

(2009) 07 DEL CK 0062

In the Delhi High Court

Case No : Writ Petition (C) 7736 of 2009

Minas E Minerais De Goa P. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Income Tax Act, 1961 — Section 256(2)
Mineral Concession Rules, 1960 — Rule 54, 55, 55(4)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 30

Citation : (2009) 07 DEL CK 0062

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Ankur S. Kulkarni, Nirmesh Dube and Jyoti Gupta, for the Appellant; Anjana Gosain and Ravinder Srivastav and Pramod Yadav, for respondent No. 3, SAIL, for the Respondent

Judgement

Sanjiv Khanna, J.—The two writ petitions raised a common question, whether the Mines Tribunal is entitled to restore a revision petition, which is dismissed in default.

2. The two petitioners had filed the revision petitions u/s 30 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the Act), but were dismissed in default by order dated 6th November, 2008.

3. The petitioners had filed applications for restoration of the revision petitions, but vide letters dated 19th January, 2009, the petitioners were informed that there is no provision in Section 30 of the Act and Rules 54 and 55 of the Mineral Concession Rules, 1960 for restoration of the revision petition, which has been dismissed in default. The said letters have been written by a section officer.

4. Letters dated 19th January, 2009 and the orders dated 6th November, 2008 have been impugned in the present writ petitions.

5. Rule 55(4) of the Rules stipulates that after examining the record, the Central Government may confirm, modify or set aside the order or pass such other order as the Central Government may deem just and proper. There is no rule or provision which provides for or prohibits filing of an application of restoration. It appears that the revisionary authority has refused to entertain the restoration applications on the assumption that after disposal of the revision petition, they have become functus officio and cannot entertain an application for restoration of the revision petition, dismissed in default.

6. There is a distinction between procedural review and substantive review. A quasi judicial body or a Court cannot exercise the power of substantive review unless the said power is conferred (Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, However, a quasi judicial body or a Court has inherent or implied right of procedural review. Drawing out this distinction, the Supreme Court in Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, had held:

The expression "review" is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in Patel Narshi Thakershi case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal.

7. In the said case the management had challenged the order passed by Labour Tribunal setting aside an ex-parte award on the ground that the said Tribunal had become functus officio after the award was made. The said contention was rejected by the Supreme Court on the ground that while setting aside an ex-parte award, the Labour Tribunal is exercising inherent power of procedural review and not of substantive review, which entitles the Court or the Tribunal to correct an error on merits. The Supreme Court also came to the conclusion that the Labour Tribunal had not become functus officio.

8. The said judgment has been followed in Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Another, . In the said case the Industrial Tribunal had passed a reasoned award holding that the settlement before the conciliation officer was legal and binding on both the parties. Subsequently, a labour union filed an application for setting aside the said award stating inter alia that it was an ex-parte award. The said application was opposed by the management. The Industrial Tribunal held that the ex-parte award was a nullity as it was passed without issue of notice and the tribunal had power and jurisdiction to set aside an ex-parte award. The Supreme Court reiterated the difference between the procedural review and substantive review

and held as under:

17. The question still remains whether the Tribunal had jurisdiction to recall its earlier "Award dated June 12, 1987. The High Court was of the view that in the absence of an express provision in the Act conferring upon the Tribunal the power of review the Tribunal could not review its earlier Award. The High Court has relied upon the judgments of this Court in *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*, and *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, wherein this Court has clearly held that the power of review is not an inherent power and must be conferred by law either expressly or by necessary implication. The appellant sought to get over this legal hurdle by relying upon the judgment of this Court in *Grindlays Bank Ltd. v. Central Government Industrial Tribunal and Ors.* (supra). In that case the Tribunal made an ex-parte Award. Respondents applied for setting aside the ex-parte Award on the ground that they were prevented by sufficient cause from appearing when the reference was called on for hearing. The Tribunal set aside the ex-parte Award on being satisfied that there was sufficient cause within the meaning of Order 9 Rule 13 of the CPC and accordingly set aside the ex-parte Award. That order was upheld by the High Court and thereafter in appeal by this Court.

19. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was

itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In *Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal and Ors.* (supra), it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again.

9. The Supreme Court in *Rabindra Singh Vs. Financial Commissioner, Cooperation, Punjab and Others*, has held that an ex-parte decree can be recalled in exercise of power of procedural review. It has been observed that industrial tribunals have incidental power to recall an ex-parte decision.

10. A Division Bench of the Delhi High Court in *International Airports Authority of India Vs. Commissioner of Income Tax*, had examined whether an ex-parte decision deciding a reference u/s 256(2) of Income Tax Act, 1961 on merits, can be reviewed/recalled on an application of the party who was absent. The Division Bench had examined the contention whether the court had become functus officio after deciding the reference on merits, though in absence of one of the parties. The statute i.e. the Income Tax Act, 1961 does not confer right to review a decision deciding the reference. Judgment of the Supreme Court in *Grindlays Bank (Supra)* and in several other cases were referred to. The Division Bench held that an ex-parte order deciding the reference application on merits can be recalled or reviewed procedurally. The underlined principle accepted and applied was that the power of procedural review is an inherent power and need not be specifically conferred by a statute. It is not a creature of a statute and inheres in a civil court/tribunal.

11. In view of the aforesaid legal position, the impugned letter dated 19th January, 2009 written by the Section Officer, Ministry of Mines, Government of India stating inter alia that the restoration applications are not maintainable u/s 30 of the Act and under Rules 54 and 55 as there is no provision for restoration of the revision petition is not legally tenable. The letter is contrary to law and is liable to be set aside. The revisionary authority is entitled to examine the application of the petitioner for restoration of the revision petitions, even if there is no specific provision in the Act or the Rules. Accordingly, the applications for restoration filed by the petitioners should be considered on merits. The revisionary authority will fix a date of hearing on the applications for restoration and thereafter hear the parties and dispose of the said applications. It is clarified that the petitioners will be entitled to rely upon *Agra Electric Supply Co., Ltd. Vs. The Labour Court, Meerut and Another*, before the revisionary authority, when the application for restoration is taken up for consideration. The private respondents obviously will be entitled to contend that the said decision is not applicable. The parties will be at liberty to request the revisionary authority to dispose of the application expeditiously. It is clarified that this Court has not expressed any opinion on merits of the revision petition or the restoration applications. There will be no order as to cost.

The petitions are disposed of.