

(1967) 01 KL CK 0018
In the High Court Of Kerala
Case No : O.P. No. 37 of 1966

Workmen of Travancore Rayons Ltd.

APPELLANT

Vs

Manager, Travancore Rayons Ltd. and Another

RESPONDENT

Date of Decision : 18-01-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 79
Industrial Disputes Act, 1947 — Section 2, 20(3)
Kerala Industrial Disputes Rules, 1957 — Rule 23

Citation : (1967) 1 LLJ 518

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Advocate : T.C.N. Menon, K.R. Panicker and P. Sankarankutty, for the Appellant; K.V.R. Shenoi, P.K. Kurien, V. Desikan, K.A. Nayar and K. Sukumaran, (for No. 1) and Govt. Pleader (for No. 2), for the Respondent

Final Decision : Allowed

Judgement

V.P. Gopalan Nambiyar, J.—This writ petition is to quash the order of the Industrial Tribunal, Kozhikode declining to set aside the decision passed ex parte by the Tribunal, on 6-5-1965 in Industrial Dispute No. 20 of 1965. The Tribunal held that it had no jurisdiction to set aside its ex parte decision dismissing the reference for non-prosecution, and that the remedy of the petitioner would appear to be to move the Government for a fresh reference. A copy of the Order is Ext. P-1. The petitioner also prays for a writ of mandamus directing the Tribunal to dispose of the application to set aside the ex parte decision in accordance with law.

2. The order referring Industrial Dispute No. 20 of 1965 is dated 1-2-1965. The case was posted for the filing of the statement on behalf of the Union of Workers, successively to 18-3-1965, 31-3-1965, 23-4-1965 and 5-5-1965. It is enough to notice that no statement on behalf of the Union of Workers was filed, and that the Tribunal by its order dated 6-5-1965, dismissed the reference for non-

prosecution. The same was published in the Government Gazette dated 1-6-1965 and the petition to set aside the ex parte decision was filed on 28-6-1965. The impugned order was passed on 13-12-1965.

3. The application to set aside the ex parte decision was made under Rule 23 of the Kerala Industrial Disputes Rules 1957, which reads:

"23. Setting aside ex parte decision:

(1) The Board Court, Labour Court, Tribunal or Arbitrator may for sufficient cause set aside after notice to the opposite party the ex parte decision either wholly or in part on an application made within fifteen days of the ex parte decision. The Board Court, Labour Court, Tribunal or Arbitrator may extend the time on sufficient cause being shown.

(2) Such an application must be supported by an affidavit."

4. The petitioner's counsel contended that the above Rule is sufficient warrant to found jurisdiction in the Tribunal to set aside the ex parte decision. The position was countered by the counsel for the 1st respondent, in two ways; first that after rendering of the ex parte decision, and at any rate after the publication of the award, the Tribunal is functus officio and cannot entertain or deal with the application; and second that the ex parte decision of the Tribunal dated 1-6-1965 dismissing the reference, is itself an award and had been published as such on 1-6-1965 and Rule 23 is inapplicable to set aside an ex parte award.

5. Section 2(b) of the Industrial Disputes Act defines an award to mean:

"An interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made u/s 10A."

Section 11(3) of the Act vests the Tribunal with the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in the trial of a suit, in respect of matters specified by Clauses (a) to (c) and by clause (d),

"In respect of such other matters as may be prescribed."

Rule 23 is a prescription under the above power. Section 20, clause 3 of the Act provides:

"Proceedings before an arbitrator u/s 10A or before a Labour Court, Tribunal or National Tribunal shall be deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication, as the case may be and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable u/s 17A."

Under Section 17(A) (omitting the provisos which are not material) the award becomes enforceable on the expiry of 30 days from the date of its publication u/s 17.

6. The petitioner's counsel contended that the order dated 6-5-1965 dismissing the reference for non-prosecution cannot be regarded as an award within the meaning of Section 2(b) of the Act, as there is neither an interim nor a final determination of the Industrial Dispute or any question relating thereto. He argued that it was an ex parte decision to which Rule 23 was squarely attracted. Counsel for the first respondent contended that the determination of the dispute in any manner, even if it be by a dismissal for non-prosecution would be an "award"; and, in the instant case, the order dated 6-5-1965, had been published as an award on 1-6-1965, and therefore Rule 23 was inapplicable. The Government Pleader appearing for the 2nd respondent supported the contentions of the counsel for the petitioner.

7. In Krishna Kutty Nair Vs. Industrial Tribunal, Trivandrum, there are observations of a learned Judge of this Court that:

"The expression "determination" in the definition of "award" in the Act, indicates only a coming to an end, may be in any way whatever, though it may require examination, and choice".

