

(2013) 03 AHC CK 0284

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 51362, 51562, 51565, 51568 and 51570 of 2012

M/s. Triveni Engineering and Industrial Limited and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Citation : (2013) 9 ADJ 208

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : S.D. Singh and Diptiman Singh, for the Appellant; Bhoopendra Nath Singh and Devendra Pratap Singh, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—This group of writ petitions are interlinked and are being decided together. For facility, the facts of Writ Petition No. 51362 of 2012 is taken into consideration. It transpires that the services of a large number of workers in the petitioner Company had been terminated. The workmen raised several industrial disputes before the Labour Court, Saharanpur. One workman filed Writ Petition No. 56374 of 2011 before this Court, which was disposed of by an order dated 27.9.2011 directing the Labour Court to decide the adjudication case referred to within four months from the date of the production of a certified copy of the order 22 such writ petitions were filed in which similar orders were passed on different dates directing the Labour Court to decide the dispute within four months.

2. Prior to the directions of the Writ Court, the petitioner, not being satisfied with the conduct of the Presiding Officer, filed a transfer application before the Labour Commissioner, who is the delegated authority of the State Government, praying for the transfer of the case to another Labour Court. Since the transfer application remained pending and no order was passed by the appropriate authority, the petitioner filed Writ Petition No. 61123 of 2011, which was

disposed of by an order dated 21.10.2011 directing the Labour Court to decide the transfer application of the petitioner within one month and further restrained the Labour Court from passing any award for a period of one month or till the disposal of the transfer application.

3. It transpires that the Labour Commissioner rejected the transfer application by an order dated 30.11.2011. On the same date, the Labour Court, after hearing the adjudication case, closed the evidence of the parties and fixed 7.12.2011 for arguments. On 7.12.2011, the petitioner filed an adjournment application praying that the matter may be adjourned to enable the petitioner to get an appropriate order from the High Court against the order of rejection of their transfer application. This adjournment application was rejected by the Labour Court by an order dated 7.12.2011 and thereafter the Labour Court reserved the award directing the parties to file their written arguments within three days, if any.

4. The petitioner filed Writ Petition No. 72320 of 2011 questioning the order of the Labour Commissioner rejecting the transfer application. This writ petition was allowed and the order of the Labour Commissioner was quashed and the order of the Labour Commissioner dated 30.11.2011 was quashed. The Writ Court directed the Labour Commissioner to decide the transfer application afresh and further directed that the order of the Writ Court dated 21.10.2011 passed in Writ Petition No. 61123 of 2011 would continue to operate till such time as a fresh order was not passed by the Labour Commissioner, meaning thereby that the Labour Court will not make the award till the disposal of the transfer application. Against the judgment of the Writ Court dated 22.12.2011, the workman filed Special Appeal No. 17 of 2012 (defective), which was dismissed by a Division Bench by an order dated 16.1.2012.

5. It transpires that the Labour Court after reserving the award on 7.12.2011 made the award on 16.12.2011 and remitted the award to the State Government for publication u/s 6 of the U.P. Industrial Disputes Act. The said award was published by the State Government on 26.5.2012 and became enforceable after the expiry of 30 days from the date of its publication.

6. In the meanwhile the petitioner filed an application dated 2.1.2012 before the Labour Court for recall of the order dated 30.11.2011 by which the employer's evidence was closed as well as against the order dated 7.12.2011 by which the adjournment application was rejected and arguments were closed and the award was reserved. This application remained pending. When the petitioner, came to know that the award has been sent for publication, the petitioner moved an application before the Labour Commissioner praying that the award may not be published till the disposal of their transfer application. According to the petitioner, no heed was placed on the petitioner's request and, the State Government, without waiting for any orders being passed on the transfer application published the award.

7. The workman, in pursuance of the award of the Labour Court, filed an application u/s 6H(1) of the U.P. Industrial Disputes Act for execution of the award and during its pendency, the petitioner has filed the present writ petition, praying for the following reliefs:

(I) a writ, order or direction in the nature of certiorari to quash the proceedings u/s 6H(1) of the Act initiated by Deputy Labour Commissioner, Saharanpur vide his notice dated 13.9.2012 (Annexure 1 to the writ petition) in respect of Award of the Labour Court, Saharanpur dated 16.12.2011 in Adjudication Case No. 6/09 between Triveni Engineering & Industries Ltd. and its workman Sri Manoj Kumar, and/or

(II) a writ, order or direction in the nature of Mandamus commanding the Deputy Labour Commissioner not to proceed with execution of the Award dated 16.12.2011 passed in Adjudication Case No. 6/09 during pendency of the petitioner's recall application dated 2.1.2012 filed in that case to recall the orders dated 30.11.2011 and 7.12.2011.

