

(2000) 11 AP CK 0028
In the Andhra Pradesh High Court
Case No : Writ Petition No. 7796 of 2000

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

Date of Decision : 18-11-2000

Acts Referred:

Andhra Pradesh Industrial Disputes Rules, 1958 — Rule 22, 24, 26, 30
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 11
Criminal Procedure Code, 1898 (CrPC) — Section 480, 482
Industrial Disputes (Central) Rules, 1957 — Rule 10B
Industrial Disputes Act, 1947 — Section 17A, 26
Limitation Act, 1963 — Section 10, 20, 5

Citation : (2001) 1 ALD 73 : (2001) 1 ALT 125

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

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

Judgement

1. Whether the Industrial Tribunal/Labour Court has jurisdiction to entertain the application for setting aside the ex parte award after expiry of 30 days of its publication is the question that falls for consideration in this writ petition. The industrial dispute arising out of the punishment of reduction of two increments without cumulative effect imposed by the management/writ petitioner was referred to the Labour Court for adjudication on the dispute raised by the President, the Nellore District Co-operative Central Bank Employees Association, the petitioner herein and the same was numbered as ID No. 109 of 1994.

2. On receipt of the notice of the reference, both the claimant/employee and employer filed statements and counter statements. Subsequently the employer remained ex parte and after recording the evidence of the employee, award was passed on 31-10-1997 holding that the management of the Nellore Co-operative Central Bank Limited, Nellore. Writ petitioner herein is not justified in awarding

the punishment of withholding of two annual increments of Sri P. Venku Reddy, Supervisor and the Management was directed to pay all the incremental arrears which were not paid because of the punishment awarded to the employee/first respondent herein by the petitioner-Management. The said award was published on 17-12-1997 as contemplated under the Rules. Thereafter the Management filed an application under Order 9, Rule 13 CPC to set aside the ex parte award, as there is delay in filing the application to set aside the ex parte award. The Management filed IA No.181 of 1988 u/s 5 of the Limitation Act to condone the delay of 40 days. The Labour Court dismissed the same holding that once the Award was published in the Gazette, after expiry of 30 days the Labour Court will become functus officio and, thus, will have no jurisdiction to entertain the application for condonation of delay in filing the application to set aside the ex parte award. The Labour Court further held that no sufficient reason was explained for condoning the delay for setting aside the ex parte award. Aggrieved by the same, the management/petitioner filed by the present writ petition.

3. The learned Counsel for the petitioner strenuously contended that the representative of the petitioner-bank was attending the case. Some times the camp Court was cancelled and he could not have further information of the posting of the case. As such when the case was posted for trial and the camp Court was cancelled, the representative of the bank could not have further information about the posting of the case. While so on 9-1-1998 the petitioner bank received the Award passed by the Labour Court. Immediately they filed an application on 24-3-1998 to set aside the ex parte award. The Labour Court dismissed the same on the ground that it has become functus officio as the same was filed after expiry of the thirty days of publication of the award. It is further submitted that absence on the date of adjournment is not willful and only because of not knowing the exact date of posting. He also placed reliance on the judgments in *Satnam varma v. Union of India*, 1985 (2) LLN 55 and *APSRTC v. K. Bhoomiah*, 1987 (2) LLN 240. On the other hand the learned Counsel for the first respondent contended that the Labour Court will become functus officio after expiry of thirty days from the date of publication of the award and will not have the jurisdiction to entertain the application filed for setting aside the ex parte award. In the present case award was passed on 31-10-1997 and it was published on 17-12-1997 and that award will become enforceable after expiry of thirty days as per Section 17A of the Industrial Disputes Act. Therefore, the Labour Court was right in dismissing the application filed by the petitioner. Apart from the same, it is contended that the petitioner has not shown sufficient cause to condone the delay in filing the application to set aside the ex prate award. In support of his contentions he placed reliance on *Anil Sood Vs. S.K. Saruaria*,

4. Before dealing with the above issue, it is relevant to note Rules 24 and 26 of the Andhra Pradesh Industrial Disputes Rules, 1958, which reads as follows:

"24. Board, Court, Labour Cowl, Tribunal, or arbitrator may proceed ex parte :--If without sufficient cause being shown 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 arbitrator may proceed as if the party had Duly attended or had been represented.

26. Power of Boards, Courts, Labour Courts, and Tribunals :--In addition to the powers conferred by the Act, Boards, Courts, Labour Courts or Tribunals shall have same powers as are vested in a civil Court under the Code of Civil Procedure, 1908(Central Act V of 1908) when trying a suit in respect of the following matters, namely:

- (a) discovery and inspection
- (b) granting adjournment
- (c) reception of evidence taken on affidavit;

and the Board, Court, Labour Court or Tribunal may summon and examine any person whose evidence appears to it to be material and shall be deemed to be a Civil Court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure 1898 (Central Act V of 1898)".

