Grindlays Bank Ltd vs Central Government Industrial ... on 12 December, 1980

Equivalent citations: 1981 AIR 606, 1981 SCR (2) 341, AIR 1981 SUPREME COURT 606, 1981 LAB IC 155, (1981) 1 LAB LN 196, 1981 BBCJ 32, (1981) SCR 341 (SC), (1981) SERVLJ 510, (1981) 1 LABLJ 327, (1981) 2 SCJ 117, 1981 SCC (L&S) 309, 1981 UJ(SC) 42, 1981 LAWYER 13 29, 1980 SCC (SUPP) 420, (1981) 1 SCWR 236, (1981) 58 FJR 140, (1981) 42 FACLR 88, 1981 BLJR 104

Author: A.P. Sen

Bench: A.P. Sen, Y.V. Chandrachud

PETITIONER:
GRINDLAYS BANK LTD.

Vs.

RESPONDENT:
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AND ORS.

DATE OF JUDGMENT12/12/1980

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
CHANDRACHUD, Y.V. ((CJ)

CITATION:
1981 AIR 606 1981 SCR (2) 341
CITATOR INFO :
F 1985 SC 294 (6,7)

ACT:
Powers of the Industrial Tribunal to set aside an ex-parte award passed on merits-Whether such an ex parte award passed on merits, when sought to be set aside by an application showing sufficient cause amounts to seeking review-Point of time at which jurisdiction of the Tribunal begins, for setting aside the ex parte award-Rule of statutory construction Industrial Disputes Act 1957, sections 11,17, 17-A and 20 part III of the Industrial Dispute (Central) Rules, 1957, Orders IX and XVII of the Civil Procedure Code.

HEADNOTE:

Dismissing the appeal, the Court

^

HELD: (1) 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 powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. The words "shall follow such procedure as the arbitrator or other authority may think fit" in sub-section (1) of section 11 of the Industrial Disputes Act are of the widest amplitude and confer ample power upon the Tribunal and other authorities to devise such procedure as the justice of the case demands. The discretion thus conferred on these authorities to determine the procedure as they may think fit, however, is subject to the rules made by the 'appropriate Government' in this behalf. Nevertheless, all these authorities being quasi-judicial in nature objectively determining matters referred to them, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. [344 E-F, H, 345A, C, F]

(2) Where a party is prevented from appearing at the hearing due to a sufficient cause and is faced with an ex parte award, it is as if the party is visited with an award without a notice of the proceedings. Where the Tribunal proceeds to make an award without notice to a party, the award is nothing but a nullity. In such circumstances, the Tribunal has not only the power but also the duty to set aside the ex parte award and to direct the matter to be heard afresh. Further, Rules 22 and 24(b) of the Industrial Disputes (Central) Rules, 1957 make it clear that the Tribunal was competent to entertain an application to set aside an ex parte award. [346 C-E]

(3) Merely because the ex parte award was based on the statement of the manager of the appellant, the order setting aside the ex parte award, in fact, does not amount to review. The expression "review" is used in two distinct senses, namely, (i) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a

342

misapprehension by it, and (ii) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every

court or Tribunal. [347 B-C, E-G]

Narshi Thakershi v. Pradvumansinghji, A.I.R. [1970] SC 1273, distinguished.

(4) The Tribunal had not become functus officio and, therefore, had the jurisdiction to set aside the ex parte award. To contend that the Central Government alone could set aside the ex parte award is not correct. Under section 17-A an award becomes enforceable on the expiry of 30 days from the date of its publication under section 17. The proceedings with regard to a reference under section 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and upto that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under section 17-A. [347 G, 348 A-B]

(5) 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. There is no finality attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Tribunal had the power to deal with an application properly made before it for setting aside the ex parte award and pass suitable orders. [348 D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2355 of 1979.

Appeal by Special Leave from the Judgment and Order dated 25-7-1979 of the Calcutta High Court in Appeal No. 3/1978.

G.B. Pai, Mrs. Rashmi Dhariwal, Miss Bina Gupta, Mr. Praveen Kumar and J.R. Das for the Appellant.

Amlan Ghosh for Respondents 3-4.

The Judgment of the Court was delivered by SEN, J. This is an appeal by special leave from a judgment of the Calcutta High Court, by which it refrained from interfering with an order of the Central Government Industrial Tribunal, Calcutta, constituted under s. 7A of the Industrial Disputes Act, 1947, setting aside an ex parte award made by it.

The facts giving rise to the appeal are these: The Government of India, Ministry of Labour by an order dated July 26, 1975 referred an industrial dispute existing between the employers in relation to the Grindlays Bank Ltd., Calcutta and their workmen, to the Central Government Industrial Tribunal in exercise of its powers under s. 10 of the Industrial Disputes Act, 1947 for adjudication.