(III) a writ, order or direction in the nature of mandamus directing the Labour Commissioner, U.P. to forthwith allow the transfer application dated 27.7.2012 transfer the matter of restoration/recall filed by the petitioner in Adjudication Case No. 6 of 2009 in the matter of Triveni Engineering & Industries Ltd. and its workman Sri Manoj Kumar to any other functional Industrial Tribunal or Labour Court with a further direction for expeditious decision on those applications.

(IV) issue any other writ, order or direction, as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(V) to award cost of the petition to the petitioner.

8. Similar relief has been claimed by the petitioner in the connected writ petition and the facts are identical except for the dates.

9. The Court has heard Sri S.D. Singh, the learned counsel assisted by Sri Diptiman Singh, the learned counsel for the petitioner and Sri Bhupendra Nath Singh, the learned counsel for the respondents-workmen.

10. The learned counsel contended that the Deputy Labour Commissioner should be restrained from proceeding u/s 6-H(1) of the Act till such time as the petitioner's transfer application was not decided by the Labour Commissioner and till such time as the petitioner's recall application was not decided by the Labour Court. The contention of the petitioner is that if the petitioner's recall application dated 2.1.2012 is allowed and the orders dated 30.11.2011 and 7.12.2011 are recalled, it would necessarily recall the ex parte award dated 16.12.2011, which was published on 26.5.2012.

11. The learned counsel further contends that the Labour Court proceeded with the hearing of the case in haste and should have stayed its hands when a request was made by the petitioner to question the veracity of the order passed

by the Labour Commissioner, on their transfer application, which was eventually quashed by the High Court. The learned counsel further contended that even when the award was made and sent by the Labour Court to the State Government, the Labour Commissioner should not have published the award and should have decided the transfer application first and should have waited till the disposal of the recall application. The contention of the petitioner is, that the recall application filed by the petitioner was maintainable in view of Rule 16(2) of the Rules and the decision of the Full Bench of this Court in the case of *Badri Prasad Hari Dass v. Industrial Tribunal and others*, 1984 (48) FLR 315, in which the Full Court held that once an order was set-aside, the necessary consequence was that the award given in pursuance of the decision of the Labour Court or Tribunal to proceed ex parte would automatically fall down. The Full Bench held as under:

The scheme of the Act is to decide a dispute referred to a Labour Court or Tribunal for adjudication after hearing the parties. But, in case on the date fixed any party to the proceedings before the Labour Court or Tribunal is absent, the Tribunal is empowered to proceed with the case in his absence and pass such order as it may think fit under sub-rule (1) of Rule 16. Sub-rule (2) of Rule 16 confers power on the Tribunal to set aside an order passed against a party in his absence if within ten days of such order the party applies setting aside such order and shows sufficient case for his absence. The view taken by this Court in *Krishna Mohan Singh v. M/s. Ratan Steel Limited, Lohta, Varanasi and others* (supra) is that sub-rule (2) of Rule 16 does not empower the Labour Court or Tribunal to set aside an ex parte award. It was further found that under sub-rule (2) of Rule 16, what can be set aside is "order" and not "award". There is a difference between an order and award, according to the view taken in this case.

This does not appear to be a correct view. Under sub-rule (2) of Rule 16, it may be correct that the word used is "order", but once an order is set aside the necessary consequence is that the award given in pursuance of the decision of the Labour Court or Tribunal to proceed ex parte would automatically fall down. Sub-rule (2) of Rule 16 is an enabling provision and, therefore, is sufficient cause has been shown by a party against whom the case has proceeded ex parte, the party would become entitled to be heard. If it becomes entitled to be heard, it necessarily follows that if any award has been given against him, that is liable to be set aside. It often happens that a Tribunal or Labour Court may make an order of proceeding with the case ex parte and thereafter on that very day it may give the award on the view taken in the above case, Rule 16(2) would become nugatory.

