

BUNDI ZILA PETROL PUMP DEALERS ASSOCIATION A
BUNDI

v.

SANYOJAK BUNDI ZILA PETROL MAZDOOR
SANGH(B.M.S.)

(Civil Appeal Nos.2784-2785 of 2009) B

FEBRUARY 12, 2019

**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

Industrial Disputes Act, 1947 – s.10(1) – State Government made reference u/s.10(1) of the Act to Industrial Tribunal to decide the various demands raised by the respondent – Industrial Tribunal decided the reference ex parte against the appellant – Writ petition by appellant – Single Judge of the High Court allowed the writ petition – Writ appeal by the respondent – Division Bench of High Court allowed the appeal of respondent in the absence of appellant – Review petition was also dismissed – On appeal, held: Since inception, appellant did not get opportunity to contest the matter because they did not have any knowledge of the proceedings – Every party to a lis has a right to contest the case on merits, subject to certain exceptions provided in law – Thus, case remanded to the Industrial Tribunal.

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Allowing the appeals, the Court

HELD: 1. The reasons for remand are: First, it is not in dispute that the appellant did not get any opportunity to contest the reference before the Industrial Tribunal and had to suffer adverse award *ex parte*; Second, the cause shown for their absence before the Industrial Tribunal constitutes a sufficient cause and entitles the appellant to claim an opportunity to contest the reference on merits; Third, this is not a case where the appellant appeared before the Tribunal and thereafter stopped appearing and proceeded *ex parte*. In other words, since inception, the appellant did not get any opportunity to contest the matter because they did not have any knowledge of the proceedings; Fourth, every party to a *lis* has a right to contest the case on merits, of course, subject to certain well known exceptions provided in law. However, so far as the appellant's case is

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- A concerned no such exception is noticed, which may disentitle them to contest the reference on merits; and lastly, substantial justice demands that having regard to the controversy, which is subject matter of reference, both the parties to the *lis* are entitled for an opportunity to contest the case on the merits. It is for all these reasons appeals are allowed and the case remanded to the Industrial Tribunal. [Paras 9 and 10][720-F-H; 721-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2784-2785 OF 2009

- From the Judgment and Order dated 21.11.2005 of the High Court
- C of Judicature for Rajasthan at Jaipur Bench, Jaipur in D.B. Civil Special Appeal No. 449 of 1999 and order dated 10.4.2007 in D.B. Civil Review Petition No. 29 of 2006 in D.B. Civil Special Appeal No. 449 of 1999.

Ms. Shobha Gupta, Sourav Roy, Advs. for the Appellant.

Ms. Kusum Chaudhary, Adv. for the Respondent.

- D The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J.

- 1. These appeals are directed against the final judgment and order dated 21.11.2005 passed by the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in D.B. Civil Special Appeal No.449 of 1999
- E whereby the Division Bench of the High Court allowed the appeal filed by the respondent herein and the order dated 10.04.2007 whereby the review petition filed by the appellant herein was dismissed.

2. A few facts need mention hereinbelow in brief to appreciate the controversy involved in these appeals.

- F 3. On 26.07.1989, the State Government made a reference under Section 10(1) of the Industrial Disputes Act, 1947 to the Industrial Tribunal, Kota for deciding the following disputes which read as under:

“Whether the demands raised in the demand letters by the Secretary, Zila Petrol Pump Mazdoor Sangh before the Manager, Maheshwari Automobiles Corporation, District Bundi, are just and valid? If yes, to what reliefs the workmen are entitled to?

