

(2008) 03 GUJ CK 0013
In the Gujarat High Court
Case No : S.C.A. No. 510 of 2008

State Bank of Saurashtra

APPELLANT

Vs

Rashmikanth G. Dave

RESPONDENT

Date of Decision : 04-03-2008

Acts Referred:

Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 — Section 9
Industrial Disputes (Central) Rules, 1957 — Rule 22
Industrial Disputes Act, 1947 — Section 11, 11(1), 11(3)

Citation : (2008) 118 FLR 70 : (2008) 3 LLJ 813

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Pranav G. Desai, for the Appellant; A.S. Supehia, for the Respondent

Judgement

H.K. Rathod, J.—Rule. Learned Advocate Mr. A.S. Supehia waives the service of notice of Rule on behalf of respondent. In the facts and circumstances of the case and with consent of both the learned Advocates, matter is taken up for final hearing today itself.

2. Heard learned Advocate Mr. P.G. Desai on behalf of petitioner, learned Advocate Mr. A.S. Supehia with learned Advocate Mr. Chaudhari appearing for respondent workman.

3. In the present petition, petitioner Bank has challenged the order passed by C.G.I.T.A. in application No. 636/2004, old reference ITC No. 50/1995 dated May 30, 2006 and September 13, 2007 which are at Annexure A & Annexure D to the petition.

The Central Government Industrial Tribunal, Labour Court, vide Exhibit 43 decided that departmental inquiry held against the workman is illegal and against principles of, natural justice and that the finding given by Inquiry Officer is not based on evidence. Thereafter, matter was further processed for hearing on July 7, 2006.

4. Learned Advocate Mr. Desai appearing for petitioner submitted that this order is passed by Labour Court, Ahmedabad on May 30, 2006 in absence of petitioner. Therefore, MCA No. 119/2006 is filed by petitioner before Labour Court, against that written statement was filed by respondent workman. The Labour Court has decided the application, which is at page 49 to 51 dated September 13, 2007. The application filed by the petitioner is rejected and direction was issued against the petitioner to appear in this reference, to lead evidence and to justify the action by attending the Tribunal on the date as intimated.

5. The present petition is filed by petitioner challenging aforesaid two decisions, which is at annexure A and D as referred above. Learned Advocate Mr. Desai submitted that Labour Court has committed gross error in deciding preliminary contention raised by workman against departmental inquiry. He submitted that while examining the issue whether departmental inquiry is proper or not, the Labour Court has also considered the finding given by Inquiry Officer i.e. beyond the scope of preliminary point raised by workman.

6. Learned Advocate Mr. Desai also submitted that this order is passed by Labour Court in absence of petitioner because initially matter was at Rajkot Tribunal, thereafter, it has been transferred to Ahmedabad Tribunal, but Bank was not having any intimation from the Ahmedabad Tribunal. Therefore, petitioner Bank has not remained present before Labour Court, Ahmedabad and in their absence the Labour Court has decided preliminary point against petitioner Bank.

7. Learned Advocate Mr. Desai submitted that petitioner Bank has received Caveat from respondent workman. Therefore, a letter addressed to their Advocate on July 13, 2006 land inquire what happened with the Labour Court, Ahmedabad, why this order has been passed in absence of petitioner Bank.

8. The Caveat was filed by learned Advocate Mr. Vaibhav A. Vyas. The application preferred by respondent workman vide Exhibit 8 has been objected by the petitioner Bank vide exhibit 17 that inquiry conducted by the petitioner Bank is in accordance with law with the principles of natural justice. The Advocate engaged by the petitioner has not remained present after transferring the matter from Rajkot to Ahmedabad.

9. Learned Advocate Mr. Desai also submitted that Labour Court has committed gross error in deciding two things together while examining the inquiry. He submitted that there is a difference between inquiry and finding given by Inquiry Officer. The Labour Court shall have to examine only issue whether inquiry is proper or not. Therefore, he submitted that petitioner Bank has not given reasonable opportunity of hearing and passed order dated May 30, 2006.

10. He also submitted that application was made by the petitioner with a request to Labour Court to give opportunity while setting aside ex parte order, but even that application is rejected though petitioner remained absent without awareness and not able to make their submissions before Labour Court. Therefore, present petition is filed.