12. On the other hand the learned counsel for the respondents contended that the writ petition was not maintainable and that no restoration application dated 2.1.2012 was filed before the Labour Court nor is any such application pending and that a false statement had been made by the petitioner on the basis of which an interim order was obtained. The Learned counsel further submitted that the

interim order of the Court directing the petitioner to deposit certain amount pending the disposal of the writ petition had not been complied with and therefore, there is no equity in favour of the petitioner and that the petitioner was not entitled to any relief whatsoever.

13. Having heard the learned counsel for the parties at some length the admitted position is that by an order dated 30.11.2011, the Labour Court closed the evidence and, on 7.12.2011, the Labour Court, after rejecting the application of the petitioner for adjournment, reserved the award. On 16.12.2011 the award was made and was sent to the State Government for publication. The award was published by the State Government on 26.5.2012.

14. On the other hand the petitioner's transfer application remained pending before the Labour Commissioner. There is an order of the Writ Court dated 22.12.2011 directing the Labour Court to decide the transfer application and further directing the Labour Court not to publish the award till the pendency of the transfer application.

15. The Court finds that the direction of the Writ Court given in its order dated 22.12.2011 has become otiose, inasmuch as, prior to the passing of the said order, the Labour Court had already given the award. Subsequently, the award was published on 26.5.2012. There was no embargo upon the Labour Court not make an award on 16.12.2011 since on that date there was no order of the Writ Court.

16. In so far as the recall application dated 2.1.2012 filed by the petitioner is concerned, there is some controversy. According to the petitioner the application was filed before the Labour Court on 2.1.2012. According to the learned counsel for the respondents there is no such application and that an inquiry has been instituted. This Court is not going into this controversy as to whether an application has been filed or not, for the simple reason that the relevance of that application is now lost and, in the opinion of the Court, the application has become infructuous. The petitioner's application dated 2.1.2012 was filed to recall the orders of the Labour Court dated 30.11.2011 and 7.12.2011. By an order on 30.11.2011, the evidence was closed and by an order dated 7.12.2011 the petitioner's adjournment application was rejected and the award was reserved. Even if one has to assume that the application is pending and even assuming that this application was liable to be allowed, it would make no difference to the end result, inasmuch as, it will not set aside the ex parte award dated 16.12.2011 which was published on 26.5.2012. The decision of the Full Bench is distinguishable and is not applicable. In the said case, the request for adjournment made by the employer was refused and the Tribunal proceeded to hear the case ex parte and made the award on that very date itself. Thereafter an application was filed by the employer under Rule 16(2) of the Rules for setting aside the ex parte order to proceed ex parte and also for setting aside the award. This application was rejected by the Tribunal, against which the matter came up before the Writ Court, which was referred to the Full Bench. The Full Bench after

considering the matter held that when an ex parte order and award are passed on the same date, the application of the employer under Rule 16(2) becomes maintainable and, in that light, held that when an ex parte order is set aside, it would necessarily set aside the ex parte award.

17. In the instance case the situation is different and distinct. The adjournment application was rejected on 7.12.2011 and the award was made on 16.12.2011. The recall application dated 2.1.2012 was filed only to recall the order dated 30.11.2011 and 7.12.2011. There is no prayer for recall of the ex parte award dated 16.12.2011. Consequently, the Court is of the opinion, that the application of the petitioner for setting aside the order dated 30.11.2011 and 7.12.2011 has become redundant.

18. The Court finds that an award has now been published and has now become enforceable. The award of the Labour Court has not been challenged by the petitioner before any appropriate forum nor any application has been filed for the recall of the ex parte award. There is no reason for the Court to stay the proceedings filed by the workman u/s 6-H(1) of the U.P. Industrial Disputes Act. The contention, that the proceedings should be stayed till the recall application of the petitioner was not disposed of, is erroneous since the Court has already held that the said application has become redundant. The contention, that the proceedings should be stayed till such time the transfer application was not decided, is also erroneous, inasmuch as, the transfer application has also become infructuous since the award has been made, which has now been published and has become enforceable. In the light of the aforesaid, no relief can be granted to the petitioner, The writ petition fails and is dismissed. The interim order granted, if any, is vacated.