

(2009) 02 CAL CK 0064
In the Calcutta High Court
Case No : Writ Petition No. 30261 (W) of 2008

Octavius Tea and Industries Limited

APPELLANT

Vs

Fifth Industrial Tribunal and Others

RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Citation : (2009) 121 FLR 1127 : (2009) 4 LLJ 857 : (2009) 4 SLR 201

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Dipak Kumar Ghosh and Ranjan De, for the Appellant; R.N. Paul for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Dipankar Datta, J.

The Judgment of the Court was as follows:

1. While hearing an industrial dispute between the workman and the petitioner, the 5th Industrial Tribunal, Kolkata had passed an ex parte award dated 26.2.2008 directing reinstatement of the workman in service with full back wages w.e.f. 2.5.2005.
2. The petitioner had applied before the Tribunal on 2.5.2008 for setting aside the ex parte award dated 26.2.2008. According to it, provisions contained in Rules 21 and 20B(5) of the West Bengal Industrial Disputes Rules, 1985 (hereinafter the said Rules) had not been complied with and, therefore, it had no occasion to contest the proceedings before the said Tribunal. By an order dated 30.9.2008, the Tribunal has rejected the application filed by the petitioner on the ground that it had become functus officio. It proceeded to record that the award having been made on 26.2.2008, it had been published on 27.3.2008 and upon expiry of 30 days from date of publication, the award became enforceable and, therefore, the Tribunal did not have the jurisdiction to entertain the application.

3. In this petition, inter alia, the ex parte award dated 26.2.2008 and the order of rejection dated 30.9.2008 are the subject-matter of challenge.

4. Mr. Ghosh, learned Counsel appearing for the petitioner has relied on the decisions. If this Court reported in 2008(1) CLT (Cal) 243, Eagle Wood Agencies (Pvt.) Ltd. and Another Vs. The State of West Bengal and Others, , Eagle Wood Agencies (Pvt.) Ltd. & Anr. vs. State of West Bengal & Ors., to contend that the award being a nullity, the Tribunal erred in not allowing the application praying for setting aside the ex parte award. He has also relied on the decision of the Apex Court reported in Radhakrishna Mani Tripathi Vs. L.H. Patel and Another, for the proposition that the Industrial Tribunal fell in error in observing that it had become functus officio after the ex parte award became enforceable. In the alternative, he contended that the Tribunal having recorded in its order dated 30.9.2008 that notice under Rule 21 of the said Rules and copy of written statement in compliance with provisions contained in Rule 20B(5) thereof not having been served upon the petitioner, there occasioned clear breach of mandatory rules thereby disabling the petitioner to contest the proceedings and the award having been passed in gross violation of principles of natural justice is unsustainable in law. He has, accordingly, prayed for stay of the award.

5. Mr. Paul, learned Counsel appearing for the workman, on the other hand, has invited the attention of this Court to provisions contained in Rule 27 of the said Rules to contend that an application of the nature filed by the petitioner could not have been entertained by the Tribunal upon expiry of 15 days from the date of the award and, therefore, the Tribunal was justified in rejecting the application. He has also contended that the petitioner did not avail of the opportunity to contest proceedings before the Tribunal and, therefore at this stage, it cannot make a grievance that provisions contained in Rules 21 and 20B(5) of the said Rules have not been complied with. He has, accordingly, prayed for dismissal of the writ petition.

6. None has appeared for the State despite service. Affidavit-of-service filed in Court today shall be retained with the records.

7. This Court had heard learned Counsel for the parties. Having regard to the controversy involved herein, this Court considers it unnecessary to keep the writ petition pending.

8. On a perusal of the order dated 30.9.2008, it is difficult for this Court to accept the contention advanced on behalf of the workman. It appears from the said order that the Tribunal had accepted the position that notice under Rule 21 of the said Rules had not been served upon the company before placing the case for ex parte hearing. It has also accepted that written statement filed by the workman had not been served upon the petitioner in compliance with provisions contained in Rules 20B(5) of the said Rules. On the face of such finding recorded by the Tribunal, it is absolutely clear that proceedings were conducted before it, leading to the impugned award, in clear violation of principles of natural justice

as well as mandatory provisions of law. The award passed on 26.2.2008 is liable to be set aside only on this ground.

9. That apart, this Court is unable to agree with the observation of the Tribunal that it had become functus officio upon expiry of a month from date of publication of the award. Rule 27(iii) of the said Rules is the source of the power of the Tribunal to set aside an ex parte award, if sufficient cause exists. Such a power can be exercised either on an application by an aggrieved party or on the own motion of the Tribunal. There is no provision in the said Rules which prohibits a Tribunal to recall an ex parte award upon the same becoming enforceable. The second proviso to Rule 27 imposing a limitation by referring to clause (iii) thereof clearly contains a misprint inasmuch clause (iii) does not refer to an application for review. If at all, it would have application in respect of an application for review covered by clause (ii) of Rule 27. This view finds support from the decision in M/s. Eagle Wood (supra). For the purpose of considering an application for setting aside an ex parte award, no limitation has been imposed on the Tribunal's power to consider such a grievance and to set aside such award, provided sufficient cause is shown by a party and the Tribunal is approached without avoidable delay. On the authority of the decision of the Apex Court in Radhakrishna (supra), the Tribunal must be held to have erred in holding that it had become functus officio.

10. In the result, this writ petition succeeds. While a setting aside the impugned award and the order dated 30.9.2008, the reference is revived.

11. The Tribunal directed 10 reconsider the issue between the parties as expeditiously as possible in accordance with law upon affording them opportunity of being heard.

12. The records shall be returned back to the Tribunal by the Registry at once.

13. Urgent xerox certified copy of this order, if applied for, be supplied to the parties as early as possible.