11. Learned Advocate Mr. Supehia appearing for respondent workman submitted that petitioner Bank was aware about transfer of the matter from Rajkot to Ahmedabad and also aware about the proceeding, which was pending before Labour Court, but on the date of hearing, Advocate remained absent. Therefore order is passed by Labour Court, Ahmedabad.

12. He submitted that it is a duty of the petitioner Bank to remain present when matter was transferred from Rajkot to Ahmedabad. Therefore, Labour Court has rightly passed an order and rightly rejected application filed by petitioner Bank.

13. Learned Advocate Mr. Supehia submitted that oral evidence was led by workman in respect to preliminary contention of legality of inquiry vide Exhibit 33, but petitioner Bank has not led any oral evidence in support of their case. He also submitted that Labour Court has considered para 7, where the merits have been examined by Labour Court. Learned Advocate Mr. Supehia has supported the order passed by Labour Court.

14. I have considered the submissions made by both learned Advocates. I have also perused orders passed by Labour Court on May 30, 2006 and September 13, 2007. Considering the fact that petitioner remained absent before Labour Court when first order passed by Labour Court, Ahmedabad, it is necessary to consider that preliminary point raised by respondent workman before Labour Court. The workman was examined at Ahmedabad vide Exhibit 33. Thereafter, no oral evidence led by petitioner Bank. The petitioner Bank has not submitted any oral or written arguments before Labour Court in respect to legality of inquiry.

15. Therefore, Labour Court has examined matter in absence of petitioner and come to conclusion that inquiry is illegal against principal of natural justice and finding given by Inquiry Officer are not based on evidence. The preliminary point is only in respect to decide that inquiry conducted by petitioner Bank is contrary to the principles of natural justice. Even though, Labour Court has decided the issue of finding against petitioner bank without giving any opportunity of hearing to petitioner Bank.

16. It is true that petitioner Bank has not taken sufficient care to remain present before Labour Court when matter was transferred from Rajkot to Ahmedabad, but that does not mean that petitioner should not be given reasonable opportunity of hearing in respect to two important point as raised by respondent workman before Labour Court and same is decided by Labour Court in absence of petitioner.

17. Therefore, considering some lapse on the part of petitioner Bank, according to my opinion, petitioner Bank is entitled to have reasonable opportunity of hearing before Industrial Tribunal, Ahmedabad in respect to question whether departmental inquiry conducted by petitioner is legal and valid or not and question of finding given by Inquiry Officer is baseless and perverse or not. These are two important issue in case of punishment of dismissal.

18. The contention raised by respondent Advocate Mr. A.S. Supehia that Tribunal has no jurisdiction to set aside ex parte order and there is no provision in the Rules. The Tribunal has also considered the said contention and come to conclusion that petitioner has to challenge such ex parte order to the High Court and not filed such Application for setting aside ex parte order before High Court. Therefore, Tribunal has rejected the Application filed by petitioner Bank. The submissions made by learned Advocate Mr. Supehia cannot be accepted. The reason given by Tribunal while rejecting said application by passing the order dated September 13, 2007 is erroneous. The Tribunal has committed gross error in rejecting said application by order dated September 13, 2007. The reason is that every Court has inherent power to pass appropriate order in such circumstances as decided by Apex Court in case of State of Maharashtra and others Vs. Admane Anita Moti and others, The Apex Court has considered identical case where ex parte order is set aside in case of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, . In Grindlays Bank v. Central Government Industrial Tribunal (supra) case, Apex Court has observed that when there is no provision in central Rules to file such application to set aside ex parte order, even though, Industrial Tribunal endowed such ancillary power for doing substantial justice between parties to entertain such Application for setting aside ex parte order and to set aside the same.

19. Labour Court has mainly rejected the application filed by the petitioner bank on the ground that the Labour Court has no power to reconsider the order passed by the Labour Court and remedy is to challenge to the higher forum. Labour Court has not examined the merits of the matter while passing order dated September 13, 2007. Relevant observations made by the labour Court in para 4 and 5 are reproduced as under:

