
(2013) 02 JH CK 0072
In the Jharkhand High Court
Case No : L.P.A. No. 267 of 2012

State of Jharkhand and Another

APPELLANT

Vs

Sanjay Kumar and Others

RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 226
Industrial Disputes Act, 1947 — Section 10A, 17B

Citation : (2013) 137 FLR 14 : (2013) 2 JLJR 133 : (2013) 2 LLN 671

Hon'ble Judges : Prakash Tatia, C.J.;Alok Singh, J

Bench : Division Bench

Advocate : Rajesh Shankar and Lokess Kumar, for the Appellant; Sumeet Gododia and Dhananjay Kr. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Tatia, C.J. and Alok Singh, J.—Heard learned Counsel for the parties. The appellant-State is aggrieved against the order dated 24.1.2012 passed in W.P.(L) No. 3919 of 2008 by the learned Single Judge as well as another order passed on 25.1.2012 to the same effect. It is also pertinent to mention here that by these two orders passed separately, several interlocutory applications have been decided by the learned Single Judge with the same relief that the respondent-appellant shall comply with the provisions of section 17-B of the Industrial Dispute Act, 1947.

2. The preliminary objection raised by the learned Counsel for the respondent-workmen Shri Sumit Gadodia that, section 17-B of the Act of 1947 is a mandatory provision of law and once the award has been passed by the Labour Court, the High Court under Article 226 as well as the Hon'ble Supreme Court under Article 136 of the Constitution of India cannot restrict the relief which is made available to the workmen u/s 17-B of the Act. Learned Counsel for the respondent submitted that in the judgment of Hon'ble Supreme Court delivered in the case of AIR 1998 511 (SC) . even the view taken by the Bombay High

Court, that section 17-B nowhere lays down that, even in extreme cases, if it is demonstrated that the award passed is either without jurisdiction or is otherwise a nullity or grossly erroneous or perverse, the High Court or the Supreme Court is deterred from exercising its powers under Articles 226 and 136 of the Constitution, has been overruled by the Supreme Court. Learned Counsel for the respondent also relied upon another judgment delivered in the case of Ch. Saraiah Vs. Executive Engineer, Panchayat Raj Department and Another, wherein also the provisions of section 17-B of the Industrial Disputes Act, 1947 has been examined by the Supreme Court and it has been held by the Supreme Court that the Division Bench of High Court committed serious error in interfering with the direction of the learned Single Judge to comply with the provisions of section 17-B of the Act.

3. Learned Counsel for the appellant-State Shri Rajesh Shankar vehemently submitted that the Division Bench of this Court in the case of Employer in relation to the Management of Employer in relation to the Management of Central Mine Planning and Design Institute Ltd. Vs. Union of India and Others, after considering the judgment of Hon"ble Supreme Court delivered in the case of Dena Bank (Supra), in para-10, in detail and after discussing the issue held that, there can be cases where despite section 17-B being there on the Statute Book, the High Court can decline to grant relief of paying wages last drawn to a person. However, learned Counsel for the State Shri Rajesh Shankar, after his own research, found one order through internet from the Website of the Supreme Court, passed in Civil Appeal No. 7249 of 2001 whereby the Hon"ble Supreme Court, vide order dated 22nd February, 2002, set aside the judgment of the Division Bench of this Court delivered in the case of Employer in relation to the Management of Central Mine Planning and Design Institute Ltd. v. Union of India and others.

4. In spite of such position, learned Counsel for the appellant-State vehemently submitted that there cannot be law that even nullity can be a basis for the relief and in that situation also, the High Court as well as the Supreme Court in exercise of their power under Articles 226 and 136 of Constitution of India can pass appropriate order to do the justice so as to give the relief to the aggrieved party from the harm which may be caused due to the order which is nullity and from the order which has been passed wholly without jurisdiction. Not only this, there may be cases where fraud is apparent from the award itself and in that situation, it cannot be held that the High Court cannot interfere under Article 226 and even Supreme Court cannot interfere under Article 136 of Constitution of India. Therefore, according to learned Counsel for the State, still the State is of the view that in the rarest of rare cases and in extreme circumstances, the High Court can pass appropriate order under Article 226 of Constitution of India to do the justice by staying the benefit arising out of the order which has been passed wholly without jurisdiction or is nullity which, in fact, may be outcome of fraud.