On the actual facts of the case an Industrial Dispute referred to the Tribunal and posted for evidence, was withdrawn on an application for withdrawal filed by the Management accompanied by a statement containing the terms of settlement by which all outstanding disputes were to be referred to an arbitrator. The withdrawal was opposed by the workers. The Tribunal after enquiry, allowed the application for withdrawal and later on passed its award, accepting the terms of the said compromise, and holding that there was no subsisting dispute to be decided by the Tribunal. The said award was published in the Gazette. It was attacked inter alia, on the ground that it did not terminate the dispute between the parties on the merits by the application of the Industrial Law, but left all pending matters of difference for disposal in the future by an arbitrator. It was in this context that the above observations were made in Krishna Kutty Nair Vs. Industrial Tribunal, Trivandrum, . The observations may not quite lend countenance to the broad submission that an ex parte decision dismissing the reference for non-prosecution would amount to an award. If they do, I would express my respectful dissent. To satisfy the definition of an award there should be an interim or a final determination of the dispute and there is none where the Tribunal merely dismissed the reference for non-prosecution.

8. The observations in Krishna Kutty Nair Vs. Industrial Tribunal, Trivandrum, were considered and dissented from by a single Judge of the Andhra Pradesh High Court in the Andhra Handloom Weavers Co-operative Society Vs. State of Andhra Pradesh and Others, They were also dissented from by the Bombay High Court in The Maharana Mills Kamdar Union and Others Vs. N.L. Vyas and Another, Chief Justice Chainani sneaking for the Court observed:

"Where a tribunal allows a matter to be withdrawn in order that it may be referred to a private arbitrator for adjudication, there remains no dispute before

it, on which it can adjudicate. There is also no determination of the dispute itself, the dispute continues, but instead of being decided by the Industrial Tribunal, it is to be decided by private arbitration. There is, therefore no determination of the dispute in such cases, much less is it a determination by an Industrial Tribunal. Even though, therefore, orders made by the Tribunal are described as awards, and are published as such in the official gazette, they are not awards within the meaning of the Act. The position might be different, if the dispute has been settled on merits by private agreements and the tribunal has been asked to make awards in terms of the agreements."

9. I am in respectful agreement with the principle laid down in the above decisions, and hold that a dismissal of a reference for non-prosecution cannot amount to an award within the meaning of Section 2(b). The said ex parte decision does not attain any greater sanctity or get itself exalted into an award, by publication in the Gazette. This was stated by Chainani, C. J. in the Bombay case, and by Gopalakrishnan Nair, J. in the Andhra Case.

10. There is nothing in the statute to support the contention that the Tribunal becomes functus officio, on the passing or publication of an award. Counsel for the first respondent relied on the decision of the Full Bench of the Madras High Court, in In the matter of In Re: Mr. Hayles, Editor of "The Mail" and Another, . The question there considered was whether a Judge of the High Court, who presided over an Industrial Tribunal had jurisdiction to initiate contempt of court proceedings after the Tribunal gave its award. The contention advanced, was that the Tribunal became "functus officio" when it gave its award, or at least on the date when the proceedings before the Tribunal should be deemed to have concluded u/s 20(3) of the Industrial Disputes Act. The contention in the alternative form appears to have, been cautiously advanced. Even so, the argument was rejected, and it was ruled that the power of a court over a cause has no relevance to, and does not determine, its power to deal with a contempt of itself. I am unable to derive any support from this decision

11. Section 20(3) of the Industrial Disputes Act extracted earlier, contains sufficient indication that the proceedings should be deemed to continue till expiry of 30 days from the date of the award. That limit, in the present case, was reached only on 1-7-1965, and the petition to set aside the ex parte decision was filed on 28-6-1965. But the counsel for the 1st respondent contended that on the date on which the order was passed (13-12-1965"), the Tribunal had become functus officio and could not deal with the petition. I cannot accede to this argument The Tribunal had power to deal with an application properly filed before it. Rule 23 is yet another indication that the Tribunal retains jurisdiction to set aside its ex parte decision.

12. In O. P. No. 1261 of 1963 (Ker) my learned brother Govindan Nair, J. held that an Industrial Tribunal had jurisdiction to vacate an order passed ex parte and published in the Gazette. In that case, the order vacated was passed by the Tribunal before the award was published in the Gazette. But the learned Judge

also relied on Section 20(3) of the Industrial Disputes Act, to hold that proceedings before the Tribunal had not concluded at the time the impugned order vacating the award, was passed.

13. Counsel for the 1st respondent was prepared to take up the position that the vires of Rule 23 itself may require examination. The same cannot be done in these proceedings, as the Government of Kerala which framed the rule, has not been impleaded as a party to this writ petition. It was contended that the petition to set aside the ex parte decision was filed beyond the period of 15 days prescribed by Rule 23. This is a matter to be taken into account by the Tribunal, which is given power by the said rule to extend time on sufficient cause shown.

14. I hold that the Tribunal's view that it had no jurisdiction to entertain the application to set aside the ex parte decision cannot be sustained. I quash Ext. P-I and direct the Tribunal to deal with the petitioner's application to set aside the ex parte decision in accordance with law and pass appropriate orders thereon.

15. The O. P. is allowed as above. No costs.