

**(2007) 07 CAL CK 0023**  
**In the Calcutta High Court**

**Case No :** C.O. No. 12218 (W) of 1991 and CAN No's. 4832 and 5158 of 2007

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|--------------------------------------------|------------|
| Swaika Vanaspati Products Ltd. and Another | APPELLANT  |
| Vs                                         |            |
| State of W.B. and Others                   | RESPONDENT |

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**Date of Decision :** 09-07-2007

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 17, 17AA, 17AA(1), 2  
West Bengal Industrial Disputes Rules, 1958 — Rule 20B(1), 20B(5), 21, 24

**Citation :** (2007) 4 CHN 566 : (2008) 117 FLR 166

**Hon'ble Judges :** Jayanta Kumar Biswas, J

**Bench :** Single Bench

**Advocate :** Arunava Ghosh, Pratik Prakash Banerjee, Amitava Das and Siddhartha Sharma, for the Appellant; Lovely Dasgupta and S. Sengupta for Respondent No. 3 and Soumya Majumdar and Suman Sengupta, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Jayanta Kumar Biswas, J.—The petitioners (the second petitioner is a director of the first petitioner) in this writ petition dated August 20th, 1991 are questioning the order of the second respondent (The Second Industrial Tribunal, West Bengal) dated March 26th, 1991 rejecting two applications dated August 19th, 1989—one of the first petitioner and the other of one M/s. Swaika Oil Mills (a Hindu Undivided Family)--both filed for setting aside the ex parte award pronounced by the Tribunal on June 12th, 1989.

2. M/s. Swaika Oil Mills was not a party in the writ petition. It took out an application dated July 13th, 2006 for its addition in the case as a respondent. It has filed a supplementary affidavit stating that it has no intention of questioning the award, if it is added in the case as a respondent. That application is pending. I think on the facts I am going to narrate presently it will be appropriate to add Swaika Oil Mills as a respondent in the writ petition. Hence I dispose of its application (CAN No. 5158 of 2006) ordering that it shall be deemed to be added

in the writ petition as the fourth respondent. Advocates for the parties and the department concerned are directed to amend the cause papers within a fortnight from the date the records are sent down from the Court.

3. The third respondent joined Swaika Vanaspati as a clerk in 1970. On March 2nd, 1979 Swaika Vanaspati transferred him to Swaika Oil Mills with immediate effect. By letter dated March 4th, 1979 he protested against the order of transfer. He said that he would report for duty in Swaika Oil Mills without prejudice to his rights and contentions. He also approached the Assistant Labour Commissioner concerned. By a letter dated March 6th, 1979 Swaika Vanaspati informed him that the transfer was made bona fide and in the interest of his career. By a letter dated March 16th, 1979 he informed the authorities of Swaika Vanaspati that he had reported for duty in Swaika Oil Mills. While working in Swaika Oil Mills he received a telegram that his wife was seriously ill and prayed for leave of absence for the period from April 3rd, 1980 to May 22nd, 1980. He reported back for duty in Swaika Oil Mills on May 23rd, 1980, but was not allowed to join duty. He brought the matter to the notice of Swaika Vanaspati asking it to allow him to join duty at his original place of posting. Since nothing was done, he approached the Assistant Labour Commissioner on June 11th, 1980. The conciliation proceedings ended in a failure report. Consequently the Government of West Bengal referred the dispute to the Tribunal by order dated March 24th, 1981. The issue referred was: "Whether termination of service of Sri Tej Pratap Singh is justified? To what relief, if any, is he entitled?" It was mentioned in the order of reference that an industrial dispute was in existence between Swaika Vanaspati, Swaika Oil Mills, and their workman, the third respondent.

