

(1995) 12 CAL CK 0038
In the Calcutta High Court
Case No : C.O. No. 4624 (W) of 1992

Subrata Guha Sarkar and Others

APPELLANT

Vs

Second Labour Court and Others

RESPONDENT

Date of Decision : 08-12-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 11

Citation : 100 CWN 182 : (1996) 73 FLR 992 : (1996) 1 ILR (Cal) 114 : (1996) 2 LLJ 116

Hon'ble Judges : Nikhil Nath Bhattacharjee, J

Bench : Single Bench

Advocate : Kashi Kanta Maitra and Alok Ghosh, for the Appellant; T.L Banerjee and Supan Gupta, for the Respondent

Final Decision : Allowed

Judgement

Nikhil Nath Bhattacharjee, J.—In this writ application under Article 226 of the Constitution of India the question that falls for determination is whether a labour court in a computation case has the inherent power to review its own reviewed judgment after lapse of two hundred and seventy seven days. The facts leading to the present application, which undoubtedly portray how justice delivery system can be made a mockery are as follows.

2. Surendra Nath Guha Sarkar was a workman under M/s. B.K. Saha & Bros. Private Ltd. The said Private Limited Company was converted into a Limited Company by operation of law and was added as a party in the industrial reference case before the first Industrial Tribunal, Calcutta - and is respondent No. 2 herein. The writ petitioners are the heirs and legal representatives of Surendra Nath Sarkar who worked under the said company since July 3, 1953. The said employer served a notice dated May 15, 1976 addressed to all his employees including S.N. Guha Sarkar intimating that all employees working under it would be the employees of Samir Kumar, Mihir Kumar Saha as per agreement dated May 13, 1976. The notice was strongly opposed by the

workmen.

3. On August 12, 1978 the Government of West Bengal referred to the First Industrial Tribunal for adjudication of the said dispute of S.N. Guha Sarkar under reference No. 3510/IR. The employer company moved an application under Article 226 of the constitution against the said reference which was registered as C.R.No. 8223 (W) of 1978. The application was disposed of by an order dated February 25, 1980 with a direction to dispose of the reference case within four months from date. Thereafter the workman as also the employer Company filed written statements with lists of documents.

4. On May 8, 1983 S.N. Guha Sarkar died intestate and was substituted by his heirs and legal representatives who are the present writ petitioners. The Tribunal took up the case for hearing twice but the employer company failed to adduce further evidence and May 25, 1984 was fixed for argument.

5. On August 30, 1984 the employer company moved a writ application against the said order of closing further evidence and fixation of May 25, 1984 for argument being C.O. No. 19416(W) 1984. Upon hearing the parties the writ application was dismissed on March 19, 1985. Against the said order the employer company preferred an appeal being F.M.A.T. No. 1057 of 1985 which was also dismissed on August 23, 1985 by the Hon"ble Division Bench. In the subsequent hearing before the Tribunal the employer company wanted to adduce further evidence which was opposed by the workman and upon hearing the parties the Tribunal refused to accept further evidence. Against this order the company moved another application under Article 226 of the Constitution being C.O. No. 3385 (W) of 1986 which was rejected by this Hon"ble Court.

6. On June 19, 1987 the Tribunal passed its Award as follows:

"under such circumstances there is no escape from the conclusion that Sri. S.N, Guha Sarkar was entitled to back wages with effect from June 1, 1976 along with usual increments including dearness allowances, P.F, Gratuity, Bonus, Leave Pay in credit and other benefits to which he was entitled had he been in service from the Company."

7. "Admittedly in the instant case the company has not produced any contract of employment regarding superannuation on reaching a particular age. No Standing Orders of the company as to age of retirement have been produced before this Tribunal"

8. The Award was eventually published by the Government of West Bengal in its official Gazette dated August 2, 1987.

9. On October 15, 1987 the petitioners filed computation case No. 155 of 1987 for recovery of the dues u/s 33(c)(2) of the I.D. Act read with Rule 74(3) before the Second Labour Court, West Bengal which issued notice to appear and file objection on December 14, 1987. The respondent No. 2 duly appeared but did not file any objection and instead on March 21, 1988 moved an application under

Article 227 of the Constitution challenging the Award dated June 19, 1987 suppressing the material fact that a computation case had already been filed and that it had already made appearance in the said case. The writ application was registered as C.O. No. 519 of 1988.

