Kapra Mazdoor Ekta Union vs Management Of M/S. Birla Cotton ... on 16 March, 2005

Equivalent citations: AIR 2005 SUPREME COURT 1782, 2005 (13) SCC 777, 2005 AIR SCW 1561, 2005 LAB. I. C. 1604, (2005) 3 JCR 38 (SC), (2005) 2 KER LT 978, (2005) 34 ALLINDCAS 410 (SC), 2005 (5) SRJ 100, 2005 (3) SLT 274, 2005 (2) SERVLJ 338 SC, 2005 (3) SCALE 218, 2005 LAB LR 765, (2005) 2 ALL WC 1075, (2005) 105 FACLR 416, (2005) 2 LABLJ 271, (2005) 2 SCT 382, (2005) 4 SCJ 112, (2005) 4 SERVLR 655, (2005) 2 SUPREME 675, (2005) 3 SCALE 218

Author: B.P. Singh

Bench: N. Santosh Hegde, B.P. Singh, S.B. Sinha

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           CASE NO.:
Appeal (civil)  3475 of 2003

PETITIONER:
Kapra Mazdoor Ekta Union

RESPONDENT:
Management of M/s. Birla Cotton Spinning and Weaving Mills Ltd.& Anr.

DATE OF JUDGMENT: 16/03/2005

BENCH:
N. SANTOSH HEGDE,B.P. SINGH & S.B. SINHA

JUDGMENT:
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J U D G M E N T B.P. SINGH, J.

The appellant Kapra Mazdoor Ekta Union has preferred this appeal by special leave which is directed against the judgment and order of the High Court of Delhi at New Delhi in Civil Writ Petition No. 2084 of 1990 dated August 31, 2001 whereby the writ petition preferred by the respondent- Management of M/s. Birla Cotton Spinning and Weaving Mills Limited was allowed and the order dated February 19, 1990 passed by the Presiding Officer, Industrial Tribunal No. II, Delhi was quashed. By the said order the Industrial Tribunal had in effect recalled its Award of June 12, 1987 and framed an additional issue to be tried by the Tribunal. The High Court held that the Award dated June 12, 1987 had effectively terminated the industrial dispute referred to the Tribunal by the appropriate Government on December 13, 1982.

With a view to appreciate the submissions urged before us it would be necessary to notice the factual background in which these questions have arisen.

The appellant-Union is one of the eight Unions representing the workers employed in the respondent-Company. In the year 1982 on account of closure of some looms of the Weaving Section of the Mill disputes arose between the workmen and the Management of the respondent-Company. The appropriate Government in exercise of its powers conferred by Section 10(1)(d) and 12(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') referred the said disputes to the Industrial Tribunal, Delhi vide Notification dated December 13, 1982. The reference was in the following terms :-

> "1. Whether the action of the Management in refusing duties to a large number of workers is illegal and/or unjustified, and if so, what directions are necessary in this regard?
>
> 2. Whether the Management is justified in closing down a large number of looms in the mill and if not to what relief the affected workers are entitled and what further directions are necessary in this respect?"

While the reference was pending before the Industrial Tribunal, a settlement is purported to have been arrived at between the respondent-Management and its workmen. According to the Management this settlement was reached in the course of conciliation proceedings with the assistance and concurrence of the Conciliation Officer, namely the Deputy Labour Commissioner-cum-Conciliation Officer, Delhi M. Basai. It is the case of the respondent-Management that after reference of the dispute further disputes arose between the Management and the Workmen and a notice of strike was served on the Management and some more demands were raised. The notice of strike was served on February 14, 1983 and the Management on April 4, 1983 gave notice under Section 25FFA of the Industrial Disputes Act for closing the undertaking relating to the Weaving Mill on account of labour trouble resulting in huge financial losses. It is the case of the respondent-Management that in these circumstances conciliation proceedings commenced and after great and sustained efforts, a settlement was arrived at between the Management and its Workmen in the course of conciliation proceedings. The settlement has been reduced into writing, and it is not disputed that the same has been signed by representatives of the Management as well as the representatives of two Workers' Union as also by the Deputy Labour Commissioner-cum-Conciliation Officer, M. Basai.

