

(1997) 09 CAL CK 0015
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction Original Side W.P. No. 301 of 1997

M/s. Ranigunj Chemicals Works

APPELLANT

Vs

Learned Judge, 4th Industrial Tribunal and Others

RESPONDENT

Date of Decision : 02-09-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Industrial Disputes (Central) Rules, 1957 — Rule 22
Industrial Disputes Act, 1947 — Section 10, 11(1), 17, 17A
West Bengal Industrial Disputes Rules, 1958 — Rule 20(3), 20A, 27

Citation : (1998) 1 CALLT 32 : (1998) 1 CHN 115

Hon'ble Judges : Bijitendra Mohan Mitra, J

Bench : Single Bench

Judgement

The Court

1. In this writ proceeding a challenge is thrown for issuance of writs in the nature of Mandamus and Prohibition against the concerned respondents being directed against order No.28, dated 20.12.96 passed by the learned Judge, 4th industrial Tribunal recalling the award dated 29.6.94. The resume of facts as emerging from the records appears that by an order of reference dated 30.12.93 for determination of issues as to whether (a) dismissal of Sri Ram Subhag Roy is Justified (b) what relief, If any, he is entitled to. The parties to the dispute did not appear before the concerned Tribunal for adjudication of the issues referred to above and as such no step was taken. Accordingly, the Tribunal passed a no dispute award dated 29.6.94. The said award dated 29.6.94 was published u/s 17 of the industrial Disputes Act, 1947 by an order No. 564-IR/ 11L-46/92 dated 27.3.95 issued by the Assistant Secretary to the Government of West Bengal, Labour Department. Much after publication of the Impugned award on 27.3.95 the respondent No.3 filed an application under Rule 27 of the West Bengal industrial Disputes Rule, 1958 on 5.6.95 for setting aside of the no dispute award. On the said application under Rule 27, as aforesaid, evidence was adduced by the respective parties and the Tribunal by Order No. 28, dated

20.12.96 has set aside the no dispute award and observed that question of limitation did not arise in this application.

2. The moot point which permeates the range of controversy in this proceeding the question as to whether an ex parte award can be set aside by the learned Tribunal even after the award becomes enforceable u/s 17A of the industrial Disputes Act. The application under Rule 27 of the West Bengal industrial Disputes Rules, 1958 was caused to be made -incorporating the grounds taken by the said respondent that the notice under Rule 20A of the West Bengal industrial Disputes Rules, 1958 was not properly served upon the Union as the office of the Union was shifted from 10, K.S. Roy Road to 188, Manicktala Main Road. Rule 27 of the West Bengal industrial Disputes Rules, 1958 as incorporated contains provision for correction of errors and review of an order. It is significant to refer to the caption of Rule 27 which is founded on two limbs namely, (1) correction of errors and (2) review of an award. The ambit of correction of errors has been adumbrated in clause I to III of Rule 27 itself and that is of wide amplitude. Even, the expression "for sufficient reason" is required to be interpreted in consonance with the principle of "ejusdem generis", there is another dimension being founded about the review of an award. The Supreme Court had the occasion to deal with the said question in the case of *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, . On construction of sub-section (1) of section 11 of the industrial Disputes Act, it has been opined in the said decision by Supreme Court that the expression here namely, "review" is used in 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 misappreciation by it and (2) a review when the error ought to be corrected is one of law and is apparent on the face of record. In the same breadth, the Supreme Court becomes inclined to propound the view that where a party is prevented from appearing at the hearing due to sufficient cause and is faced with an ex parte award it is as if a party is vested with an award without a notice of the proceedings. It is needless to stress that by the award 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. It is well-known even within the range of Order 47, Rule 1 of the CPC that apart from execution discharge or satisfaction of a decree if the controversial decree is patently vitiated by inherent lack of jurisdiction of the court concerned to be in seisin of the controversy, then, on the score of the same the point of nullity is covered within the range of the ambit of review. This court is not required to dilate in details in view of the pith and substance as the matters seem to have been set at rest by the decision of the Supreme Court as aforesaid and the ratio of law appears to have been followed subsequently. As such, it can be safely held that the industrial Tribunal has a right of review of an award passed by it. The same does not take care of the other point as to whether an ex parte award can be set aside by the concerned Tribunal even after

the award becomes enforceable u/s 17A of the industrial Disputes Act.

