
(1991) 12 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 781 of 1991 (R)

Shyama Pada Dutta

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 11-12-1991

Acts Referred:

Citation : (1991) 12 PAT CK 0003

Judgement

S.B. Sinha, J.—This application is directed against the order dated 31-1-1991 passed by respondent No. 1 in Miscellaneous case No. 1 of 1988 whereby and whereunder an ex-parte award passed by him in Reference case No. 11 of 1987 was aside.

2. The fact of the matter lies in a very narrow compass.

3. An industrial dispute was raised with regard to the termination of service of the petitioner by the respondent No. 2 company and the Government of Bihar in exercise of its power conferred upon it u/s 10(1)(c) of the Industrial Disputes Act issued a notification dated 5th July, 1987 whereby and whereunder a dispute was referred for adjudication of the Labour Court, Dhanbad:

Whether the dismissal of Sri Shyam Pada Dutta workman of M/s. Rahul Udyog Viniyog Limited, Katras Road, Dhanbad, is justified ? If not, what relief Sri Shyampada Dutta is entitled ?

4. It is admitted that the Labour Court Dhanbad functioned for a very limited period and at the relevant time respondent No. 1 was in-charge of the said Court as Labour Court Dhanbad had not been authorised to adjudicate upon the reference. Respondent No. 2 having been noticed filed its written statement. According to respondent No. 2, it was informed that a separate Presiding Officer for Labour Court, Dhanbad would be appointed and upon vesting of the power to adjudicate upon the reference cases, notice would be served upon it in due course. According to the said respondent, it did not receive any summons or notice.

5. From the order sheet of the Labour Court which is contained in Annexure-F to the counter affidavit filed on behalf of respondent No. 2, it appears that it has not been recorded therein as to when respondent No. 1 was authorised to adjudicate upon the reference made by the State Government. However, from the order sheet dated 13-4-1988, it appears that respondent No. 2 was issued with a notice.

6. However from the next order sheet dated 16-5-1988, it does not appear that it was recorded therein that the notice was served upon respondent No. 2 and the case was adjourned to 23-5-1988. On 23-5-1988 as the respondent was absent, the case was taken up for ex parte hearing.

7. From the order sheet dated 2-6-1988 it appears that the award was prepared, sealed and signed and four copies thereof were sent to the Government and one copy was sent to the Presiding Officer, Industrial Tribunal, Ranchi. The receipt of the award from the Government was received on 12-7-1988 and 19-7-1988 was the date fixed for pronouncement of the award without issuing any notice to the parties and on 19-7-1988 an award was pronounced although both the parties were absent.

8. According to respondent No. 2, when it received an application on 22-8-1988, from the petitioner asking it to reinstate him in service pursuant to the aforementioned ex parte award as contained in Annexure 2 to the writ application, it came to know about the passing of the ex parte award and, thus, it filed an application for setting aside the said award on the ground that it did not receive any notice from respondent No. 1.

9. Before respondent No. 1, respondent No. 2 examined one witness. The petitioner did not examine himself or any other witness. Respondent No. 1 by reason of the impugned order as contained in Annexure-1 to the writ application held that as notices were sent to respondent No. 2 and as it filed written statement, the award cannot be set aside on the ground of non-service of notice. It, however, held as follows:

However, in course of argument it has been urged on behalf of the applicant if the reference case not restored the management will be prejudiced. They are ready, to bear the cost if awarded by the court. It is also a fact as already stated above that previously the reference case was looked after by the Presiding Officer of the Labour Court Bokero Steel City as the Presiding Officer of this Court had not joined. But from the above discussion, it is obvious that the case was heard ex parte, mainly due to negligence of the applicant. However, in the circumstances stated above, for the ends of justice the applicant may be given opportunity with some conditions of payment of cost.

As regards power of the court to set aside the award in view of the decision of the Hon'ble Supreme Court passed in Civil Appeal No. 2355 of 1979 reported in 1981 LIC 155, it is held that this Court has got power to set aside the award.

10. Mrs. M. M. Pal learned Counsel appearing for the petitioner raised a short question in support of this application. Learned Counsel submitted that in view of the fact that respondent No. 2 had notice of the reference having been made by the State Government and having in fact filed a written statement, no case had been made out for setting aside the ex parte award.

Learned Counsel further submitted that in any event, the application filed by respondent No. 2 for setting aside the said award was without jurisdiction inasmuch as 30 days had elapsed from the date of pronouncement of the award,

11. Learned Counsel in this connection has relied upon a decision of the Supreme Court in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, .