In view of the settlement reached between the parties, an application was moved before the Industrial Tribunal which was seized of the disputes, which were the subject matter of the reference made on December 13, 1982, with a prayer that in view of the settlement reached between the parties the Industrial Tribunal may be pleased to give its award in terms of the conciliation settlement dated May 17, 1983. One of the terms of the settlement was to the effect that both the parties will present a petition before the Industrial Tribunal, Delhi with a request to accept the terms of the settlement as fair and reasonable and to give its award in terms of the settlement in the disputes pending before it pursuant to the reference made on December 13, 1982.

The application made by the Management for passing an award in terms of the settlement dated May 17, 1983 was opposed by the appellant-Union on various grounds. It was submitted by the

appellant-Union that only two of the Unions had signed the settlement who represented a very insignificant number of workmen. The settlement was a private settlement and the workers who were not members of those two Unions were not bound by the settlement. It was further submitted that in May, 1983, when the settlement is said to have been arrived at, no conciliation proceedings were pending before the Conciliation Officer and, therefore, the Conciliation Officer had no power or justification to record such a settlement, particularly during the pendency of the earlier reference. It was also the case of the appellant-Union that the settlement did not settle the disputes which had been referred to the Tribunal for adjudication. The settlement was unfair and unjust to the workmen and, therefore, not acceptable to the appellant-Union.

The appellant-Union filed a writ petition before the High Court of Delhi at New Delhi contending that the settlement dated May 17, 1983 was not a conciliation settlement binding upon all the workmen. The writ petition was dismissed by the High Court by its order dated January 3, 1986. The matter was brought before this Court in Special Leave Petition (Civil) No. 1526 of 1985 which was also dismissed by this Court on August 5, 1986 with the following observations :-

> " We have heard learned counsel for the parties. We do not see any reason why we should entertain this Special Leave Petition at this stage. It is conceded that the settlement between the employer and certain trade Unions has been filed before the Industrial Tribunal to which a reference of this dispute was made and a settlement was filed before the Tribunal three years ago. It is for the Industrial Tribunal to dispose of the question whether the settlement is valid and binding between the employer and the workmen. It is only after the Industrial Tribunal has disposed of the matter that this Court may look into it. While we dismiss the Special Leave Petition, we may observe that the Industrial Tribunal should dispose of the question as to the validity and binding nature of the settlement as expeditiously as possible. Having regard to the lapse of time which has taken place we trust that the Industrial Tribunal will be able to adjudicate on the matter within three months from today."

In the light of the order of this Court the Industrial Tribunal heard the parties and passed an Award on June 12, 1987. The Award is a detailed reasoned Award. The Tribunal took note of the background in which the disputes had arisen and the reference made to it. It rejected the argument of the appellant-Union that once a reference is made, the Labour Department of the appropriate Government becomes functus officio in the matter. After considering to the decisions of this Court in State of Bihar vs. D.N. Ganguly & Ors. : 1959 1 SCR 1191 ; Sirsilk Limited vs. Government of Andhra Pradesh and another : AIR 1964 SC 160 and Paraga Tools Ltd. vs. Mazdoor Sabha : 1975(I) LLJ 210 it concluded that merely because a dispute had been referred to the Industrial Tribunal for adjudication, it did not prevent the Conciliation Officer from playing his role when other disputes arose between the parties and the industrial peace was disturbed. It noticed the fact that in the instant case a notice of strike was given on February 14, 1983 and a notice of closure of a part of the undertaking on April 4, 1983. The workers were disturbed and the atmosphere was surcharged. In this background if the Conciliation Officer intervened in an attempt to bring about a settlement, it cannot be contended that he had no jurisdiction to do so. In fact the Labour Department was not only justified but legally competent and compelled to set the conciliation proceedings in motion so

as to restore industrial peace.

Having found that the settlement was brought about in the course of conciliation proceedings, the Tribunal considered the terms of settlement and recorded the following conclusion :-

> " I have carefully gone through the terms of the settlement. These are not only well bargained but quite detailed and very sound in the circumstances obtaining. It's various items made provision for meeting all the relevant problems of relief and rehabilitation of the affected workers because of the closure of weaving section of the mill and envisages an expert technical body for deciding on the possibility and extent of the revival of weaving work in the Mill, under the time bound schedule. I find the settlement fair and just."

