
(2007) 09 OHC CK 0069
In the Orissa High Court

Nilachal Service Station

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 10-09-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 142, 226
Industrial Disputes Act, 1947 — Section 17, 17A, 29, 33, 33C

Citation : (2007) CLT 372 Supp : (2008) 2 LLJ 95 : (2007) 2 OLR 794 Supp

Hon'ble Judges : A.K. Ganguly, C.J.; I. Mohanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Ganguly, C.J.—The management of Nilachal Service Station, (Indian Oil Petrol Pump), Grand Road, Puri has filed this writ appeal challenging the judgment dated June 20, 2005 passed by a learned Judge of the writ Court in O.J.C. No. 14546/2001 wherein the learned Judge was pleased to dismiss the writ petition by a reasoned judgment. The present appellant was the petitioner before the writ Court and the writ petition was filed challenging dismissal of a restoration application which was registered as Misc. Case No. 12/2000 by the Labour Court, Bhubaneswar in respect of an ex parte award passed against the petitioner.

2. The material facts are that an industrial dispute was raised by respondent No. 2 -workman challenging the legality of his termination from service by the management of Nilachal Service Station. The dispute was referred to the Labour Court by the State Government in exercise of powers conferred on it under the Industrial Disputes Act. The said reference runs as follows:

Whether the termination of service of Bhramarbar Das by the Management of Nilachal Service Station (Indian Oil Petrol Pump), Grand Road, Puri is legal and/or justified? If not to what relief Das is entitled?

On consideration of the material placed before it, the Labour Court came to the conclusion that the termination of service of the workman by the Management of Nilachal Service Station was illegal and unjustified and the workman was entitled to reinstatement with full back wages. The case of the workman-respondent No. 2 is that after the award of the Labour Court was passed on August 19, 1985, he submitted the joining report which was accepted, but no wages were paid as per the award. Thereafter on October 16, 1985 the workman submitted an application for payment of wages. Since no action was taken on his application for payment of wages he filed an application u/s 33C(2) of the Industrial Disputes Act for computation of his entitlements under the award. The said application was registered as Industrial Dispute Misc. Case No. 104/1987. Another application was also filed by the workman for computation of service which was registered as Industrial Dispute Misc. Case No. 179/1991, dated November 25, 1989 along with an application for condonation of delay. As both the applications for condonation of delay and setting aside the ex parte order dated November 25, 1989 were rejected, the writ petitioner filed O.J.C. No. 2685/1991 and the said writ petition was dismissed by a Divisional Bench of this Court by order dated December 11, 1991. The said order passed by the Division Bench is to the following effect:

Though notice of admission has been issued in this case, after hearing Kar for the petitioner and Das for opposite party No. 2 and on perusal of the LCR, we do not find any justification for our interference in the impugned order dated March 16, 1991. The Presiding Officer, Labour Court, has found that in the proceeding u/s 33C(2), the petitioner refused to receive notice and avoided to attend the Court. This statement of the Labour Court is borne out by the service returns of the postal authorities. In that view of the matter, the petitioner cannot be permitted to invoke our extraordinary jurisdiction under Article 226 extraordinary jurisdiction under Article 226 of the Constitution for interference with order dated March 16, 1991. This application is accordingly dismissed. No costs.

3. At that juncture, the writ petitioner-appellant filed a misc. case before the Presiding Officer, Labour Court, Bhubaneswar praying for setting aside the ex parte award which was passed in 1985. The Labour Court after looking into the records of the proceeding did not accept the plea of the writ petitioner that it did not receive the notice in that case. As such the application filed for condonation of delay was rejected as also the prayer for setting aside the ex parte award was also rejected. The Labour Court after looking into the records of the proceeding did not accept the plea of the writ petitioner that it did not receive the notice in that case. As such, the application filed for: condonation of delay was rejected as also the prayer for setting aside ex parte award. This was done by the Labour Court by an order dated February 2, 1993. From the said order passed by the Labour Court it appears that the witness for the writ petitioner while appearing before the Labour Court submitted that he took the copy of Exhibit 1, i.e., the award in 1989 and thereafter the writ petition was filed in this Court for setting aside the ex parte award which was dismissed as stated above.