By a notice dated March 6, 1976 the Tribunal fixed peremptory hearing of the reference for May 28, 1976, but the hearing was adjourned from time to time on one ground or other. Eventually, the hearing of the reference was fixed for December 9, 1976. On December 9, 1976 counsel appearing on behalf of respondent No. 3, the Commercial establishments Employees Association, representing respondents Nos. 5 to 17, sought an adjournment on the ground that the General Secretary of the Association had suffered a bereavement as his father had died on November 25, 1976, and, therefore, he had to leave to perform the shradhha ceremony falling on December 9, 1976. In support of his prayer for adjournment, the counsel produced a telegram, but the Tribunal refused to grant any further adjournment and proceeded to make an ex parte award. On the basis of the statement recorded by the manager of the appellant, the Tribunal held that the respondents Nos. 5 to 17 were employed as drivers by the officers of the appellant and were not the employees of the appellant and, therefore, they were not entitled to the benefits enjoyed by the drivers employed by the appellant. On January 19, 1977, respondent No. 3, acting for respondents Nos. 5 to 17 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 on December 9, 1976. The Tribunal by its order dated April 12, 1977 set aside the ex parte award on being satisfied that there was sufficient cause within the meaning of O. IX, r. 13 of the Code of Civil procedure, 1908. The appellant challenged the order passed by the Tribunal setting aside the ex parte award but the High Court declined to interfere.

Two questions arise in the appeal, namely (1) whether the Tribunal had any jurisdiction to set aside the ex parte award, particularly when it was based on evidence, and (2) whether the Tribunal became functus officio on the expiry of the 30 days from the date of publication of the ex parte award under s. 17, by reason of sub-s. (3) of s. 20 and, therefore, had no jurisdiction to set aside the award and the Central Government alone had the power under sub-s. (1) of s. 17-A to set it aside.

It is contended that neither the Act nor the rules framed there under confer any powers upon the Tribunal to set aside an ex parte award. It is urged that the award although ex parte, was an adjudication on merits as it was based on the evidence led by the appellant, and, therefore, the application made by respondent No. 3 was in reality an application for review and not a mere application for setting aside an ex parte award. A distinction is sought to be drawn between an application for review and an application for setting aside an ex parte award based on evidence. The contention is that if there is no evidence led before the Tribunal, there may be power to set aside an ex parte award, but if the award is based on evidence, the setting aside of the award cannot but virtually amount to a review.

In dealing with these contentions, it must be borne in mind that the Industrial Disputes Act, 1947 is a piece of legislation calculated to ensure social justice to both employers and the employees and advance progress of industry by bringing harmony and cordial relations between the parties. In other words, the purpose of the Act is to settle disputes between workmen and employers which if not settled, would result in strikes or lockouts and entail dislocation of work, essential to the life of the community. The scheme of the Act shows that it aims at settlement of all industrial disputes arising between the capital and labour by peaceful methods and through the machinery of conciliation, arbitration and if necessary, by approaching the Tribunal constituted under the Act. It,

therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both the parties.

We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. 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 powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.

Sub-section (1) of s. 11 of the Act, as substituted by s. 9 of the Industrial Disputes (Amendment & Miscellaneous Provisions) Act, 1956 is in these terms:

> "11. (1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit."

The words 'shall follow such procedure as the arbitrator or other authority may think fit' are of the widest amplitude and confer ample power upon the Tribunal and other authorities to devise such proce-

dure as the justice of the case demands. Under cls. (a) to

(c) of sub-s. (3) of s. 11, the Tribunal and other authorities have the same powers as are vested in civil courts under the Code of Civil Procedure, 1908, of (a) enforcing the attendance of any person and examining him on oath, (b) compelling the production of documents and material objects, and (c) issuing commissions for the examination of witnesses. Under cl. (d) thereof, the Tribunal or such other authorities have also the same powers as are vested in civil courts under the Code of Civil Procedure, 1908 in respect of such other matters as may be prescribed. Although the Tribunal or other authorities specified in s. 11 are not courts but they have the trappings of a court and they exercise quasi-judicial functions.

The object of giving such wide powers is to mitigate the rigour of the technicalities of the law, for achieving the object of effective investigation and settlement of industrial disputes, and thus assuring industrial peace and harmony. The discretion thus conferred on these authorities to determine the procedure as they may think fit, however, is subject to the rules made by the 'appropriate Government' in this behalf. Part III of the Industrial Disputes (Central) Rules, 1957 makes rules in this behalf. Rules 9 to 30 are the relevant rules regulating procedure. State Governments too have made their own corresponding rules. Except to the extent specified in sub-s.(3) of s. 11 of the Act and the rules framed thereunder, the provisions of the Code of Civil Procedure, 1908 are not applicable to proceedings before the authorities mentioned in sub-s.(1). The

provisions of the Evidence Act, in their strict sense, likewise do not apply to proceedings before the authorities. Nevertheless, all these authorities being quasi-judicial in nature objectively determining matters referred to them, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

Rule 22 of the Industrial Disputes (Central Rules), 1957 framed by the Central Government in exercise of its powers under s. 38 of the Act, provides:

> "22. If without sufficient cause being shown, any party to proceedings before a Board, Court, Labour Court, Tribunal, National Tribunal or arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or arbitrator may proceed, as if the party had duly attended or had been represented."