The Tribunal, therefore, concluded that the settlement of May 17, 1983 was a settlement reached between the Workmen and the Management in the course of conciliation proceedings and hence binding on all the workers of the respondent-Company. It proceeded to decide the reference declaring that the disputes stood settled as between the parties by a valid and binding settlement dated May 17, 1983 and thus the reference had been rendered redundant. There was no dispute surviving and no purpose was left in making the terms of a valid and binding settlement of 1983 as a part of the award, as all the agreed terms should stood executed and implemented. The order of the Industrial Tribunal making the Award is of June 12, 1987. The said Award was duly published by the appropriate Government in the Gazette on August 10, 1987.

On September 7, 1987 the appellant-Union filed an application before the Industrial Tribunal to the effect that the only question which had been argued before the Tribunal was in relation to the power and jurisdiction of the Conciliation Officer to record settlement between the parties during the pendency of the disputes. The question as to whether the settlement was fair and just, and should be accepted by the Tribunal, was not argued since that required evidence. It was, therefore, understood that the said question will be decided later on in case the Tribunal held that the Conciliation Officer had jurisdiction to record the settlement. Under some misconception the Tribunal had determined the terms of the settlement to be fair and just and had passed an Award on June 12, 1987. It was, therefore, prayed that the appellant-Union be given an opportunity to establish that the settlement was neither just nor fair. For this purpose the Award may be recalled and the appellant-Union be given an opportunity to establish that the settlement is unjust and unfair, adversely affecting a large number of workmen. It was prayed that the Award may be recalled which was in fact an ex-parte Award, and the question of fairness of the settlement be decided after providing an opportunity to the parties to produce evidence.

This application filed by the appellant-Union was strongly opposed by the respondent-Management, but the successor Presiding Officer of Industrial Tribunal No.II, Delhi allowed the application. It observed that a perusal of the order dated June 12, 1987 showed that the then Tribunal did not make a single observation as to whether the settlement dated May 17, 1983 was just and fair. No issue was framed nor any evidence was recorded on that point. No argument was advanced and no finding was given by his learned predecessor on this point. Relying upon the judgment of this Court in Satnam

Verma vs. Union of India : 1984 (supp) SCC 712 and Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others : 1980 (Supp) SCC 420 it was held that where the Tribunal proceeds to make an Award without notice to a party, the Award is a nullity and, therefore, the Tribunal has not only the power but also the duty to set aside such an ex-parte Award. It was held that in the instant case no arguments were advanced and no finding was given as to whether the settlement was just and fair. In view of its finding that the Tribunal has power to review its Award even if the same is published in the Gazette, the Tribunal proceeded to exercise its power to review its earlier order dated June 12, 1987. It further framed an additional issue which is as follows:-

> "Whether the settlement dated 17.5.1983 is just and fair and if so, is it not binding on the parties?"

It further directed that only arguments shall be heard since there was no need to record evidence on this point. Accordingly by its order of February 19, 1990 the Industrial Tribunal decided to review its earlier order and framed an additional issue as to whether the settlement was just and fair.

The Management-respondent herein preferred a writ petition before the High Court of Delhi at New Delhi and sought quashing of the order dated February 19, 1990 passed by Industrial Tribunal No. II, Delhi, and for declaration that the Award dated June 12, 1987 earlier made by the Tribunal effectively terminated the reference pending before it. The High Court by its impugned judgment and order allowed the writ petition and granted the reliefs prayed for. The judgment and order of the High Court has been impugned before us in this appeal.

The core question which arises for consideration is whether the Industrial Tribunal was justified in recalling the earlier Award made on June 12, 1987 and in framing an additional issue for adjudication by the Tribunal. According to the appellant the recall of the order was fully justified in the facts of the case, while the respondents contend to the contrary. Two issues arise for our consideration while considering the legality and propriety of the Tribunal in recalling its earlier Award. Firstly - whether the Tribunal had jurisdiction to recall its earlier order which amounted virtually to a review of its earlier order; and secondly - whether the Tribunal had no jurisdiction to entertain the application for recall as it had become functus offico. The High Court answered the first question in favour of the respondent-Management and the second in favour of the appellant.