10. In the meantime the computation case was repeatedly fixed for hearing on May 13, 1986, July 15, 1988, September 15, 1988, October 31, 1988 and December 14, 1988. But the respondent No. 2 did not appear.

11. On December 20, 1988 upon hearing the parties the C.O. 519 of 1988 was dismissed with costs of 60GMs. On April 18, 1990 the respondent No. 2 moved an application before the Labour Court for time to bring a stay order from Hon"ble Supreme Court which was allowed and May 15, 1990 was fixed for filing certified copy of the stay order, if any of the Hon"ble Supreme Court. On the said date respondent No. 2 did not file any certified copy of the order from the Hon"ble Supreme Court and hence June 26, 1990 was fixed for hearing which was shifted to August 8, 1990 as the respondent No. 2 was absent on call. The labour Court heard the case ex-parte on August 8, 1990 and reported the matter in the daily cause list for judgment on August 24, which was shifted to September 6, 1990.

12. On September 6, 1990 judgment was pronounced allowing the workman Rs. 1,44,562.47 with interest at the rate of 9 per cent per annum from the date of filing the computation case till realisation of dues with costs.

13. On December 4, 1990 respondent No. 2 filed an application for review / recall of the order dated September 6, 1990.

14. On May 7, 1991 upon hearing both parties the application for review filed by the respondent No. 2 employer company was rejected.

15. On June 10, 1991 respondent No. 2 filed the second review application for reviewing or recalling the order dated September 6, 1990 and with this second review application certain documents relating to the service record of S. N. Guha Sarkar was submitted. The petitioners filed affidavit-in-Opposition by an order dated January 15, 1992. The Second Labour Court accepted the said second petition for review and directed the respondent No. 2 to file written statement. Being aggrieved and dissatisfied with the said order the writ petitioners have come to this Court with this application and obtained an interim order. It appears that affidavit -in-opposition was directed to be filed within five weeks from May 13, 1992 and reply, if any, within three weeks thereafter. But till today no affidavit-in-opposition has been filed on behalf of the respondent No. 2 employer.

16. Mr. Kashi Kanta Maitra, Learned Senior Advocate assisted by Mr. Arun Kr. Ghosh and Mr. Piren Bhaumick, appearing for the writ petitioners submitted at the outset that the Respondent employer having not affirmed any affidavit against the writ application, the doctrine of non-traverse will apply and this writ application is to be disposed of on the factual basis as averred in the writ

application. His next submission is that not only review of a reviewed judgment is expressly barred under Order 47, Rule 9 of the CPC but that in the whole gamut of Industrial law entertainment of a second review application by the Tribunal/Labour Court is unheard of and unprecedented. Referring to Section 11 of the Industrial Disputes Act that the Tribunal/Labour Court subject to any rules that may be made in this behalf shall follow such procedure as it thinks fit for the purpose of adjudication of a dispute, Mr. Maitra submitted that in the absence of any provision for review the Tribunal or Labour Court may in certain cases reconsider its own decision but after such reconsideration is made, there does not and cannot remain any scope for another reconsideration, as in that event there will be no finality, no end to a litigation and the parties will remain in the doldrums for all times to come. Referring to the factual aspects which are pointers to how the poor employee and since his death his heirs and legal representatives have been forced to run relentlessly from lower Court to High Court for last 19 years, Mr. Moitra submitted that the Respondent employer has adopted a definite design to make the employee exasperated and denuded of all financial resources, so that they stop claiming his legal dues on account of back wages. Mr. Moitra pointed out that the purpose of the second review application is allegedly to introduce certain service records of the employee but these records were all along in the possession of the Respondent employer but by deliberately suppressing the records during the hearing and intending to introduce them by second review application the employer wants to drag the proceedings beyond the capacity of the employee or his heirs and legal representatives. In such circumstances, Mr. Moitra maintained, if the second review application is entertained a settled position will be unsettled violating natural justice and causing untold sufferings to the writ petitioners. In this connection Mr. Moitra also referred to the proviso to Section 11A of the I.D. Act and urged that since the Labour Court has to rely only on the materials and record and is expressly barred from taking fresh evidence in the computation case following the award, there was no scope for entertaining the second review application and in that view of the matter this Court should interfere and set aside and quash the impugned order.