12. Learned Counsel further submitted that in terms of Section 17 of the Industrial Disputes Act, 1947, a presumption has to be drawn that an award has been published within 30 days from the date of receipt of the award by the appropriate Government.

13. Mr. Babban Lal learned Counsel appearing for respondent No. 2 on the other hand submitted that in the facts and circumstances of this case, it is evident that respondent No. 1 did not follow Rules 20 and 33 of the Industrial Disputes Bihar Rules as also Section 17 of the Industrial Disputes Act.

Learned Counsel submitted that in any event, from a perusal of the impugned award itself, it would appear that the same is not based on any evidence, but was made because respondent No. 2 allegedly did not produce any records to show that the workmen had not worked for a period of 240 days. In this situation, according to the learned Counsel, this Court should not exercise its discretion under Articles 226 and 227 of the Constitution of India.

14. It is true that respondent No. 1 has purported to have held that there has been no violation of Rules 20 and 33 of the Industrial Disputes, Act, Bihar Rules and Section 17 of the Industrial Disputes Act, but it had set aside an award only on a compassionate ground.

15. Rules 20 and 33 of the Industrial Disputes (Bihar Rules) and Section 17 of the Industrial Disputes Act read as follows:

20. Service of summons or notice,-Subject to the provisions contained in Rule 19, any notice, summons, process or order issued by a Board, Court, Labour Court. Tribunal or Arbitrator empowered to issue such notice summons process or order may be served either personally or by registered post. Failing service in either of these two modes service may be effected in the manner provided for in the CPC except that in case of such service the party interested in service shall depute its own agents who after service shall swear an affidavit before a Magistrate of the First Class and file the same before Tribunal or Court in proof of such service.

33. Publication of reports and awards.-(1) The receipt of every report by a Board or award of a Labour Court or Tribunal shall be acknowledged by the State Government.

(2) Within 30 days of the receipt of the report or award by the State Government, the Board, Labour Court or Tribunal shall publish the report by pronouncing the report or award in open court and shall also simultaneously arrange to exhibit the same on a notice board or a table at its office set apart for the purpose:

Provided that the Board, Labour Court or Tribunal shall send prior intimation in writing to all the parties concerned in the dispute and to the State Government about the date of pronouncement of the report or award concerned.

(3) The State Government may, where it so considers necessary, also arrange to notify the report or the award in the Official Gazette.

(4) When any application is made for copies of any award or documents to be furnished on the day on which such application is made, an additional fee equal to one and half of the fees leviable under this rule shall be charged. Such copies should be furnished on the same day and if it is not possible then on the following day.

(5) Printed copy of an award, decision etc., published under the authority of the State Government may be certified after comparison with the original of those documents to be true copy thereof, by the Presiding Officer of the Labour Court or Tribunal, as the case may be, or by any other officer, authorised by him in this behalf, on presentation of the printed copy of the award, decision etc. by the party applying for it and on payment of the prescribed fee for such application.

17. Publication of reports and awards, -(1) Every report of a Board 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.

16. It has not been disputed that at the relevant time, the Presiding Officer, Labour Court, Bokaro Steel City was merely in-charge of the court of Presiding Officer, Labour Court, Dhanbad. It is also not in dispute that the Reference was to Presiding Officer, Labour Court, Dhanbad, and not to Presiding Officer, Labour Court, Bokaro Steel City. Thus it is evident that respondent No. 2 appeared before Presiding Officer who had no jurisdiction to adjudicate upon the Reference pursuant to the notice received by it, but, there is nothing to show that any notice was served upon it by the Labour Court, Dhanbad, after respondent No. 1 was conferred with the power to adjudicate by the State Government in terms of

Section 7(2) of the Industrial Disputes Act.

Further from the order sheet which is contained in Annexure-F to the counter-affidavit, it does not appear that when respondent No. 1 was conferred with the power to adjudicate upon the disputes which was referred to Presiding Officer, Labour Court, Dhanbad. As indicated hereinbefore, pursuant to the order dated 13-4-1988, a notice was issued to the Management and the said notice was issued on 2-5-1988.

17. In terms of the order dated 16-5-1988, respondent No. 1 did not record that notice served upon respondent No. 2 was valid as 30 days from the date of issuance of the notice under registered cover as envisaged under Order V, Rule 19-A of the CPC has elapsed.

18. The witness examined on behalf of respondent No. 2 has categorically stated that it did not have any notice of the hearing of the Reference.

19. It is further evident from a perusal of Rule 33 of the industrial Disputes (Bihar) Rules that the respondent No. 1 did not follow the procedures laid down under proviso appended to Sub-rule (2) of Rule 33 of the Industrial Disputes (Bihar) Rules.