4. On receipt of notice issued by the Tribunal Swaika Vanaspati, Swaika Oil Mills and the third respondent filed their respective written statements. Swaika Vanaspati contended that there was no master-servant relationship between itself and the third respondent, and hence the reference was not maintainable. Swaika Oil Mills contended that it had not been noticed for participating in the conciliation proceedings, and hence the appropriate Government was not competent to make the reference. By order dated March 9th, 1989 the Tribunal rejected all the preliminary objections. That order remained unchallenged. Final hearing of the matter was fixed for April 29th, 1989 when none appeared for Swaika Vanaspati and Swaika Oil Mills. By order dated April 29th, 1989 the Tribunal fixed May 20th, 1989 for ex parte hearing. On May 20th, 1989 once again both Swaika Vanaspati and Swaika Oil Mills remained absent. Since business of the Tribunal did not permit hearing of the case on that day, it fixed June 3rd, 1989 for ex parte hearing of the case. On June 3rd, 1989 the same thing happened, i.e. both Swaika Vanaspati and Swaika Oil Mills remained absent. In the circumstances, the Tribunal recorded oral and documentary evidence adduced by the third respondent, and after closing evidence and hearing arguments made an order reserving the award. It did not fix any date for pronouncing the award.

5. Later in the day on June 3rd, 1989 an application on behalf of both Swaika Vanaspati and Swaika Oil Mills, signed by one Dipak Sinha on June 1st, 1989 in the capacity of administrative officer of Swaika Vanaspati, was submitted praying for an adjournment. Relevant portions of that application are as follows:

1. That the matter is fixed for hearing on 3.6.89.
2. That Shri Kalyan Bhattacharyya, the Advocate on behalf of the Companies is unable to conduct the case for some personal reasons and your petitioner has not been able to contact and authorise any other Advocate to represent the Companies because of the current summer vacation of the Hon"ble High Court.
3. That your petitioner himself has fallen seriously ill since last 3 days and as such he is unable to represent himself before your Hon"ble Tribunal. Under the circumstances stated above, your petitioner most humbly prays that the hearing scheduled for 3.6.89 be adjourned for a short period so as to enable him and to arrange for proper representation of the Companies in the matter. Unless such adjournment as prayed for, is granted the Companies will suffer irreparable loss and damages.

6. By the second order dated June 3rd, 1989 the Tribunal rejected that application for adjournment. The order is as follows:

(Later) After the above order is passed the Co. files a petition praying for a adjournment of the case on the ground stated therein. The copy of the petition has not been served upon the workman. The petition has also not been moved by anybody. Hence, the petition stands rejected.

This order also remained unchallenged.

7. On June 12th, 1989 the Tribunal pronounced and signed the award ordering Swaika Vanaspati to take back the third respondent and pay him all benefits including full back wages. Then, after service of the award, on August 19th, 1989 Swaika Vanaspati and Swaika Oil Mills filed the two applications for setting aside the award. Dipak Sinha, who had filed the application dated June 1st, 1989 seeking adjournment on June 3rd, 1989, was examined in support of the applications for setting aside the ex parte award. In his deposition he said that because of illness he was not in a position to attend the Tribunal on June 3rd, 1989. In support of his plea of illness certificate issued by a medical practitioner was exhibited. After considering the evidence on record, the Tribunal concluded that the story of sickness was not a believable. It noted that in support of the plea no prescription or receipt showing purchase of any medicine was produced. On the ground that both Swaika Vanaspati and Swaika Oil Mills failed to satisfy it that they had been prevented by any sufficient cause from appearing before it at the date the case was heard ex parte, the Tribunal rejected the applications with costs.