5. Learned Counsel for the State-appellant relied upon the judgment of Full

Bench of the Madras High Court delivered in the case of Godrej and Boyce Manufacturing Co. Ltd., Madras Vs. Principal Labour Court, Madras and Another, .The Full Bench decision of the Madras High Court has been followed subsequently by the Division Bench of this Court in the case of Employer in relation to the Management of Central Mine Planning and Design Institute Ltd. v. Union of India and others.

6. We have considered the submission of learned Counsel for the parties and perused the law laid down by the Madras High Court as well as yet another judgment of Karnataka High Court delivered in the case of Vysya Bank Ltd. Vs. General Secretary, All India Vysya Bank Employees" Union, Bangalore and Others, and the judgments referred above.

7. It will be appropriate to quote paragraphs 11 and 12 of the Judgment of the Full Bench of Madras High Court in the case of Godrej and Boyce Manufacturing Co. Ltd. Madras, which are as under:

11. Consensus of judicial opinion is that there is no vice in the rule enshrined in section 17-B of the Act inasmuch as it is not unconstitutional and although it does not infringe or makes in road in any manner into this Court's power under Art. 226 of the Constitution of India, it creates a liability upon the employer and conversely, a right in the workman to pay and receive wages last drawn by him inclusive of any maintenance allowance admissible to him, under any rule during the period of pendency of the proceedings in the Court with the exception that if during this period or any part thereof he was gainfully employed elsewhere, he would not be entitled to such wages for the period of gainful employment. In Chitram and Co. Ltd. case (supra), it has been rightly stated by a Division Bench of this Court that section 17-B cannot be construed as in any manner taking away or fettering the plenary powers of the High Court under Arts. 226 and 227 of the Constitution of India, to make appropriate orders taking note of the relevant facts. That appropriate order will invariably be to the aid of the workman for payment of full wages pending proceedings in the Court unless the award is demonstrated to be a nullity or made without jurisdiction. The unfettered power of the Court under Art. 226 of the Constitution cannot be used to destroy the statutory right granted to a workman u/s 17-B of the Act, i.e., a right pendente lite which has been recognised, as we have seen, to remove the hardship and to protect the interests of the workman. The workman cannot be left uncared to suffer a total deprivation of wages merely because the employer has chosen and accordingly initiated a proceeding under Arts. 226 and 136 of the Constitution of India. This beneficial legislation that operates within a limited sphere is subject to conditions laid down by the section itself and that the section nowhere lays down that in extreme cases where it is demonstrated that the award passed is either without jurisdiction or is otherwise a nullity, the High Court or the Supreme Court is debarred from exercising its powers under Arts. 226 and 136 of the Constitution.

12. Before we conclude and answer the reference, we feel constrained to observe

that any challenge to the award on the ground that it is without jurisdiction or is otherwise a nullity alone will not be sufficient to suspend the operation of section 17B of the Act. The final adjudication in a case where the award is without jurisdiction or is otherwise a nullity shall ordinarily meet the ends of justice. The workman, who shall be waiting for the implementation of the award during the pendency of the proceedings, however, shall receive only the wages at the rate last paid for the period of the pendency of the proceeding in the Court. It is not a burden of any serious consequence upon the employer, but will be a deprivation of a sort which may cause havoc to the workman and his family. If we proceed on the footing that the Court's power to make the final order includes the power to make an interim order, then we may say, the power will extend to suspending the liability of the employer u/s 17-B of the Act and accordingly the right of the workman to receive wages pendente lite. But, this will be possible in the rarest of the rare cases. Otherwise, it will defeat the very purpose for which this section has been introduced in the Act. There shall be any number of employers/managements, who shall successfully contrive petitions and proceedings challenging the award on some such grounds as the award being without jurisdiction or a nullity. Courts cannot afford to be manipulated and allow the management/employer to use the interim order as a weapon to avoid such a statutory liability. Some error of fact or even some error of law alone will not thus be enough to issue any interim order. If, however, the error is such that goes to the root of the jurisdiction of the Tribunal and the Court has got sufficient materials to ignore the effect of section 17-B of the Act, the Court may decline to order payment of the wages pendente lite. The Bombay High Court in the case of *Elpro International Ltd. v. K.B. Joshi and others*, (Supra), has indicated this caution in the words, in Para 8 (p.215) that: "...Extreme cases where it is demonstrated that the award passed is either without jurisdiction or is otherwise a nullity..."

The Court can decline to make an order in terms of section 17-B of the Act.