4. It may be noted that the aforesaid order dated February 2, 1993 was passed by the Labour Court in Restoration Misc. Case No. 7/92 refusing to set aside the ex parte award which was challenged by the writ petitioner. In the meantime, the workman-respondent No. 2 submitted an application for implementation of the award which was adjudicated in a Section 33 proceeding. Then he filed a certificate proceeding before the Certificate Officer. As the Certificate Officer did not take any action in the said proceeding the workman-respondent No. 2 approached this Court by filing O.J.C. No. 8547/1996. A Division Bench of this Court by an order dated November 7, 1996 disposed of the writ petition directing the Certificate Officer to dispose of the certificate case within a period of three months from the date of receipt of the order. In that writ petition, i.e., O.J.C. No. 8547/1996 the present appellant was a party. Pursuant to the aforesaid order of this Court, the appellant deposited the amount toward the wages of the workman-respondent No. 2. In the meantime a criminal proceeding was initiated against the writ petitioner on the basis of complaint by the workman filed u/s 29 of the Industrial Disputes Act alleging non-implementation of the award and such complaint was registered as 2(C)CC Case No. 14/94 and the learned Magistrate by order dated July 29, 1995 found the writ petitioner guilty and passed an order of conviction.

5. Challenging the said order of conviction, the petitioner filed Criminal Appeal No. 1/75-2000/1999 before the learned Second Addl. Sessions Judge, Puri, who by order dated June 7, 2001 allowed the appeal and set aside the order of conviction and sentence passed by the learned Magistrate. Challenging the said order passed in the Criminal Appeal, the workman filed Criminal Revision No. 397/2001 in this Court. It may be noted here that the workman had also come before this Court in 1993 by filing O.J.C. No. 4612/1993 for a direction to the Collector, Puri to realize the dues and by order dated July 9, 1993 this Court directed the Collector, Puri to realize the dues from the petitioner. In view of the said order the writ petitioner-appellant deposited the amount by accepting the award of the Labour Court and the arrear wages were paid to the workman.

6. It may be noted that the appellant filed Title Suit No. 151/1997 in the Court of Civil Judge (senior Division), Puri with a prayer to declare the award passed by the Labour Court void and inoperative. An injunction petition was also filed for restraining the workman from realizing the amount. It appears that the learned Civil Judge (senior Division), Puri dismissed the injunction petition. When the matter was pending at this stage, the writ petitioner-appellant filed a misc. case before the Labour Court, Bhubaneswar with a prayer to set aside the ex parte award which was passed on August 19, 1985. By order dated September 24, 2001, the Labour Court after discussing the history of the case and observing that a petition with self-same prayer being Misc. Case No. 7/92 filed by the petitioner was dismissed by it on February 2, 1993 declined to set aside the ex parte award which was passed in 1985, i.e., 16 years before and dismissed the restoration petition.

7. The said order dated September 24, 2001 was assailed in the writ petition, inter alia, on two grounds. The first ground is that the award dated August 19, 1985 was passed against the petitioner ex parte and the petitioner should be given an opportunity to place its case. The second ground is that the award is not enforceable since it has not been published in the official gazette and therefore, the award which is sought to be enforced against the petitioner is violative of the provisions of Sections 17 and 17A of the Industrial Disputes Act.

8. This Court proposes to consider the second ground first, namely, if an award is not published in the official gazette whether it is enforceable in a Court of law.

9. Reference in this connection may be made to the provisions of the Industrial Disputes Act. Section 17 of the said Act provides as follows:

77. Publication of reports and awards.-(1) Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

(2) Subject to the provisions of Section 17A. the award published under Sub-section (1) shall be final and shall not be called in question by any Court in any manner whatsoever.

From a perusal of the provisions of Section 17 of the said Act, it appears that every report of a Board or Court together with any minute and every award of a Labour Court (here we are concerned with the award of the Labour Court) shall within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate government thinks fit. In the instant case, after the award was passed on August 19, 1985, as it appears from the record, the publication had taken place on August 26, 1985 on the basis of a notification issued by the Government of Orissa, Labour and Employment Department in terms of the provisions of Section 17 of the Act.