8. Counsel for the petitioners has argued two points: (i) when the petitioners were keen to contest the case, by taking a rigid view that led to a perverse

conclusion regarding the plea of illness, the Tribunal should not have rejected the applications, particularly when it was possible to compensate the third respondent in terms of money and, in any case, for the fault of the administrative officer of the first petitioner, the petitioners were not supposed to suffer; (ii) the award was pronounced without fully complying with the provisions in Section 17AA of the Industrial Disputes Act, 1947 (section 17AA was inserted and then amended by the West Bengal Act Nos. 59 of 1980 and 34 of 1983 respectively), since, though the Tribunal was required to notify the date for pronouncing the award, as will appear from its first June 3rd, 1989 order, failing in its mandatory duty it kept the award reserved without notifying the date when it would be pronounced. In support of his contention that since the award was pronounced on a date that had not been notified, it was to be treated as a nullity, he has relied on *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, ; *Eagle Wood Agencies (P) Ltd. and Anr. v. State of West Bengal and Ors.* 1990 (1) LLJ 85; and *Hindustan Motors Ltd. v. Janardhan Singh and Ors.* 2002 (1) CHN 637 (DB).

9. His contention is that in view of the provisions in Section 17AA, the petitioners had a right to know when the award would be pronounced, but by not notifying the date and pronouncing the award on June 12th, 1989 behind their back the Tribunal took away their such valuable statutory right. He has referred me to the provisions in the West Bengal Industrial Dispute Rules, 1958, Rules 21 and 24, to show that the Tribunal was not only empowered to grant adjournments, but was also supposed to proceed ex parte only if the petitioners had failed to show sufficient cause for failing to appear before it. His submission is that on June 3rd, 1989 itself the administrative officer of the first petitioner showed cause for failure to attend the proceedings, and hence not only the Tribunal should not have proceeded ex parte, but it was also under the obligation to set aside the ex parte award,--a nullity, when necessary application was made for the purpose. He has cited to me *Sub-Inspector Rooplal and Anr. v. Lt. Governor, Delhi and Ors.* 2001 (1) SCC 644, and has said that I am bound by the Co-ordinate Bench decision in *Eagle Wood*.

10. Counsel for the third respondent has contended that since the writ Court is not to exercise the appellate power, there is no scope for this Court to substitute its decision on the question of genuineness of the plea of illness for that of the Tribunal that disbelieved the case made out in the applications by appreciating the oral and documentary evidence. She has relied on *K.V. Kumaran v. Labour Court, Kozhikode and Anr.* 1982 Lab. IC 124 (Ker); *Misak Pen Mfg. Co-operative v. M.A Malik and Ors.* 1988 Lab. IC 1595 (AP); and *Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another*, . Her further contention is that the provisions in Section 17AA should be interpreted for advancing the object and purpose of the Industrial Disputes Act, 1947, a social welfare legislation. For this she has relied on *Transport Corporation of India v. Employees' State Insurance Corporation and Anr.* 2000 SCC 121; *State of Bihar and Anr. v. Bal Mukund Sah and Ors.* 2000 SCC 489; and *R. Hariharan and Ors. v. K.*

Balachandran Nair and Ors. 2000 SCC 946. Her argument is that, on the facts of the case, it will cause a grave injustice to the third respondent, if the plea that the award is a nullity, taken for the first time in the course of hearing, is entertained and decided against him. On the strength of U. P. State Electricity Board v. Shri Shiv Mohan Singh and Anr. 2004 SCC 1141 she has argued that the word "shall" in Section 17AA did not cast any mandatory duty on the Tribunal.

11. The principal ground on which I have been invited to interfere is that when the petitioners were keen to contest the case and the third respondent could be adequately compensated in terms of money, the Tribunal should not have rejected the applications. I do not think such a simple approach can be given to the matter for interfering with the well-reasoned order of the Tribunal. That the ex parte hearing of the case was fixed for June 3rd, 1989 was known to the petitioners, is evident from the fact that the adjournment application had been signed by the administrative officer of the first petitioner on June 1st, 1989. That application was not filed in the first sitting of the Tribunal on June 3rd, 1989. It was filed by someone after evidence was closed, arguments were finished, and the Tribunal made the order reserving the award. Copy of the application was not served on the third respondent. It was not moved by anyone. Even then the Tribunal took note of and rejected it by passing an order. Till August 19th, 1989 no steps were taken by the petitioners in the matter. They waited for service of the award on them. The two orders dated June 3rd, 1989 were never questioned by them.