Rule 24(b) provides that the Tribunal or other body shall have the power of a civil court under the Code of Civil Procedure, 1908 in the matter of grant of adjournments. It runs thus:

> "24. In addition to the powers conferred by the Act, Boards, Courts, Labour Courts, Tribunals and National Tribunals shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely;
>
> (a) .....
>
> (b) granting adjournment;"

When sub-s. (1) of s. 11 expressly and in clear terms confers power upon the Tribunal to regulate its own procedure, it must necessarily be endowed with all powers which bring about an adjudication of an existing industrial dispute, after affording all the parties an opportunity of a hearing. We are inclined to the view that where a party is prevented from appearing at the hearing due to a sufficient cause, and is faced with an ex parte award, it is as if the party is visited with an award without a notice of the proceedings. It is needless to stress that where the Tribunal proceeds to make an award without notice to a party, the award is nothing but a nullity. In such circumstances, the Tribunal has not only the power but also the duty to set aside the ex parte award and to direct the matter to be heard afresh.

The language of r. 22 unequivocally makes the jurisdiction of the Tribunal to render an ex parte award conditional upon the fulfilment of its requirements. If there is no sufficient cause for the absence of a party, the Tribunal undoubtedly has jurisdiction to proceed ex parte. But if there was sufficient cause shown which prevented a party from appearing, then under the terms of r. 22, the Tribunal will have had no jurisdiction to proceed and consequently, it must necessarily have power to set aside the ex parte award. In other words, there is power to proceed ex parte, but this power is subject to the fulfilment of the condition laid down in r. 22. The power to proceed ex parte under r. 22 carries with it the power to enquire whether or not there was sufficient cause for the absence of a party at the hearing.

Under r. 24(b) a Tribunal or other body has the powers of a civil court under O. XVII of the Code of Civil Procedure, relating to the grant of adjournments. Under O. XVII, r. 1, a civil court has the discretion to grant or refuse an adjournment. Where it refuses to adjourn the hearing of a suit, it may proceed either under O. XVII, r. 2 or r. 3. When it decides to proceed under O. XVII, r. 2, it may proceed to dispose of the suit in one of the modes directed in that behalf by O. IX, or to make such other order as it thinks fit. As a necessary corollary, when the Tribunal or other body refuses to adjourn the hearing, it may proceed ex parte. In a case in which the Tribunal or other body makes an ex parte award, the provisions of O. IX, r. 13 of the Code are clearly attracted. It logically follows that the Tribunal was competent to entertain an application to set aside an ex parte award.

We are unable to appreciate the contention that merely because the ex parte award was based on the statement of the manager of the appellant, the order setting aside the ex parte award, in fact, amounts to review. The decision in Narshi Thakershi v. Pradyumansinghji is distinguishable. It is an authority for the proposition that the power of review is not an inherent power, it must be conferred either specifically or by necessary implication. Sub-sections (1) and (3) of s. 11 of the Act themselves make a distinction between procedure and powers of the Tribunal under the Act. While the procedure is left to be devised by the Tribunal to suit carrying out its functions under the Act, the powers of civil court conferred upon it are clearly defined. The question whether a party must be heard before it is proceeded against is one of procedure and not of power in the sense in which the words are used in s. 11. The answer to the question is, therefore, to be found in sub-s. (1) of s. 11 and not in sub-s. (3) of s. 11. Furthermore, different considerations arise on review. The expression 'review' is used in 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 misapprehension 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 Narshi Thakershi's case held that no review lies on merits unless a status 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 debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal.

The contention that the Tribunal had become functus officio and therefore, had no jurisdiction to set aside the ex parte award and that the Central Government alone could set it aside, does not commend to us. Sub-section (3) of s. 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable under s. 17A. Under s. 17A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under s. 17. The proceedings with regard to a reference under s. 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and upto that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under s. 17A. In the instant case, the Tribunal made the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the ex parte award was filed by respondent No. 3, acting on behalf of respondents Nos. 5 to 17 on January 19, 1977 i.e., before the expiry of 30 days of its publication and was, therefore, rightly entertained by the

Tribunal. It had jurisdiction to entertain it and decide it on merits. It was, however, urged that on April 12, 1977 the date on which the impugned order was passed the Tribunal had in any event become functus officio. We cannot accede to this argument. 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. There is no finality attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Tribunal had the power to deal with an application properly made before it for setting aside the ex parte award and pass suitable orders.

The result, therefore, is that the appeal must fail and is dismissed with costs throughout.

V.D.K. Appeal dismissed.