the Labour Court becoming functus officio, the Supreme Court in paragraph 14 observed as follows:

14. ...It was, however, urged that on April 12, 1977 the date on which the impugned order was passed, the Tribunal had in any event become

functus officio. We cannot accede to this argument. The jurisdiction of the Tribunal had to be seen on the date of the application made to it and not

the date on which it passed the impugned order. There is no finality attached to an ex parte award because it is always subject to its 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.

8. The Supreme Court vide its judgment in Anil Sood Vs. Presiding Officer, Labour Court II, , after analysing the Grindlays Bank's case (cited

supra), in paragraphs 6 to 8 observed as follows:

6. The aspect that the party against whom award is to be made due opportunity to defend has to be given is a matter of procedure and not that of

power in the sense in which the language is adopted in Section 11. When matters are referred to the tribunal or court they have to be decided

objectively and the tribunals/courts have to exercise their discretion in a judicial

manner without arbitrariness by following the general principles of law and rules of natural justice.

7. The power to proceed ex parte is available under Rule 22 of the Central Rules which also includes the power to inquire whether or not there was sufficient cause for the absence of a party at the hearing, and if there is sufficient cause shown which prevented a party from appearing, then if the party is visited with an award without a notice which is a nullity and therefore the Tribunal will have no jurisdiction to proceed and consequently, it must necessarily have power to set aside the ex parte award.

8. If this be the position in law, both the High Court and the Tribunal (sic Labour Court) fell into an error in stating that the Labour Court had become functus officio after making the award though ex parte. We set aside the order made and the award passed by the Labour Court and affirmed by the High Court in this regard, in view of the fact that the learned Counsel for the respondent conceded that application filed by the appellant be allowed, set aside the ex parte award and restore the reference. To decide the matter afresh, the parties shall appear before the Labour Court on 11-12-2000 to take further directions as regards the proceedings. As the matter is very old, it would be appropriate for the Labour Court to dispose of this reference as expeditiously as possible but not later than six months from today.

9. Once again, the Supreme Court considered the same issue in respect of the Industrial Disputes (Bombay) Rules in Radhakrishna Mani Tripathi

Vs. L.H. Patel and Another, . Rule 26 of the Bombay Rules reads as follows:

26. Board, Court, Labour Court, Tribunal or Arbitrator may proceed ex parte. - (1) If without sufficient cause being shown, any party to a

proceeding before a Board, Court, Labour Court, Tribunal or an arbitrator fails to attend or to be represented, the Board, Court, Labour Court,

Tribunal or arbitrator may proceed ex parte.

(2) Where any award, order or decision is made ex parte under Sub-rule (1), the aggrieved party, may within thirty days of the receipt of a copy

thereof, make an application to the Board, Court, Labour Court, Tribunal or an arbitrator, as the case may be, to set aside such award, order or

decision. If the Board, Court, Labour Court, Tribunal or arbitrator is satisfied that there was sufficient cause for non-appearance of the aggrieved

party, it or he may set aside the award, order or decision so made and shall appoint a date for proceeding with the matter:

Provided that, no award, order or decision shall be set aside on any application as aforesaid unless notice thereof has been served on the opposite party.

Note: [It may be stated here that originally Rule 26 was limited to what now comprises Sub-rule (1); Sub-rule (2) was added by Government

Notification dated 20-8-1970 and the original and the added provisions were numbered as sub-rules (1) and (2) respectively.]

10. In Radhakrishna Mani Tripathi's case, the Supreme Court considered the scope of earlier judgments of Grindlays Bank and Anil Sood's case

(cited supra). In paragraphs 6 and 7, the Supreme Court dealt with the scope of rule making power by the appropriate Government, which is as

follows:

6. At this stage it will be useful to take note of certain provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") and the

Rules framed there under. Section 11 of the Act permits the Industrial Tribunal, the Labour Court (and the other authorities under the Act) to

follow, "subject to any rules that may be made in this regard" such procedure as they may think fit.

7. Section 38 of the Act gives the power to the "appropriate Government" to make rules for the purpose of giving effect to the provisions of the

Act. u/s 38 of the Act the Central Government and many State Governments have framed rules. The case in hand coming from Maharashtra is

governed by the provisions of the Industrial Disputes (Bombay) Rules (hereinafter referred to as "the Bombay Rules"). Rule 26 of the Bombay

Rules lays down the circumstances in which an Industrial Court may proceed ex parte as also the conditions on which it may set aside an ex parte

award....