4. Perused the citation referred by it published in 2001 LLR. 257 where Apex Court observed that, Court has power to set aside to its own ex parte decision. He also relied upon citation published in 1987 G.L.H. 157 where it was observed that ex parte decree can be set aside. He also relied upon on the copy and order passed in misc. application No. 78 of 1989, whereas second party's Advocate placed reliance on citation published in The Cooper Engineering Limited Vs. Shri P.P. Mundhe, where it was observed that, Labour Court cannot set aside inquiry. He also place reliance on the citation published in Bharat Forge Company Ltd. Vs. A.B. Zodge and another, where it is observed that, when opportunity was given to the employer to lead evidence but fail in that case, employer cannot complaint about opportunity not given. In this case my learned predecessor observes that, inquiry is not fair and proper and finding perverse, said order was passed on May 30, 2005. It is to be noted that it is not interim order as presumed by the applicant bank. In fact it is decision given by the Tribunal on the preliminary issue of inquiry and finding of it. When Tribunal observe that inquiry is not fair and proper and finding perverse then, only remedy lies with the applicant i.e., Bank to challenge the said order by approaching Hon"ble High Court and not before the same Court as happened and submitted by the second party

Advocate. Here it is a matter on record that, inquiry observe not fair and finding perverse. When that finding is there, it is the first party i.e., bank who has to challenge it by appealing the said order and not requesting the same Court to reconsider the issue of inquiry as Section 11 of the Industrial Dispute Act, does not permit Tribunal to set aside its own order as prayed by the bank/applicant.

5. In this premises, I conclude that, bank cannot ask this Tribunal to reconsider its own order, passed on May 30, 2005. Bank has option to challenge the said order before Hon"ble High Court or to lead evidence to justify its action, which is taken on the basis of said inquiry. Hence the order:

20. Based upon the aforesaid observations, Labour Court rejected the application by directing the applicant bank to appear in reference to lead evidence to justify its action by attending Tribunal on the date intimated and therefore, both the orders are under challenge in this petition.

21. Rule 22 of the Industrial Disputes (Central) Rules, 1957 is quoted as under:

22 Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parteIf without sufficient cause being shown, any party to proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.

22. In *Grindlays Bank Limited v. Central Government Industrial Tribunal and Ors.* (supra), the Apex Court observed as under in paras 5 to 8:

5. In dealing with these contentions, it must be borne in mind that the Industrial Disputes Act, 1947 is a piece of legislation calculated to ensure social justice to both employers and the employees and advance progress of industry by bringing harmony and cordial relations between the parties. In other words, the purpose of the Act is to settle disputes between workmen and employers which if not settled, would result in strikes or lockouts and entail dislocation of work, essential to the life of the community. The scheme of the Act shows that it aims at settlement of all industrial disputes arising between the capital and labour by peaceful methods and through the machinery of conciliation, arbitration and if necessary, by approaching the Tribunals constituted under the Act. It, therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both the parties.

6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the Rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of

the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.

7. Sub-section (1) of Section 11 of the Act, as substituted by Section 9 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, is in these terms:

11.(1) Subject to any Rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.

The words "shall follow such procedure as the arbitrator or other authority may think fit" are of the widest amplitude and confer ample power upon the Tribunal and other authorities to devise such procedure as the justice of the case demands. Under Clause (a) to (c) of Sub-section (3) of Section 11, the Tribunal and other authorities have the same powers as are vested in civil Courts under the Code of Civil Procedure, 1908, of (a) enforcing the attendance of any person and examining him on oath, (b) compelling the production of documents and material objects, and (c) issuing commissions for the examination of witnesses. Under Clause (d) thereof, the Tribunal or such other authorities have also the same powers as are: vested in civil Courts under the Code of Civil Procedure, 1908 in respect of such other matters as may be prescribed. Although the Tribunal or other authorities specified in Section 11 are not Courts but they have the trappings of a Court, and they exercise quasi-judicial functions.

8. The object of giving such wide powers is to mitigate the rigour of the technicalities of the law, for achieving the object of effective investigation and settlement of industrial disputes, and thus assuring industrial peace and harmony. The discretion thus conferred on these authorities to determine the procedure as they may think fit, however, is subject to the Rules made by the "appropriate Government" in this behalf. Part III of the Industrial Disputes (Central) Rules, 1957 makes Rules in this behalf, Rules 9 to 30 are the relevant Rules regulating procedure. State Governments too have made their own corresponding rules. Except to the extent specified in Sub-section (3), of Section 11 of the Act and the Rules framed thereunder, the provisions of the Code of Civil Procedure, 1908 are not applicable to proceedings before the authorities mentioned in Sub-section (1). The provisions of the Evidence Act, in their strict sense, likewise do not apply to proceedings before the authorities. Nevertheless, all these authorities being quasi-judicial in nature objectively determining matters referred to them, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and Rules of natural justice.