5. A plain reading of Rules 24 and 26 clearly postulates that the Tribunal is vested with the powers of a civil Court in granting adjournments. When once the Tribunal passed an Award ex parte, Order 9, Rule 13 CPC is applicable to set aside the ex parte award. In the present case it is not in dispute that the writ petitioner/management was set ex parte in the Labour Court and Award was passed after recording the evidence of the claimant. The Supreme Court in *Grindlays Bank Ltd. v. Central Government Industrial Tribunal*, 1981 (1) LLN 196, held as under:

"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". (Para 10)

"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 on 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 up to that date it has the power to entertain an application in connection with such dispute....."

The above judgment was considered and explained by the Apex Court in the case of Satnam Varma (supra). In para 7 of its judgment the Supreme Court explained as follows:

".....The Court men proceeded to examine the contention that once an award is published in the Official Gazette, be it an ex parte one, does the Tribunal become functus officio and therefore, will have no jurisdiction to set aside the ex parte award, and that as contended before us the appropriate Government alone could set it aside, and rejected it holding that no finality is attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Court held that 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. We have extensively referred to this decision because it effectively answers all the limbs of the contention canvassed before us and which unfortunately found favour with the Labour Court and the High Court"

After explaining the same, the Supreme Court came to the conclusion that the Labour Court as well as the High Court denied to itself the jurisdiction vested in it to entertain an application for setting aside an ex parte award and reached an erroneous conclusion and while holding so, the Supreme Court allowed the appeal and set aside the ex parte award made by the Labour Court as well as the decision of the High Court and directed the Labour Court to proceed further according to law after giving both the parties opportunities to lead the evidence.

6. Following the judgment of the Supreme Court referred to above, this Court in APSRTC v. K. Bhoomaiah (supra) observed that:

"The same point arose in Satnam Varma v. Union of India, Desai, J. speaking for the Court held that where an ex prate 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."

7. Speaking for the Bench in Anil Sood v. S.K. Sarvaria (supra) K. Sabharwal, J. considered both the judgments of the Supreme Court referred to above and held as follows:

"... 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..."

8. No doubt in both the cases referred to above i.e., 1981 (I) LLN 196 and 1987 (II) LLN 240, the application to set-aside the ex parte award was made before the expiry of 30 days but not after expiry of 30 days. Sub-section (3) of Section 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable u/s 17-A. That means, during the pendency of the proceedings, a workman cannot be discharged as contemplated u/s 33. That is only the legal fiction for the purpose for which it is created by the Legislature by incorporating sub-section (3) of Section 20. Under Rule 30 of A.P. Industrial Disputes Rules, 1958 which substituted in 1983, the Board, Labour Court, Tribunal, National Tribunal or Arbitrator may at any time correct any clerical mistake or error arising from an accidental slip or commission in any proceedings, report, award or decision either of its or his own motion or on the application of any of the parties. In a given case, if the Labour Court proceeds ex parte by accidental omission by recording that summons are duly served, it is always open for the Labour Court to correct the said mistake committed by it and the error arising from accidental slip or commission in any proceedings has wider meaning but it cannot be restricted to clerical mistakes. In the case of Grindlays Bank Limited (supra), the Apex Court in Para 10 of its judgment held that the Tribunal has not only the power but also the duty to set aside ex parte award and to direct the matter to hear afresh and 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. The same view was approved by the Supreme Court in the subsequent case i.e., Satnam Varma (supra). This Court in the case of Bhoomaiah (supra) held that the Labour Court does not become functus officio on expiry of 30 days from the date of publication of the award and will have ancillary or incidental power to set aside the award if sufficient cause is shown while making an application under Order IX, Rule 13 of the Code of Civil Procedure. In view of the same, the Labour Court is not right in coming to the conclusion that the application filed by the petitioner-Management to set aside an ex parte award after expiry of 30 days of its publication cannot be entertained as the Labour Court will become functus officio on expiry of 30 days in view of the law laid down by the Apex Court and this Court.

9. The next question is whether the petitioner Management has shown sufficient cause for condoning the delay in filing the application to set aside the ex parte award.

10. Except saying that the delay has occurred only because of not knowing the exact date of posting and further that after receiving the award the delay has occurred in obtaining the legal opinion which was followed by Parliament election,

no other reason was shown by the petitioner for the delay in filing the application. The petitioner has not shown any cause, much less sufficient cause in not filing the application in time to set aside the ex parte award in time. The Labour Court was perfectly right in dismissing the application filed u/s 5 of the Limitation Act. I do not see any error apparent on the face of the record Committed by the Labour Court in exercise of its discretion warranting interference by this Court.

11. The writ petition, therefore, fails and it is accordingly dismissed. No costs.