11. On the power of the Court to set aside the Award, the Supreme Court after dealing with the Central Rules, in paragraphs 13 and 14 held as

follows:

13. Further, Rule 24 of the Central Rules gives to the Industrial Tribunal, Labour Court (and the other authorities under the Act) certain powers

under the CPC as vested in a civil court when trying a suit. The powers

enumerated under the Rule include the power of granting adjournments.

14. In *Grindlays Bank*¹ this Court held that Rules 22 and 24(b) were sufficiently the source of power for the Industrial Courts to recall an ex parte

award. It was pointed out that in terms of Rule 22 the Industrial Courts could proceed ex parte in the matter only in case a party to the proceeding

failed to attend or be represented without showing sufficient cause. The Court held that power to proceed ex parte under Rule 22 carried with it

the power to inquire whether or not there was sufficient cause for the absence of the party at the hearing and in case the party was able to show

sufficient cause for its non-appearance on the date the court had proceeded ex parte against it, to recall the award. (Vide para 11 of the decision.)

12. On the question of the Labour Court becoming functus officio, the Supreme Court in paragraphs 15 to 18 had observed as follows:

15. Similarly, the Court pointed out in *Grindlays Bank*, the provision of Rule 24(b) empowered the Industrial Courts to refuse to adjourn the

hearing and to proceed ex parte. Hence, in a case in which the Industrial Court makes an ex parte award the provisions of Order 9 Rule 13 CPC

would be clearly attracted. It logically follows that the Tribunal is competent to entertain an application to set aside an ex parte award. (Vide para

12 of the decision) The Court thus founded the Industrial Court's jurisdiction and power to recall an ex parte award on Rules 22 and 24(b) of the

Central Rules. It is thus to be seen that in *Grindlays Bank*¹ what this Court held to be implicit in Rule 22 of the Central Rules is made explicit and

clear in the Bombay Rules in the form of Sub-rule (2) of Rule 26.

16. In *Grindlays Bank*¹ this Court did not say that the Industrial Courts would have no jurisdiction to entertain an application for setting aside an

award made after thirty days of its publication....

17. We are unable to accept. The position is made clear in the later decision in *Anil Sood v. Labour Court*.

18. In light of the decision in *Anil Sood* we find no substance in the appellant's submission based on Section 17A of the Act. There being no

substance in the first limb of the submission there is no question of any conflict between Rule 26(2) of the Bombay Rules and Section 17-A of the

Act.

13. Notwithstanding this judgment, Mr. John, the learned Counsel contended that

the Tamil Nadu Rules are slightly different from the Central Rules and Bombay Rules. The contention raised does not reflect the correct rule position. In fact, the Tamil Nadu Rule is much wider than the Bombay Rules and Central Rules. In Tamil Nadu Rules, not only an application can be filed within 15 days and if it is filed beyond 15 days, it only requires sufficient cause to be shown.

14. Yet, another rule with reference to the power of the Labour Court must also be noted. Rule 43(1) of the Tamil Nadu Industrial Disputes

Rules, 1958, which reads as follows:

43. Power of Courts, Boards, Labour Courts and Tribunals.- (1) In addition to the powers conferred by Sub-section (3) of Section 11, the

provisions of Order IX in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908), in so far as they relate to the

appearance of plaintiffs and defendants in suits, shall apply to the appearance of parties in the proceedings before a Court, Board, Labour Court

or Tribunal.

In fact only on account of such a provision under the Central Rules being found, the Supreme Court gave relief in the Grindlays Bank's case. The

Tamil Nadu Rules framed under the Industrial Disputes Act is not only parameteria with the Central Rules and the Bombay Rules, but in effect, it is

more wider than those two rules referred to and considered by the Supreme Court in the three decisions referred to earlier.

15. In order to reject the contention of theory of functus officio, the Supreme Court in all the three judgments emphasised the power of the Labour

Court as it was akin to a civil court and found that specific power has been conferred on the Labour Court similar to that of Order IX C.P.C. The

State Government in addition to the power conferred u/s 11 has also conferred specific power under Order IX CPC relating to appearance of

parties. Therefore, the apprehension expressed by the petitioner's counsel that they cannot move the Labour Court in view of the Award being

published u/s 17-A of the I.D. Act and therefore, the Labour Court had become functus officio does not stand to reason and legal scrutiny.

16. In the light of the above, the writ petition will stand dismissed as the petitioner has the remedy of moving the Labour Court with an appropriate

petition claiming the same relief. No costs. Consequently, connected

miscellaneous petition stands closed.