23. In *Anil Sood Vs. Presiding Officer, Labour Court II*, the Apex Court observed as under in paras 5 to 8 at pp. 1114 & 1115 of LLJ:

5. This Court in *Grindlays Bank Limited v. Central Government Industrial Tribunal and Ors.* (supra) case examined the scheme of the provisions under the Industrial Disputes Act and enunciated that Section 11 of the Industrial Disputes Act conferred ample powers upon the Tribunal to devise its own procedure in the interest of justice which includes power which bring out the adjudication of an existing industrial dispute. Sub-sections (1) and (3) of difference between procedure and powers of the Tribunal under the act while the procedure is left to be devised by the Tribunal to suit carrying out its functions under the Act, the extent of powers of Civil Court are clearly set out.

6. The aspect that the party against whom award is to be made due opportunity to defend has to be given is a matter of procedure and not that of power in the sense in which the language is adopted in Section 11. When matters are referred to the Tribunal or Court they have to be decided objectively and the Tribunals/ Courts have to exercise their discretion in a judicial manner without arbitrariness by following the general principles of law and Rules of natural justice.

7. The power to proceed *ex parte* is available under Rule 22 of the Central Rules which also includes the power to inquire whether or not there was sufficient cause to the absence of a party at the hearing and if there is sufficient cause shown which prevented a party from appearing, then if the party is visited with an award without a notice which is a nullity and therefore the Tribunal will have no jurisdiction to (sic) proceed and. consequently, it must necessarily have-power to set aside the *ex parte* award.

8. If this be position in law both the High Court and the Tribunal fell into an error in stating that the Labour Court had become; *functus officio* after making the award though *ex parte*. We set aside the order made and the award passed by the Labour Court and affirmed by the High Court in this regard, in view of the fact that the learned, Counsel for the respondent concerned that application filed by the appellant, be allowed set aside *ex parte* award and restore the reference. To decide the matter afresh, the parties shall appear before the Labour, Court on December 11, 2000 to take further directions as regards the proceedings. As the matter is very old, it would be appropriate for the Labour Court to dispose of this reference as expeditiously as possible but not later then six months from today.

24. Therefore, order passed by Labour Court Central on September 13, 2007 is bad and contrary to law laid down by Apex Court decisions as referred to above. Therefore, considering the fact, petitioner is entitled for reasonable opportunity of hearing from Industrial Tribunal. For such lapse committed by petitioner Bank not to remain present before Labour Court when the matter was pending, some reasonable costs is to be ordered to pay to respondent workman because the period from September 13, 2007 to March 2008 remain pending before this Court in present proceeding. For that, reference is not decided during this period because orders are challenged by the petitioner Bank before this Court.

25. The dates given by learned Advocate Mr. Desai that about the order dated

May 30, 2006, petitioner Bank has received information on July 13, 2006 and application to set aside the order was filed on August 4, 2006, that has been decided by Labour Court on September 13, 2007, that order received on October 25, 2007 and petition is filed before this Court on December 26, 2007.

26. Considering the aforesaid period, delay occurred because of some lapse committed by petitioner Bank. Therefore, reasonable cost of Rs. 30,000/- is quantified, to be paid to respondent workman by petitioner Bank within a period of one month from the date of receiving copy of this order by way of an Account Payee Cheque in the name of respondent workman.

27. Accordingly, both the orders dated May 30, 2006 and September 13, 2007 are hereby quashed and set aside with a direction to Labour Court, Ahmedabad to decide preliminary point raised by respondent workman whether inquiry conducted against respondent workman by the petitioner Bank is legal and valid or not and finding given by Inquiry Officer is baseless and perverse or not in accordance with law and to decide the question within a period of two months from the date of receiving copy of this order after giving reasonable opportunity of hearing to both parties.

28. Both the parties have agreed before this Court to co-operate in hearing before Industrial Tribunal and will not ask for unnecessary adjournment.

29. It is hoped being an old matter, Tribunal will give priority in deciding main reference and to decide as early as possible preferably within a period of one year from the date of receiving copy of this order.

30. Accordingly, Rule is made absolute to that extent with no order as to costs.