3. Srf Arunava Ghosh, the learned Advocate of the petitioner, has contended before this court that in terms of section 20(3) of the industrial Disputes Act, proceedings before such Tribunal shall be deemed to have commenced on the date of reference of the dispute for adjudication and such proceeding shall be deemed to have concluded on the date on which the award becomes enforceable. In aid of further elucidation of the point raised by Mr. Ghosh, he has referred to provisions of section 17A of the said Act which postulates that an award will become enforceable on the expiry of the 30 days from the date of its publication u/s 17. According to Mr. Ghosh, two dates are relevant in the said context namely, the date of the order of reference being 30.12.93 and the date of publication of award dated 27.3.95. According to the submission of the learned Advocate of the petitioner, the same can be extended by another 30 days from the date of publication and after expiry of the additional period of 30 days it loses the character of its pendency. According to Mr. Ghosh, after expiry of 30 days from the publication of the Impugned award the Tribunal has become functus officio. According to Mr. Ghosh, no application either of review or for setting aside of an Impugned award u/s 11(1) of the industrial Disputes Act can be entertained after the Tribunal is relegated to the position of functus officio and it loses all its authority to be in seisin of such controversy relating to a prayer for setting aside of such Impugned award. Mr. Ghosh has further submitted that application for setting aside of the exparte award was made by the concerned respondents on 5.6.94 which is long after the expiry date of the enforceability of the award. In support of the said submission, a reliance was placed on the reported decision of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, and attention of the observation of the Supreme Court in the penultimate paragraph has been drawn which is quoted hereunder :

"Sub-section(3) of section 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date when the award becomes enforceable u/s 17A. u/s 17A of the Act, an award becomes enforceable on the expiry of 30 days from the date of publication u/s 17. The proceedings with regard to a reference u/s 10 of the Act are therefore not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the disputes referred to it for adjudication and upto that date it has a power to entertain."

Much reliance has been led by Mr. Ghosh on the said observation made by the apex court in the case of Grindlays Bank v. Central Government industrial Tribunal & Ors. Next case that was referred to by Mr. Ghosh is the case of Satnam Verma Vs. Union of India (UOI), In that case, award was passed exparte on 23.2.82 and application was made on 26.2.82 itself for setting aside the exparte award which appears even before publication of the same u/s 17. As such, the question of expiry of 30 days from the date of publication u/s 17 does not and cannot arise and deeming effect cannot be given to the conclusion of the

same. In the said decision, a reference was made to the earlier case of the Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, and after due consideration of the Judgment passed in the said case where concurrence was expressed by making reference to the observation of the court that if the tribunal has the power to proceed *ex parte* as provided by Rule 22 of the industrial Disputes and Central Rules, 1957, it should be considered to be endowed with such ancillary and incidental powers as are necessary to discharge its functions effectively for the purpose of doing Justice between the parties. If Rule 22, as aforesaid, unequivocally confers Jurisdiction on the tribunal to proceed *ex parte*, then, the tribunal seems to have the power to set aside such *ex parte* order. There does not appear to be a direct dissent from the view expressed in the earlier decision of the Grindlays Bank's case by the apex court that the proceedings with regard to a reference u/s 10 of the Act are therefore not deemed to be concluded until expiry of 30 days from the publication of the award. Till then the tribunal retains Jurisdiction of the dispute referred to it for adjudication and upto that date it has the power to entertain the application in connection with such dispute. Mr. Ghosh, learned Advocate of the petitioner, has then relied on the decision of Warring Co-operative Agricultural Service Society Limited v. State of Punjab, reported in 1987 Labour 1C 359 and reliance was placed on paragraph 10 of the said Judgment to indicate that proceedings in a reference u/s 10 of the Act are not deemed to be concluded until the expiry of 30 days after the publication of the award. Till then the tribunal retains Jurisdiction over the dispute referred to it for adjudication and upto that date it has the power to entertain an application in connection with such dispute. Impliedly thereafter it becomes *functus officio* and cannot entertain an application for setting aside an *ex parte* award. A further reference was made by Mr. Ghosh to the case of Anil Sood & Ors. v. S.K. Sarvanla & Ors., reported in 1997(1) LLJ 1006, Delhi where the Division Bench of Delhi High Court observed that the ratio of relevant decision as referred to therein was clear that the industrial Tribunal retains jurisdiction to deal with an application for setting aside an *ex parte* award only until the expiry of 30 days from the publication of the award.