The words "or grossly erroneous or perverse" in that judgment and in the judgment of the Division Bench of this Court in *Chitram and Company* (supra), have to be understood only to mean illustratively when the Court may treat the award a nullity.

8. After giving the reasons, the Full Bench of Madras High Court held that section 17-B of the Act does not in any manner impair or interfere with the powers of the High Court under Article 226 of the Constitution of India and the Court still possesses the discretion to go into the question and award a lesser amount than the exact quantum of last drawn wages. At this juncture, it will be appropriate to mention that before the Full Bench of Madras High Court, the issue was that whether the High Court can exercise its power under Article 226 to award the wages lesser than the wages which are permissible u/s 17-B of the Industrial Disputes Act, 1947. However, while deciding this question and while passing any award u/s 17-B of the Act, the Full Bench of Madras High Court, in detail, has

considered the power of the High Court under Article 226 and the power of the Supreme Court under Article 136 of the Constitution of India in the matter of interference with the award. A Division Bench of this Court in the case of *Employer in relation to the Management of Central Mine Planning and Design v. Union of India and others*, (supra), considered the case of Dena Bank in para 10 of the judgment. Para-10 of the said judgment of this Court is quoted as under:

10. we are in respectful agreement with the view expressed and the ratio laid down by the Full Bench of Madras High Court in *Godrej and Boyce* (supra). Similarly in *Dena Bank* (supra), their Lordships of the Supreme Court asserted once again the fact that basic power still originates from Article 226 of the Constitution. On a consideration of all the relevant aspects of the matter, therefore, our view is that section 17-B of the Act does not take away the unfettered power and plenary jurisdiction of the High Court conferred upon it under Article 226 of the Constitution and that section 17-B of the Act has to be read with Article 226 of the Constitution. We are of the view, therefore, that whenever a writ petitioner challenges an award passed by a Labour Court or an Industrial Tribunal and raises contentions concerning the very basic jurisdictional aspects of the Award or brings to the notice of the Court some patent error of law apparent on the face of the award and thus satisfied the Court, prima-facie, with reference to the merits of the aforesaid contentions (duly supported by the material on record) that the Labour Court or the Industrial Tribunal erred in passing the Award (award can thus be termed as a perversity or nullity in the eye of law) merely because section 17-B is there on the Statute Book, there is no mandatory requirement that even in such cases where the High Court, prima facie, is satisfied about such illegality in the Award, it must pass an order directing the writ petitioner to pay wages last drawn to the respondent during the pendency of the proceedings in the High Court. We have thus no hesitation in saying that there can be cases where despite section 17-B being there on the Statute Book the High Court can decline to grant relief paying wages last drawn to a person. At the same time we must hasten to add that cases where the High Court may decline to pass an order u/s 17-B of the Act, have to be the rarest of the rare. Granting relief u/s 17-B of the Act and passing order directing payment of wages drawn, is generally the rule; refusing to grant relief u/s 17-B, an exception, as it would be in the rarest of the rare cases. The cases may be only those where an award is challenged on the basic issue of jurisdictional error or errors apparent on the face of the Award. One instance of jurisdictional error can be about the absence of the relationship of workman and the employer between the parties. If the writ petitioner challenging the Award before the High Court genuinely, bona fide, seriously and gravely raises the question of absence of this relationship and the High Court is satisfied, prima facie in full measure with reference to such contention of the writ petitioner, which have to be duly supported by the material on record and the High Court comes to a prima facie conclusion that indeed very serious and grave doubts do exist with respect to the question of such relationship between the parties, it can refuse to pass an order

u/s 17-B of the Act, thus declining to issue a direction to the writ petitioner to pay wages last drawn to the respondent. Since the satisfaction of the High Court on this score has to be prima facie very clear, it goes without saying that while declining to grant relief u/s 17-B of the Act, we are required to act with utmost circumspection.

9. The Division Bench of this Court, after holding that section 17-B is not a restriction upon the power of the High Court under Article 226 of Constitution of India, observed that there can be cases where despite section 17-B being there on the Statute Book, the High Court can decline to grant relief paying wages last drawn to a person. However, as has been done by the Full Bench of Madras High Court in the case of Godrej and Boyce Manufacturing Co. Ltd., the Division Bench of this Court also observed that the High Court can refuse to grant relief u/s 17-B of the Act, if the case is not of the rarest of the rare nature and such power can be exercised only sparingly and not to destroy the spirit of section 17-B and such denial can be when the Court finds, prima facie, that the Award passed was wholly without jurisdiction or is nullity.