10. Learned Counsel for the writ petitioner-appellant submitted that the said award was never forwarded to the Management. This is belied from the notification.

11. Then the grievance of the appellant seems to be that the award was forwarded for publication in the official gazette -but there was no gazette publication.

12. On a perusal of the provisions of Section 17 it appears that what is required is a publication of an award by the appropriate Government in such manner as the appropriate Government may think fit. In the instant case, the appropriate Government published the award of the Labour Court by way of notification as indicated above. Therefore, Section 17 has been complied with.

13. Section 17A provides for commencement of the award. Section 17A has

several sub-sections. It appears from Sub-section (1) of Section 17A that the award shall be enforceable on the expiry of thirty days from the date of its publication u/s 17. Therefore, according to Section 17-A(1) the award becomes enforceable on the expiry of thirty days from the date of its publication u/s 17. Therefore, it is enforceable immediately on expiry of 30 days from that date, Thus, this award is enforceable on and from September 26, 1985, as thirty days from August 26, 1985, the date of its publication expires on September 26, 1985.

14. Section 17-A(1)(a) of the Act provides if the appropriate Government is of opinion, in a case 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 as provided u/s 17-A(1) (b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal and 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, then 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.

15. It is therefore clear that the award which has been published by the notification is enforceable u/s 17-A(1)(a) within a period of thirty days from the date of its publication. But if in some cases in which the award as contemplated u/s 17-A(1)(a) and (b) is passed, but either the State Government or the Central Government is of the opinion that it should not be enforceable then in that case the appropriate Government may by notification in the official gazette declare that the award shall not be enforceable. Therefore, it is open to the Government to make the notification in the official gazette depending on the situation contemplated u/s 17-A(1) read with provisos under clauses (a) and (b).

16. The award in the instant case does not fall under such a category. Therefore, the contention that in the absence of any notification of the award in the official gazette, the award is unenforceable is without any substance.

17. So far the first ground is concerned, this Court is of the opinion that against an award which was passed in 1985 an application for setting aside the same cannot be entertained in 2001.

18. Apart from that in case of the same award the attempt to set aside the same had failed in 1993 by the order of Labour Court dated February 2, 1993. The said order had attained finality and the principles of *res judicata* are attracted. The Supreme Court has held that the principles of *res judicata* are also applicable in matters of industrial disputes. In this connection reference may be made to the decision of the Supreme Court in the case of *Sulochana Amma Vs. Narayanan Nair*, . The learned Judges of the Supreme Court in that case held that an order in issue which had arisen directly or indirectly or substantially between the same parties or privies and decided by competent Court or Tribunal though of limited or special jurisdiction will operate as *res judicata* in a subsequent suit or

proceeding notwithstanding the fact that such Court of limited or special jurisdiction was not competent Court to try the subsequent suit. In the instant case the earlier decision of the Tribunal dated February 2, 1993 will certainly operate as res judicata before the Labour Court in the subsequent proceedings for restoration. This subsequent order of the Labour Court dated September 24, 2001 is sought to be assailed before the writ Court. Therefore the finding of the writ Court is based on proper consideration.

19. Learned Counsel for writ petitioner has referred to several judgments. Reference has been made to the decisions of the Supreme Court in the case of Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Another, . That was a decision of the Supreme Court on the question whether jurisdiction of the Industrial Tribunal continues over the dispute referred to it. In that particular case application for recall was made two days before the award was made enforceable. The learned Judges held that the Tribunal can entertain the said application, The facts here are totally different. In the instant case, there was no scope for publication of the Tribunal's award in the gazette inasmuch as the Tribunal's award had been notified on August 26, 1985.

20. In the Orissa Industrial Disputes Rules, 1959 it is provided under Part III, Rule 10-B, Sub-rule (10) as follows:

10-B. Proceedings before the Labour Court and Tribunal:

1 to (9) xxx xxx xxx xxx

(10) The Labour Court or Tribunal shall submit its award to the State Government within one month from the date of oral hearing arguments or within the period mentioned in the order of reference whichever is earlier.

Therefore, the notification of the award in the instant case has been made in accordance with the statutory rules.