4. The learned Advocate appearing on behalf of the concerned respondent has made an adumbration by reproduction of salient features of the industrial Disputes Act, 1947 and the Rules framed thereunder. This court is not required to embark into a detailed scrutiny of all the provisions of the Act and the Rules framed thereunder and it is not required in its considered opinion to make any digression from the point in controversy which is germane in significance. After hearing Mr. Ghosh in details this court is only required to deal with the limited question of controversy as to whether the industrial Tribunal retains Jurisdiction to deal with an application for setting aside an *ex parte* award after the expiry of 30 days from the publication of the award. If the tribunal in seisin of the controversy is not relegated to the position of *functus officio*, then, there is no question and/or doubt tribunal's competence to entertain the application for setting aside. As it has been mentioned earlier from the observations of the

salient decision of the apex court that if the Tribunal is clothed with authority to pass an *ex parte* award, then necessarily by implication it follows that it can set aside the same. Therefore, there is no question of doubt as to the tribunal's power to set aside an *ex parte* award. The question that emerges that Tribunal can exercise that power of setting aside only upto the outer limit as prescribed by the statute and section 20(3) of the industrial Disputes Act makes it significantly clear as to the outer most limit of the conclusion of the proceeding coinciding with expiration of the period of 30 days after publication of the award in the gazette. Section 20(3) makes it clear abundantly the dated of the commencing the proceeding being the date of the reference of the dispute to adjudication and the date of conclusion of the proceeding on the expiry of 30 days after publication of the award. This court is here not concerned and not called upon to answer as to whether the tribunal has the right or authority to set aside an award passed *ex parte* of which there is not iota of doubt. The learned Advocate of the concerned respondent has tried to contend that it is a no dispute award which patently is a nullity. Assuming the same to be vitiated by elements of nullity but the adjudicating authority in seisin of the controversy is not entitled to in law to enter into the scrutiny of the same because of its relegation to the position of a *functus officio*, then, whatsoever the points of challenge may be there for having the award set aside, it cannot be ventilated before the competent forum having jurisdiction to set at rest the said controversy as it is no longer in seisin of the same because of the termination and conclusion not only of the controversy but when it is reduced to the position of *functus officio*. The point in issue even as propelled by the apex court in the case of the Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, when it has opined on construction of subsection (3) of section 20 of the Act that the proceeding before the Tribunal would be deemed to continue and commencement of the same by way of reference u/s 10 will not be deemed to be concluded until expiry of 30 days from the publication of the award. The facts of the case reported in the latter decision of Satnam Verma Vs. Union of India (UOI), is factually on a different score as within 3 days from the passing of the award an application for setting aside was made when the tribunal was in seisin of the controversy. The said decision did not overturn the ratio of law as expounded by the apex court in the earlier decision of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, which finds its support from the construction of sub-section (3) of section 20 read with section 17A of the Act. Much reliance has been placed by the concerned learned Advocate that when both the parties failed to appear nothing remains pending before the authority concerned to whom dispute is referred and the decision cannot but be treated as outstanding. If in such outstanding dispute case if there be any at all has to be disposed of by a competent adjudicating authority but not by an adjudicating authority which has become *functus officio* because of the provisions of the statute itself. As the industrial Disputes Act is a self-contained statute and it provides for a machinery to have the disputes settled and if the said machinery becomes nonest in the eye of the law because of its relegation to a state of