We shall first take up the second question namely whether the Tribunal was functus offico having earlier made an Award which was published by the appropriate Government. It is not in dispute that the Award was made on June 12, 1987 and was published in the Gazette on August 10, 1987. The application for recall was made on September 7, 1987. Under sub-section (1) of Section 17A of the Act an Award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17 of the Act. Thus the Award would have become enforceable with effect from September 9, 1987. However, the application for recalling the Award was made on September 7, 1987 i.e. 2 days before the Award would have become enforceable in terms of sub-section (1) of Section 17A of the Act. The High Court rightly took the view that since the application for recall of the order was made before the Award had become enforceable, the Tribunal had not become fuctus offico and had jurisdiction to entertain the application for recall. This view also find supports from the judgment of

this Court in Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others (supra). This Court after noticing the provisions of sub-section (3) of Section 20 of the Act which provides that the proceedings before the Tribunal would be deemed to continue till the date on which the Award become enforceable under Section 17A, held that till the Award becomes enforceable the Tribunal retains jurisdiction over the dispute referred to it for adjudication, and up to that date it has the power to entertain the application in connection with such dispute. The jurisdiction of the Tribunal had to be seen on the date of the application made to it and not the date on which it passed the impugned order. The judgment in Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others (supra) has been reiterated by this Court in Satnam Verma vs. Union of India (supra), J.K. Synthetics Ltd. vs. Collector of Central Excise : (1996) 6 SCC 92 and M.P. Electricity Board vs. Hariram etc. : JT 2004 (8) SC 98.

In the instant case as well we find that as on September 7, 1987 the Award had not become enforceable and, therefore, on that date the Tribunal had jurisdiction over the disputes referred to it for adjudication. Consequently it had the power to entertain an application in connection with such dispute. The order of recall passed by the Tribunal on February 19, 1990, therefore, cannot be assailed on the ground that the Tribunal had become fuctus offico.

The question still remains whether the Tribunal had jurisdiction to recall its earlier Award dated June 12, 1987. The High Court was of the view that in the absence of an express provision in the Act conferring upon the Tribunal the power of review the Tribunal could not review its earlier Award. The High Court has relied upon the judgments of this Court in Dr. (Smt.) Kuntesh Gupta vs. Management of Hindu Kanya Maha Vidyalaya, Sitapur (U.P.) and others : (1987) 4 SCC 525 and Patel Narshi Thakershi and others vs. Pradyumansinghji Arjunsingji : AIR 1970 SC 1273 wherein this Court has clearly held that the power of review is not an inherent power and must be conferred by law either expressly or by necessary implication. The appellant sought to get over this legal hurdle by relying upon the judgment of this Court in Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others (supra). In that case the Tribunal made an ex-parte Award. Respondents applied for setting aside the ex-parte Award on the ground that they were prevented by sufficient cause from appearing when the reference was called on for hearing. The Tribunal set aside the ex-parte Award on being satisfied that there was sufficient cause within the meaning of Order 9 Rule 13 of the Code of Civil Procedure and accordingly set aside the ex-parte Award. That order was upheld by the High Court and thereafter in appeal by this Court.

It was, therefore, submitted before us relying upon Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others (supra) that even in the absence of an express power of review, the Tribunal had the power to review its order if some illegality was pointed out. The submission must be rejected as misconceived. The submission does not take notice of the difference between a procedural review and a review on merits. This Court in Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others (supra) clearly highlighted this distinction when it observed :-

> "Furthermore, different considerations arise on review. The expression 'review' is used in the two distinct senses, namely (1) a procedural review which is either

> inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in Patel Narshi Thakershi case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debita justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal".

Applying these principles it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others (supra), it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again.

The facts of the instant case are quite different. The recall of the Award of the Tribunal was sought not on the ground that in passing the Award the Tribunal had committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the Award, but on the ground that some mattes which ought to have been considered by the Tribunal were not duly considered. Apparently the recall or review sought was not a procedural review, but a review on merits. Such a review was not permissible in the absence of a provision in the Act conferring the power of review on the Tribunal either expressly or by necessary implication.