17. On the other hand, Mr. Supan Gupta, Learned Advocate assisted by Mr. Dipankar Ghosh and Mr. Partha Sarathi Sengupta appearing for the Respondent relied on the decision reported in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, wherein on the question whether the Industrial Tribunal has power to set aside an award passed ex-parte, it was held that although there is no express provision in the Act or Rules giving the Tribunal jurisdiction to set aside ex parte award 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 power as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. It was also held in the said decision that where a party is visited with an award without a notice of the proceedings. In such circumstances the Tribunal has not only the power to

review but also the duty to set aside the ex-parte award and direct the matter to be heard afresh.

18. In the instant case what we are really concerned with is not the initial power of review or reconsideration of a decision but whether second review or reconsideration can at all be made. Here it is not the case of the respondent review applicant that they could not appear when the computation case was heard ex-parte or the review application was dismissed ex-parte. In this case what is glaring is that after the computation case was filed the Labour Court issued notice to appear and file objection, in response to which the respondent No. 2 appeared but did not file any objection and instead moved a writ application before the High Court challenging the award passed long back suppressing the material fact that the computation case had already been filed and appearance had already been made on its behalf. The writ application was dismissed even at the appellate stage and the award became final. In the computation case the employer company took time one after another to bring stay order from the Hon'ble Supreme Court but failed. The Computation case was fixed for hearing several times but the employer company was absent. Ultimately hearing was concluded ex-parte and the matter was posted for judgment on two successive dates but the employer company did not come forward to contend that they had been prevented by sufficient cause from appearing on the date fixed for hearing. Order was passed in the computation case. Thereafter the first review application was filed and upon hearing both the parties the application was rejected. Then the second review application was filed. In this backdrop of the present case, it is needless to point out, the cited decision has no manner of application to the present case.

19. On behalf of the respondent No. 2 reliance has also been placed on the decision reported in (i) Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another, 1976 Lab. I.C. 521 (ii) Bells Asbestos and Engineering (India) Private Ltd. v. A. Heartgrove and (iii) Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, to highlight that an application to recall an award made ex-parte can be entertained by the Court or Tribunal. But as already pointed out, our question for consideration is not whether the first application lies but whether a second application, particularly in the facts and circumstances of the present case could be entertained by the Labour Court and accordingly the cited decisions are of little help to me.

20. What stands out is that the employee and since his death his heirs and legal representatives have been fighting the cause of the employee viz. back wages for illegal termination, for last 19 years and on innumerable occasions were forced to come to this Court, engage counsels and fight out writ applications even at the appellate stage. Although in each case the employee won he was however dragged to the higher Court. What may be a luxury for the affluent employer is a death-knell to the poor employee. Indeed, if any honest reckoning is made, it will be evident that the employer incurred expenditure much more than its liability

towards the outstanding wages of the employee.

21. Having considered the facts, circumstances and the points of law involved I am fully in agreement with the submissions of Mr. Moitra and of the view that the second application is not maintainable, particularly when the first review application had been disposed of on contest after hearing both the parties. I am of the view that in the circumstances of this case entertainment of the second review application after lapse of two hundred and seventy seven days which is clearly and designedly made to impede, thwart and frustrate the course of justice, is not sustainable.

22. The writ application succeeds. Let a writ in the nature of Mandamus be issued directing the respondent No. 1 to give effect to the order dated September 6, 1990 passed in the computation case No. 155 of 1987 in accordance with law forthwith ignoring the second review application or any further application that may be made for reconsideration. An exemplary cost of 1,000 G.M. is awarded in favour of the writ petitioners to be paid by Respondent No. 2 herein.

23. Upon pronouncement of the judgment Dr. Banerjee, appearing on behalf of the Respondent No. 2 prays for stay of operation of the order. Upon payment of the cost within two days from today, the prayer shall stand allowed for a period of four weeks. The cost is to be paid directly to the writ petitioner by a cheque.

24. A xerox certified copy of this judgment be given to the learned Counsels expeditiously.

25. A plain copy of the operative portion of the judgment duly counter signed by Assistant Registrar (Court) be also given to the Learned Advocate for Respondent No. 2.