

(2001) 02 AP CK 0057
In the Andhra Pradesh High Court
Case No : WA No. 1752 of 2000

Nellore District Co-operative Central Bank Limited, Nellore	APPELLANT
Vs	
President, the Nellore District Co-operative Central Bank Employees Association, Nellore and another	RESPONDENT

Date of Decision : 08-02-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Industrial Disputes (Central) Rules, 1957 — Rule 10
Industrial Disputes Act, 1947 — Section 17
Limitation Act, 1963 — Section 10, 11, 20, 5

Citation : (2001) 2 ALD 193 : (2001) 2 ALT 146

Hon'ble Judges : Satyabrata Sinha, C.J; S.R. Nayak, J

Bench : Division Bench

Advocate : Mr. K. Muralidhar Reddy, for the Appellant; Mr. A. Satya Prasad and Government Pleader for Labour, for the Respondent

Judgement

S.B. Sinha, CJ

1. The question which arises for consideration in this writ appeal arising out of a judgment and order dated 18-11-2000 passed by a learned single Judge of this Court in Writ Petition No.7796 of 2000 is as to whether the Labour Court or the Industrial Tribunal can set aside an ex parte order despite publication of the award in the official gazette in terms of Section 17-A of the Industrial Disputes Act, 1947.

2. An ex parte award against the appellant was passed on 31-10-1997. It did not file an application to set aside the award within a period of 30 days but filed such an application 40 days thereafter. The labour Court rejected the application on the ground that the same cannot be entertained having regard to the fact that the application for setting aside the ex parte order was filed beyond the period of 30 days from the date of the award and the same has already been published in the gazette. Consequently, it was held that it had no power to condone the delay.

The said decision was based upon a judgment of the Apex Court in *Grindlays Bank Limited v Central Government Industrial Tribunal* 1981 I LLJ 196. The appellant-writ petitioner questioned the said judgment inter alia on the ground that subsequently the Apex Court in *Satnam Varma v Union of India* 1985 II LLN 55 and *Anil Sood Vs. S.K. Saruaria*, has taken a different view.

3. The learned single Judge relying on the decision of the Supreme Court in *Satnam Varma's* case (supra) which was followed by this Court in *APSRTC v. K. Bhoomaiah* 1987 LLN 240, by the order under appeal held that "despite passing of an ex parte award the Court does not become functus officio". But the learned Judge proceeded to dispose of the matter on merits holding that the appellant herein has not been able to satisfy the Court as regards its justification in approaching the labour Court after a delay of 40 days. The contention raised in this appeal shortly shorted is that the learned single Judge acted contrary to law in determining the disputed question of fact itself having arrived at a conclusion that it is a petition for setting aside the ex parte award as also an application filed u/s 5 of the Limitation Act was maintainable. Section 17-A of the Industrial Disputes Act, 1947 reads thus:-

Commencement of the award :--(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication provided that--

(a) If the appropriate Government is of opinion, in any where the award has been given by a labour Court or Tribunal in relation to an industrial dispute to which it is a party; or

(b) If the Central Government is of opinion, in any case where the award has been given by a National Tribunal; that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to sub-section (1), the appropriate Government or the Central Government may, within ninety days from the date of publication of the award u/s 17, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together, with a copy of the order before the Legislature of the State, if the order has been made by a State Government or before Parliament, if the order has been made by the Central Government.

(3) Where any award as rejected or modified by an order made under subsection (2) is laid before the Legislature of a State or before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid: and where no order under sub-section (2) is made in pursuance of a declaration under the proviso to sub-section (1), the award shall become

enforceable on the expiry of the period of ninety days referred to in sub-section (2).

(4) Subject to the provisions of subsection (1) and sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under subsection (1) or subsection (3) as the case may be."

4. When a reference is made before the labour Court it derives its jurisdiction only in terms thereof and not otherwise.

5. While considering the question as to whether a labour Court or the Industrial Tribunal has got any power of review, however, a distinction has to be made between a power of substantive review and a procedural review. Whereas the power of substantive review has to be conferred by reason of a statute the power of procedural review inheres in every Court or Tribunal. Thus, although the power of procedural review has not been conferred upon it by reason of a statute the same can be exercised in the interests of justice.

6. The aforementioned dicta was laid down by the Apex Court in *Grindlays Batik* case (*supra*) in the following terms:

"When sub-section (1) of Section 11 expressly and in clear terms confers powers upon the Tribunal to regulate its own procedure, it must necessarily be endowed with all powers which bring about and 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*, 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 duty to set aside the *ex parte* award and to direct the matter to be heard afresh.