functus officio, then, self contained statute in the said situation falls to provide remedy. Even, it has been attempted to be hinted at by the learned Advocate and that in that case the concerned workmen will be without any remedy. The said plea being negated by the statute itself in terms of section 20(3) of the Act giving a proper signal to the conclusion of the proceeding in view of the provision made that award is required to be published in terms of provisions of publication of the same u/s 17. As soon as publication is made it becomes a matter of public knowledge. Even after the dawning of public knowledge about the passing of the impugned award after publication of a grace period has been contemplated u/s 20(3) of the Act so long as tribunal retains power to set aside the award. The statute does not seem to have envisaged granting of a longer time than the time prescribed otherwise anybody being a party to any such controversy of industrial dispute will remain seated in a musical chair and can try to have it revised at any point of time. Here, the point of time for setting aside an *ex parte* award cannot be equated to that of reasonable time as the time has been earmarked by the statute being 30 days after publication of the award in terms of section 10 of the Act. After the expiry of the said period the tribunal in terms of statutory operation has relegated itself to the position of a functus officio. The said voice has been echoed by different High Courts including that of the reasoned Judgment of Delhi High Court as referred to *supra* in 1997(1) LLJ 1066 Delhi. From the plethora of citations placed by the learned Advocates appearing on behalf of the concerned respondent, a reference may be made to the case of Bloomfield Tea Co. Ltd. Vs. Seventh Industrial Tribunal of West Bengal and Others, wherein it has been held that an award made without serving the summons required under Rule 20A of the West Bengal Industrial Disputes Rules, 1958 would be a nullity and in such case the affected party should move within a reasonable time from the date of knowledge of such an award before the Tribunal for setting aside the same. The basic question is as to whether Tribunal can embark into a Journey of such scrutiny as it is relegated to the position of a functus officio. As such, this case does not deal with that situation and with the point involved and as such the same is distinguishable and is no answer to the point. The preponderance of decisions even of different High Courts on different angles do not show the proper signal to illumine the gray region save and except the construction made by the Supreme Court in the reported decision of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, and proposition of ratio of law as indicated therein on that particular dimension of the aspect does not seem to have been departed from in the case of Satnam Verma Vs. Union of India (UOI), Even the aforesaid two decisions have been interpreted by the Delhi High Court in 1977(1) LLJ 1066 by placement of reference to catena of cases, the same has also been answered in the decision reported in Warring Co-operative Agricultural Services Limited v. State of Punjab, reported in 1987, Labour I.C., 359. As such, primarily on resolution of the ratio desired to be discerned by way of harmonious constructions from the decisions of the apex court as referred to coupled with the interpretation made about the same by Delhi High Court in 1997(1) LLJ 1066, and Punjab and Haryana High Court,

reported in 1987 Labour I.C., 359, this court is prompted to hold without any further fear of controversy that the industrial Tribunal retains its Jurisdiction to deal with an application for setting aside an ex parte award only until the expiry of 30 days from publication of the award. Thereafter the said Tribunal is relegated to the position of offlclo. As such, this court is of the view and opinion that the 4th industrial Tribunal does not have any jurisdiction to deal with an application purported to be under Rule 27 of the West Bengal industrial Disputes Rule. 1958 as it has become functus offlclo in terms of the statute. As such, this court is constrained to set aside the order impugned being order No.28, dated 20.12.96 passed by the learned Judge, 4th industrial Tribunal and accordingly the writ petition succeeds. As such, a writ of Mandamus be issued cancelling and/or rescinding the Order No. 28. dated 20.12.96 passed by the 4th industrial Tribunal, Calcutta and herby let a Writ of Prohibition be issued restraining the concerned respondents from proceeding further on the basis of the impugned order.

5. The copying section of the Original Side of this court is hereby directed to give urgent xerox certified copy of the Judgment to the parties concerned at the earliest particularly to the concerned respondent in order to prefer an appeal by them as submitted within a shortest possible time.

6. The prayer for stay made by the respondents is considered and this court is not inclined to stay the operation of this Judgment and Order on the facts and circumstances of this case.

7. Petition succeeds.