21. The other decision which has been cited by the learned Counsel for petitioner was in the case of Mst. Jamma Kuer v. Lal Bahadur Vol. 11IJ (1954) F. C. 117. That was a decision relating to jurisdiction of the Civil Court u/s 47 of the Code of Civil Procedure. It was made clear that when an error is found on the face of record, same is a ground for review. The question how the error occurred is not relevant. We fail to appreciate how the said decision has any application to the facts of the present case.

22. The learned Counsel also referred to a decision of the Supreme Court in the case of A.R. Antulay Vs. R.S. Nayak and Another, . The said decision was rendered in a totally different factual situation and it has no application to the facts of the present case. The learned Counsel wanted to rely on the observations made by the Supreme Court to the effect that in rectifying the error, no procedural inhibitions should debar the Supreme Court because no person should suffer by reason of any mistake of the Court and no rule of res

judicata would apply to prevent the Supreme Court from entertaining the grievance and giving appropriate directions. It is obvious that the jurisdiction of the Supreme Court under Article 142 is not available either to this Court and obviously not to the Tribunal. The Tribunal has limited jurisdiction under the Industrial Disputes Rules and it is well settled that once an application for restoration to set aside the award is dismissed, the second restoration application does not lie.

23. Reference was also made to the decision of the Supreme Court in the case of Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, . In that case the Court held that if the Court has no jurisdiction to decide question then the decision cannot operate as res judicata. Here it is nobody case that the Labour Court had no jurisdiction to decide on the restoration petition filed before it.

24. In fact the dispute was referred to the Labour Court on the basis of a reference made by the State Government and it passed the award after notice to the parties and subsequently the petitioner invited the jurisdiction of the Labour Court to set aside its award. Therefore, the decision in Mathura Prasad's case (supra) has no application in this case.

25. Learned Counsel also referred to the decision of the Supreme Court in the case of Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, . In that case the Court was examining the scope of review and the Supreme Court held that in examining the scope of review subsequent event can also be considered. But here under the Orissa Industrial Disputes Rules, the Labour Court has no power of review. It has only the power to correct the error under Rule 29. It is well settled that power of review cannot be exercised by a Tribunal in the name of exercising power to correct clerical errors. Therefore, the decision of the Supreme Court in the case of Netaji Cricket Club has no application to this case.

26. Reference was also made to the judgment of the Supreme Court in the case of Ishwar Dutt Vs. Land Acquisition Collector and Another, . In that case the Hon"ble Supreme Court held that the Court cannot go outside the pleadings and make out a new case (para 33). In the instant case the said decision has no application. Here the decision of the Labour Court has not been assailed on merits by the appellant. What has been done is to make an application before the Labour Court for setting aside the ex parte award after a gap of seven years and when the same was dismissed the appellant filed the second application for restoration before the Labour Court, after a further gap of about 8 years from such dismissal of the first restoration petition and in our view, the Labour Court cannot entertain the second petition.

27. Learned Counsel placed reliance on a Division Bench decision of this Court in the case of The Workmen under the Director of Health Services Vs. The Director of Health Services and Others, . That was a case u/s 17-A(1) of the Industrial

Disputes Act. We have pointed out that we are not concerned with Section 17A of the Industrial Disputes Act. However, we have looked into the Rules, namely, the Orissa Industrial Disputes Rules, 1959 and we find that it is provided in Rule 10-B(9) that in case any party defaults or fails to appear at any stage, the Labour Court or Tribunal may proceed with the reference ex parte and decide the reference, provided that the Labour Court or Tribunal may, on the application of either party filed before the submission of the award, revoke the award, if it is satisfied that the absence of the party was on justifiable grounds.

28. In the instant case, the first application for setting aside the award was made" at a very belated period. That was made in 1992 when the award was passed in 1985. Therefore, the same was rightly rejected. That order was never assailed and therefore the said order had become final and cannot be reserved by the same Tribunal on the basis of a subsequent petition for the selfsame relief and between the same parties. The bar of res judicata, which is based on grounds of sound public policy, will apply and prevent such a reconsideration.

29. Therefore, all the points raised by the learned Counsel for the appellant fail and the order of the learned Judge of the writ Court is confirmed, may be on some different grounds.

The appeal is, therefore, dismissed. There shall be no order as to costs.