10. The similar view was taken by the Bombay High Court in the case of Elpro International Ltd. Vs. K.B. Joshi and others, . The said judgment has been considered by Hon"ble Supreme Court in the case of Dena Bank (supra), in para-16. The issue has been considered by the Hon"ble Supreme Court which has also been considered by the Bombay High Court and therefore, we quote para 16 of the judgment of Dena Bank (supra), which is as under:

16. In Elpro International Ltd. v. K.B. Joshi, the Division Bench of the Bombay High Court was dealing with the challenge to the validity of the provisions in section 17-B on the ground that the same are vague and arbitrary inasmuch no provision is made as to what would happen to the amount paid if ultimately the employer succeeds and the award is quashed and set aside and are, therefore, violative of Article 14 of the Constitution. It was also urged that the said provisions encroach upon the powers of the High Court and this Court under Articles 226 and 136 of the Constitution. The High Court has rejected both the contentions. It was held that the absence of a provision as to what would happen to the amount paid u/s 17-B if ultimately the employer succeeds in the litigations does not make the section either vague or arbitrary because what is to be paid u/s 17-B is in the nature of subsistence allowance that is payable u/s 10-A of the Industrial Employment (Standing Orders) Act, 1946 which is neither refundable nor recoverable irrespective of the result of the enquiry. As regards challenge on the ground of encroachment upon the powers of the High Court under Article 226 and this Court under Article 136 of the Constitution, the High Court was of the view that section 17-B only guarantees to the workman the payment of wages by the employer during the pendency of the proceedings before the High Court or the Supreme Court, and that too, subject to the conditions laid down by the said section and the proviso, irrespective of the result of the proceedings and it also imposes an obligation upon the workman concerned to file an affidavit before the

Court stating that he has not been employed in any establishment during the pendency of the proceedings and it also absolves the employer of his obligation to pay such wages if he is able to prove to the satisfaction of the Court that the workman had been otherwise employed and had been receiving adequate remuneration. The High Court has observed that section 17-B nowhere lays down that in extreme cases if it is demonstrated that the award passed is either without jurisdiction or is otherwise a nullity or grossly erroneous or perverse, the High Court or the Supreme Court is deterred from exercising its powers under Articles 226 and 136 of the Constitution. On that view, the High Court held that section 17-B does not in any way encroach upon or override the powers of the High Court under Article 226 and this Court under Article 136 of the Constitution.

Hon''ble Supreme Court, thereafter, in para-23 of the Dena Bank case specifically over ruled above view and held as under:

23. ...But we are unable to agree with the view of the Bombay High Court in Elpro International Ltd. that in exercise of the power under Articles 226 and 136 of the Constitution, an order can_ be passed denying the workman the benefit granted under Section_ 17-B. The conferment of such a right u/s 17-B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Articles 226 and 136 of the Constitution.

Therefore, any view contrary to judgment of Supreme Court delivered in the case of Dena Bank (supra), holding that conferment of right u/s 17-B of the Industrial Disputes Act, 1947 cannot be regarded as restriction on the powers of High Court or the Supreme Court under Articles 226 and 136 of the Constitution of India is not a good law.

11. Learned Counsel for the respondent relied upon the judgment of Hon''ble Supreme Court delivered in the case of Workmen represented by Workmen Represented by Hindustan V.O. Corpn. Ltd. Vs. Hindustan Vegetable Oils Corporation Ltd. and Others, wherein Hon''ble Supreme Court set aside the order of the Division Bench of Calcutta High Court and observed that the application u/s 17-B is required to be disposed of with great promptitude and before the disposal of the writ petition. According to learned Counsel for the respondent, in view of the above decision, the State may be directed to comply with the provisions of section 17-B of the Act for which order has been passed and which has not been interfered by us in this judgment. So order as has been passed by the learned Single Judge is required to be complied with great promptitude in the light of the decision given by Hon''ble Supreme Court in the case of Workmen represented by Hindustan V.O. Corpn. Ltd. v. Hindustan Vegetables Oils Corporation Ltd. and others. In view of the above reasons, this L.P.A. deserves to be dismissed and hence, is dismissed. Consequently, stay petition is also dismissed.

However, in the facts of this case, particularly, in view of the involvement of large number of employees, we request learned Single Judge to decide the writ

petition expeditiously and preferably by the end of April, 2013.