The contention that the Tribunal had become *functus officio* and, therefore, had no jurisdiction to set aside the *ex parte* award and that the Central Government alone could set it aside, does not commend to us. Sub-section (3) of Section 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date of which the award becomes enforceable u/s 17-A. u/s 17-A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its 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 the dispute referred to it for adjudication and upto that date it has the power to entertain an application in connection with such dispute.....".

7. In that case therefore it was clearly held that a labour Court becomes *functus officio* on expiry of 30 days from the date of publication of the award in terms of Section 17-A of the Industrial Disputes Act, 1947. In *Satnam Varma's* case

(supra) the Apex Court noticed the dicta in Grindlays Bank case (supra) and held that in terms of the said decision the High Court erred in holding that the labour Court has no jurisdiction to set aside an ex parte award. Yet again in APSRTC case (supra) it was held:

"The same point arose in Satnam Varma v. Union of India. Desai, J., speaking for the Court held that where an ex parte award was made and published in the official gazette, the Tribunal has jurisdiction to entertain the application for setting it aside if sufficient cause is shown for absence of appearance on the date on which the award was made. It is further held that the Tribunal does not become functus officio once the award is published in the official gazette."

8. The aforementioned questions again came up for consideration in Anil Sood (supra) wherein the Apex Court clearly held thus:

".....To our mind the ratio of the aforesaid decisions is 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. The stage of deemed conclusion of proceedings with regard to a reference u/s 10 of the Act reaches when the award becomes enforceable u/s 17-A of the Act. Further the parties are presumed to have the knowledge of the award on its publication. Reference may also be made to sub-rule (9) of Rule 10-B of Industrial Disputes (Central) Rules, 1957 which, inter alia provides that the Industrial Tribunal may before the submission of the award revoke the order that the case shall proceed ex parte if it is satisfied that the absence of the party was no justifiable grounds."

9. The learned single Judge has noticed that in Satnam Varma case (supra) and APSRTC case (supra) applications for setting aside the award were filed prior to 30 days of expiry from the date of publication of the award.

10. In the instant case the following facts are not in dispute. The award was passed on 31-10-1995. In terms of Rules 24 and 26 of the Industrial Disputes (Andhra Pradesh) Rules Order IX, Rule 13 of the CPC was applicable. Thus the said application for setting aside the ex parte award could have been filed upto 31-11-1997. The award was published on 17-12-1997. Thus the application which was filed 40 days beyond the period of limitation was not after the award became final as the period of 30 days has not been passed from the date of publication of the award. The judgment of the learned single Judge, therefore, on that ground is unassailable. However, keeping in view the fact that the learned labour Court refused to exercise its discretion on the ground that it had no jurisdiction to condone the delay as it became functus officio and the same having not been found favour by the learned single Judge, in our considered opinion, the learned single Judge ought not to have usurped the jurisdiction of the labour Court in considering the matter on merits. Whether there has been a sufficient cause for not approaching the labour Court in time or not was not a matter which was required to be gone into in the writ proceedings for the first

time. In a case of this nature disputed question of fact may arise which may be determined only upon adduction of oral and documentary evidence. In that view of the matter, in the opinion of this Court, the learned single Judge ought to have remitted the matter back to the labour Court.

11. In *State of West Bengal and Others Vs. Nuruddin Mallik and Others*, , it has been held:

"28. It is not in dispute in this case that after the Management sent its letter dated 6-8-1992 for the approval of its 31 staff, viz., both teaching and non-teaching staff, both the District Inspector of Schools and the Secretary of the Board sought for certain information through their letter dated 21-9-1992. Instead of sending any reply, the Management filed the writ petition in the High Court, leading to passing of the impugned orders. Thus, till this date the appellant-authorities have not yet exercised their discretion. Submission for the respondents was that this Court itself should examine and decide the question in issue based on the material on record to set at rest the long-standing issue. We have no hesitation to decline such a suggestion. The Courts can either direct the statutory authorities, where it is not exercising its discretion, by mandamus to exercise its discretion, or when exercised, to see whether it has been validly exercised. It would be inappropriate for the Court to substitute itself for the statutory authorities to decide the matter."

12. For the reasons aforementioned, the writ appeal is allowed. The impugned order is set aside and the writ petition is disposed of with a direction that the matter be remitted to the labour Court for consideration of the question of condonation of delay on its own merits. Having regard to the fact that the matter is pending for a long time and the award has already been published, the labour Court is hereby directed to dispose of the matter expeditiously and not later than two months from the date of communication of this order.