It is also clear that no intimation was given to the parties to the Reference by the Presiding Officer in terms of proviso to Rule 33 of the Industrial Disputes (Bihar) Rules, 1961 inasmuch as intimation about the receipt of the award by the Government was received by respondent No. 1 also on 12-7-1988 and in that view of the matter, it does not stand to any reason as to how 19-7-1988 was fixed for pronouncement of the award, that is, only after the period of seven days.

20. Respondent No. 1 is, therefore, not correct in holding that the pronouncement of the award did not become bad as no notice was served upon the parties to the Reference. Proviso appended to Rule 33 of the Industrial Disputes (Bihar) Rules provides that intimation has to be given to the parties about the date of pronouncement of the award. From the order sheet of Reference case No. 11 of 1987 as contained in Annexure-F to the counter-affidavit. It is evident that even no such intimation was sent to the parties concerned and on the date of pronouncement of the award, namely, 19-7-1988 neither the petitioner nor respondent No. 2 was present.

21. It is true that the petitioner filed an application for setting aside the award on 31-8-1988, that is, 30 days after the pronouncement of the award in court. However, respondent No. 1 had jurisdiction to set aside, an award by exercise of his power of procedural review as has been held by the Supreme Court in *Grindlay's Bank* (supra) within 30 days from the date of publication of the award in terms of Section 17 of the Industrial Disputes Act. There is nothing to show as to when the award pronounced by respondent No. 1 was received by the State Government.

22. In terms of Section 17 of the Industrial Disputes Act, a presumption may be drawn that an award had been published within 30 days by the appropriate Government from the date of receipt of the award. From the order sheet as contained in Annexure F to the counter-affidavit, it does not appear as to when the award was sent again to the State Government for its publication in terms of Section 17 of the Act.

23. Further in this case it has been categorically stated in the counter-affidavit that respondent No. 1 was communicated with its power u/s 7(2) of Industrial Disputes Act on 24-5-1988 ; whereas the ex parte hearing took place on 23-5-1988. It is, therefore, evident that the respondent No. 1 had no jurisdiction to examine the petitioner for the purpose passing an ex parte award on 23-5-1988.

24. In National Grindlay's Bank Ltd.'s case (supra), the Supreme Court held as follows:

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 17A. u/s 17A of the Act, an award becomes enforceable on the expiry of 30 days from the date of the publication u/s 17. The proceeding 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 over 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. That stage is not reached till the award becomes enforceable u/s 17A. In the instant case, the Tribunal made the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India, dated December 25, 1976. The application for setting aside the ex parte award was filed by respondent No. 3, action on behalf of respondent Nos. 5 to 17 on January 10, 1977 i.e., before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal. It had jurisdiction to entertain it and decide it on merits. It was, however, urged that on April 12, 1977, the date on which the impugned order was passed, the Tribunal had in any event become functus officio, we cannot accede to this argument. The jurisdiction of the Tribunal had to be seen on the date of the application made to it and not the date on which it passed the impugned order. There is no finality attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. 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.

25. Taking thus all facts and circumstances into consideration, there cannot be any doubt that even if it be held that respondent No. 1 should not have set aside the award on compassionate ground, it is evident that the ex parte award passed

by him is wholly illegal.

26. It is now well settled that issuance of a writ of certiorari is a discretionary one. This Court in exercise of its jurisdiction that Articles 226 and 227 of the Constitution may refuse to issue a writ of certiorari if by quashing of an illegal order, another illegal order is revived. In such an event, the Court has jurisdiction either to quash both the illegal orders or it may refuse to exercise its jurisdiction.

27. In this view of the matter, if the impugned order as contained in Annexure-3 to the writ application is quashed, it will revive the ex parte award which is also illegal and in that view of the matter, this Court, in my opinion, should quash both the impugned orders as also the award as contained in Annexure-2 to the writ application or may refuse to interfere with the impugned order.

28. However, it may be noted that after the hearing of the case was over. I suggested to Shri Baban Lal as to whether it would be possible for the management to take back the petitioner in services without prolonging the litigation any further.

Learned Counsel upon taking instructions from the respondent No. 2 offered that the petitioner may be reinstated by it without any back wages.

Mrs. M. M. Pal, learned Counsel appearing on behalf of the petitioner accepted the offer.

29. It was further stated by the learned Counsel for the respondent No. 2 that the petitioner may join his services with effect from 1-1-1992.

30. This application is, thus, disposed of on the terms as agreed to by the parties without any order as to costs.