DEMANDS

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- 1. The difference between the amount which has been declared by the Government and the actual amount which has been paid by the Management, which has not been paid so far, be treated as deferred wages and paid to the workmen in the form of ex-gratia payment and this difference should be more than 20% of the salaries being received by the workmen;**
 - 2. All workmen should be given 15 days casual leaves in a year.**
 - 3. 11 holidays be given every year for National Holidays and other festivals. Three times payment be paid to the workmen for work taken from them in the year 1986 on such holidays;**
 - 4. Workmen should be designated/defined accordingly to their nature of work, i.e., skilled, semi-skilled and unskilled, so that they receive salary according to their category;**
 - 5. All the workmen be given annual salary increments;**
 - 6. All the workmen be given dearness allowance in accordance with price index;**
 - 7. All workmen be paid 10% of their pay towards rent allowance;**
 - 8. Free medicines be provided to all the workmen and prescribed medical allowance be given to them;**
 - 9. Provident Fund Scheme be prepared for the workmen and deductions be made accordingly;**
 - 10. Education Fee be given to workmen for studies of their children;**
 - 11. At least two cotton uniforms every year and one woolen uniform every two years be provided to all the workmen.”**
4. By award dated 31.07.1995 (Annexure-P-2), the Industrial Tribunal, Kota answered the reference on merits in respondent's favour. It is, however, not in dispute that the Industrial Tribunal decided the reference *ex parte* against the appellant. In Para 4 of the award, the Tribunal noted that the appellant(respondent therein) did not appear despite notice served on them and hence they are proceeded *ex parte*.

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- A 5. The appellant, on coming to know of the passing of the award, filed the writ petition in the High Court of Rajasthan at Jaipur (W.P. No. 5294/1996. By order dated 10.09.1997, the Single Judge allowed the writ petition and set aside the award.
6. The respondent, therefore, felt aggrieved and filed writ appeal (No.449/1999) before the Division Bench of the High Court. By impugned order, the Division Bench allowed the respondent's appeal and set aside the order of the Single Judge. The impugned order was passed in appellant's absence because none appeared for the appellant (respondent in appeal) before the Division Bench when the appeal was heard. Aggrieved by the said order, the appellant filed the review petition, which was dismissed by the Division Bench of the High Court.
7. Against the orders passed by the High Court in the writ appeal and the review petition, the appellant has filed the present appeals by way of special leave appeal in this Court.
8. Having heard the learned counsel for the parties and on perusal of the record of the case including the written submission filed on behalf of respondent, we are inclined to allow the appeals, set aside the impugned order and also set aside the *ex parte* award of the Industrial Tribunal and remand the case to the Industrial Tribunal for deciding the reference on merits in accordance with law after affording an opportunity to both the parties.
9. The reasons for remand are not far to seek. First, it is not in dispute that the appellant did not get any opportunity to contest the reference before the Industrial Tribunal and had to suffer adverse award *ex parte*; Second, the cause shown for their absence before the Industrial Tribunal constitutes a sufficient cause and entitles the appellant to claim an opportunity to contest the reference on merits; Third, we find that this is not a case where the appellant appeared before the Tribunal and thereafter stopped appearing and proceeded *ex parte*. In other words, since inception, the appellant did not get any opportunity to contest the matter because they did not have any knowledge of the proceedings;
- F Fourth, every party to a *lis* has a right to contest the case on merits, of course, subject to certain well known exceptions provided in law. However, so far as the appellant's case is concerned no such exception is noticed, which may disentitle them to contest the reference on merits; and lastly, substantial justice demands that having regard to the controversy, which is subject matter of reference, both the parties to the *lis* are entitled H for an opportunity to contest the case on the merits.

10. It is for all these reasons set out above, we allow the appeals, set aside the impugned order of the Division Bench, the order of the Single Judge and the award of the Industrial Tribunal and remand the case to the Industrial Tribunal. The appellant is granted an opportunity to file their written statement in answer to the statement filed by the respondent. Parties are also granted liberty to amend their respective statements, file documents, and lead oral evidence in support of their case.

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11. The Industrial Tribunal will decide the reference within six months from the date of the appearance of the parties in accordance with law uninfluenced by any observations made by the High Court in their respective orders and in this Court's order.

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12. Parties to appear before the Industrial Tribunal, Kota on 05.03.2019 and file a copy of this order to enable the Tribunal to decide the matter as directed above.

Ankit Gyan

Appeals allowed.