12. I do not think if on these, the Tribunal decided to examine the plea of illness very carefully, it can be said that it committed a wrong. It was not supposed to treat the matter casually, or to set aside the award instantaneously on the ground that the petitioners were keen to contest the case. Evidence adduced by Dipak Sinha was carefully analysed by the Tribunal in the context of what was revealed in his cross-examination by the third respondent. The Tribunal noticed that in support of the plea of illness, the witness did not produce any prescription or receipt showing purchase of any medicine. The medical certificate submitted in support of the plea was disbelieved by the Tribunal. It is not that evidence on record was not appreciated by the Tribunal. What Counsel for the petitioners has argued before me is that conclusion of the Tribunal is perverse. I am unable to agree with him. Counsel for the third respondent is right in saying that in exercise of writ powers, I am not supposed to substitute my decision, taken after reappreciating the evidence on record, for that of the Tribunal. In my view, on merits, there is no reason to interfere with the order.

13. The question whether the award is a nullity on the ground that it was pronounced without fully complying with the provisions in Section 17AA, in my view, cannot arise in the case for the simple reason that it was never taken in the pleadings filed before the Tribunal and also before this Court. Even assuming that it can be raised for the first time in the course of hearing, I find that there is no merit in it. In Grindlays Bank (para. 10) it was said that award made by the

Tribunal without notice to a party would be nothing but a nullity. I do not see how that proposition can be applied to the present case. Here the Tribunal made the necessary order fixing the ex parte hearing of the case. It cannot be said that the petitioners had not received any notice of the proceedings. The question is whether by not fixing and thus notifying the date when the award would be pronounced, the Tribunal actually made the award without notice of the proceedings to the parties. In my opinion, the answer has to be in the negative. Only because the date for pronouncing the award was not fixed, it cannot be said that the Tribunal made the award without notice of the proceedings to the petitioners who, having been noticed, had already entered appearance and were contesting the case.

14. In Hindustan Motors the Division Bench of this Court was considering whether a "no dispute award" made by the Tribunal, when the parties, though had been noticed, did not appear in the case at all, was an award within the meaning of the expression defined in Section 2(b) of the Industrial Disputes Act, 1947; and hence a bar to referring the same dispute for the second time; and in that context it was said (in para. 14):

From the provisions of Sub-section (1) of Section 17AA of the Act it is found that the award by the Tribunal is to be pronounced in open Court on a date to be notified for the purpose of such pronouncement of award. A "NO DISPUTE" award when the parties do not appear, cannot be said to be an award within the meaning of Section 17AA(1) inasmuch as the "NO DISPUTE" award (when the parties do not appear) is not pronounced by notifying the date of such pronouncement as contemplated by Sub-section (1) of Section 17AA of the 1947 Act. Section 2(b) of the 1947 Act defines the word "award" to mean an interim or a final determination of any industrial dispute by Tribunal.

It is, therefore, evident that the Division Bench did not hold that a final award of the Tribunal would, of course, be a nullity, if pronounced on a date not previously notified. The question just did not arise before their Lordships.

15. The decision in Eagle Wood is not of any assistance as well. In that case Eagle Wood sought setting aside of the ex parte award on ground that since it was totally ignorant of the initiation and pendency of the proceedings before the Tribunal, it was prevented by sufficient cause from appearing and contesting them. There the question now raised before me did not arise at all. In that case it was held that the award made by the Tribunal was a nullity, since before making it the Tribunal not given notices to Eagle Wood, the employer, under Sub-rules (1) & (5) of Rule 20B of the West Bengal Industrial Disputes Rules, 1958. Those provisions have got nothing to do with pronouncement of the award on a date notified for the purpose.