Learned counsel for the appellant then sought to argue that there was no conciliation proceeding in progress when the alleged settlement is said to have been reached on May 17, 1983. The submission ignores the findings of fact recorded by the Tribunal in its order dated June 12, 1987 that while the reference was pending before the Tribunal certain events took place which compelled the Deputy Labour Commissioner-cum-Conciliation Officer to intervene. As noticed earlier a notice of strike was served on the Management on February 14, 1983 by one of the Unions. On the other hand the Management gave notice on April 4, 1983 under Section 25 FFFA of the Act for closing part of the undertaking related to the weaving section. These facts leave no manner of doubt that there was labour unrest coupled with the fear of strike and closure. The settlement itself recites the fact that there were series of bipartite and tripartite meetings between the representatives of the Management and the Unions in view of the labour unrest and threat of closing down the operation of the weaving department. Meetings were also held in the office of the Chief Labour Commissioner with a view to resolve the dispute and a meeting was thereafter held on May 17, 1983 in the office of Shri K. Saran, Joint Chief Labour Commissioner (Central) where the representatives of the Management and the Unions participated alongwith the officers of the Labour Depatment which ultimately resulted in a settlement. All these facts establish beyond doubt that there was labour unrest and the Conciliation Officer intervened in the matter and made attempts to bring about a settlement. The submission, therefore, that no conciliation proceeding was in progress when the settlement was arrived at, must be rejected.

Learned counsel for the appellant then submitted that the settlement was not arrived at with the assistance and concurrence of the Conciliation Officer. It was submitted, relying upon the decision of this Court in : The Bata Shoe Co. (P) Ltd. vs. D.N. Ganguly and others : AIR 1961 SC 1158 that a settlement which is made binding under Section 18(3) of the Act on the ground that it is arrived at in the course of conciliation proceedings is a settlement arrived at with the assistance and concurrence of the Conciliation Officer. Such a settlement brought about while conciliation proceedings are pending, are made binding on all parties under Section 18 of the Act. Reliance was placed on the judgment of this Court in Workmen of M/s. Delhi Cloth and General Mills Ltd. vs. The Management of M/s. Delhi Cloth and General Mills Ltd. : (1969) 3 SCC 302.

Learned counsel for the respondents did not dispute the legal position as it emerges from these two judgments. It was submitted that the facts of this case clearly establish that the Conciliation Officer intervened when there was considerable labour unrest and brought the parties to the negotiating table. Several meetings were held, some of them in the chambers of higher officials of the Labour Department, and ultimately a settlement was worked out. This is quite apparent from the fact that the terms of settlement has also been signed by the Conciliation Officer, apart from the representatives of the Management and representatives of the two workers' Union. We entertain no doubt that the settlement was brought about in the course of conciliation proceedings with the assistance and concurrence of the Conciliation Officer.

It was also urged before us by the learned counsel for the appellant that the Tribunal ought to have considered, while passing an Award on June 12, 1987, that the settlement was just and fair and protected the interest of the workmen. The recall of the order was sought on the ground that this aspect of the matter had not been considered when an Award was made in terms of the settlement.

This was precisely the ground on which the Tribunal entertained the application for recall and allowed it by order dated February 19, 1990. The Tribunal in our view proceeded on a factually incorrect assumption. The High Court has found that the Tribunal while making an Award in terms of the settlement has in clear terms recorded its satisfaction in paragraph 25 of its order (which we have quoted earlier in the judgment) that the settlement was fair and just. We entirely agree with the High Court.

It was lastly submitted that the settlement did not resolve the disputes which were subject matter of reference made to the Tribunal. The submission again proceeds on a misreading of the settlement. It is no doubt true that the disputes referred to the Tribunal mainly arose on account of the Management closing down a large number of looms which necessitated a curtailment of the work force on account of which the Management refused to give work to a large number of workers. We find that Clause 3.2 of the settlement in terms deals with the dispute relating to the weaving department and other allied departments. This submission, therefore, has no force.

In the result we find no merit in this appeal and the same is accordingly dismissed, but with no order as to costs.