16. In my view, the question whether part non-compliance with the provisions in Section 17AA would make an award a nullity should be decided keeping in view the object and purpose of notifying the date. The relevant parts of Section 17AA

are set out below:

17AA. Pronouncement and commencement of award, etc.-

Notwithstanding anything contained in Sections 17 and 17A,-

(1) every award, other determination or decision by an arbitrator or a Labour Court or a Tribunal shall be pronounced on a date notified for the purpose and shall be dated and signed by the person or persons pronouncing the award, determination or decision and such award, determination or decision once signed and dated shall not be altered save in the manner provided in this Act;

(2) the award, determination or decision of an arbitrator shall be pronounced in his office and the award, determination or decision of a Labour Court or a Tribunal shall be pronounced in open Court;

(3) a copy of every award, other determination or decision referred to in Clause (1) certified in such manner as may be prescribed, shall be given by the arbitrator, Labour Court or Tribunal, as the case may be, to each of the parties to the dispute free of cost and a copy of the award, determination or decision as so certified shall be sent by the arbitrator, Labour Court or Tribunal, as the case may be, to the appropriate Government;

(4) every award, other determination or decision referred to in Clause (1) shall become enforceable on the expiry of thirty days from the date of its pronouncement;.

17. It is no doubt true that the provisions cast a duty on the Tribunal to pronounce the award on a date notified for the purpose. It is apparent from the records that in the present case on June 3rd, 1989 the Tribunal did not notify when the award would be pronounced. It pronounced the award in open Court on June 12th, 1989 and signed it on that day. Copies of the award were forwarded to the persons concerned, and admittedly after service of the award, and within thirty days from the date of their knowledge of the award, the petitioners filed the applications dated August 19th, 1989 for setting it aside; and till taking the point in the course of hearing, they never raised the question before the Tribunal or in the writ petition.

18. The question is what is the effect, if any, of not notifying a date for pronouncing the award, or pronouncing the award on a date not previously notified. The statute has not mentioned any consequence of the non-compliance,--just an irregularity having nothing to do with the jurisdiction and power of the Tribunal. In my opinion, the actual prejudice aspect will provide the answer to the question; and hence the irregularity, though in a given case may make the award liable to be set aside, shall not make it a nullity. That is, if the noncompliance has caused a real prejudice to a party, he can seek setting aside of the award, and just its pronouncement on a notified date, nothing more than that. For example, in this case the petitioners could at best get an order setting aside the award and notifying a date for pronouncement of the award, but not re-

hearing of the case so long as the orders dated June 3rd, 1989 remained.

19. The object and purpose of notifying a date for pronouncement of the award, it seems to me, are two fold: (i) to ensure that the parties in the proceedings are not deprived of their any right that springs into life the moment the award is pronounced and signed; (ii) to give the parties opportunity of drawing the Tribunal's attention to any fact situation that may persuade it into deciding not to pronounce the award. In the present case, nothing of the sort was brought to the notice of the Tribunal even when the petitioners were served with the award. There is absolutely nothing either to show that they suffered any prejudice whatsoever for pronouncement of the award on a date not notified for the purpose. For deprivation of their right to know the date when the award would be pronounced, it must be held, on the facts, that they never took any exception, It would be deemed that they consciously waived that right. Hence I do not find any reason to say that for the complained of noncompliance the award became a nullity.

20. For these reasons, I do not find any merit in the writ petition; it is accordingly dismissed. The payments (except on account of costs) received by the third respondent in terms of orders made in the case shall be taken into consideration while calculating financial benefits to which he will be entitled on the basis of the award. In view of final disposal of the writ petition nothing remains to be decided in the application (CAN No. 4832 of 2007) taken out by the petitioners for interim order. That application shall be deemed to be disposed of. There shall be no further order for costs in the case.

21. Urgent certified xerox copy of this order shall be supplied to the parties, if applied for, within three days from the date of receipt of the file by the section concerned.