

Radhakrishna Mani Tripathi vs L.H. Patel & Anr on 21 November, 2008

Equivalent citations: AIR 2008 SC (SUPP) 928, 2009 (2) SCC 81, (2009) 3 MAD LJ 1368, (2008) 3 CURLR 1043, (2009) 3 MAH LJ 767, (2009) 1 LAB LN 786, (2009) 1 BOM CR 72, (2008) 15 SCALE 606, (2009) 120 FACLR 320, (2009) 1 SCT 828, (2009) 3 SERVLR 377

Author: Aftab Alam

Bench: Aftab Alam, Tarun Chatterjee

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6737 OF 2008
[Arising out of SLP (C) No.18340/2006]

Radhakrishna Mani Tripathi

... Appellant

Versus

L. H. Patel & Anr.

... Respondents

JUDGMENT

AFTAB ALAM,J.

1. Heard counsel for the parties.

2. Leave granted.

3. In an industrial dispute concerning the termination of service of the appellant (the workman) the Second Labour Court, Thane, Maharashtra gave an ex-parte award in Reference (IDA) no.224 of 1994 in favour of the appellant on 12 June 1998 directing his reinstatement with full back wages and continuity in service. The award was made after taking evidence (ex- parte) led on behalf of the appellant. It was published on 5 August 1998. On 29 January 1999 respondent no.1 filed a petition

(Misc. Application [IBA] no.2 of 1999) before the Labour Court making a prayer for recall of the award. It was stated on behalf of the respondent that no notice was served on him and he was not aware of the proceedings before the Labour Court. He came to know about the matter only on 27 January 1999 on receiving a copy of the award sent to him by the court. And then without any loss of time he filed the petition for recall of the award. After a full dressed hearing on the recall petition the Tribunal found and held, vide order dated 12 July 2005, that the appellant obtained the order for ex-parte hearing of the reference by knowingly suppressing the correct address of respondent no.1 and as a result the notice issued by the Labour Court was never served on him. In light of the finding, the Labour Court recalled its earlier award dated 12 June 1998 and fixed the matter for fresh hearing.

4. The appellant challenged the order of Labour Court setting aside the award before the Bombay High Court in Writ petition no. 7985 of 2005. The High Court, by its judgment and order dated 25 January 2006 dismissed the writ petition and confirmed the order passed by the Labour Court. This appeal is preferred against the orders passed by the High Court and the Labour Court.

5. At this stage it will be useful to take note of certain provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and the Rules framed there-under. Section 11 of the Act permits the Industrial Tribunal, the Labour Court (and the other authorities under the Act) to follow, 'subject to any rules that may be made in this regard' such procedure as they may think fit. Section 38 of the Act gives the power to the 'appropriate government' to make rules for the purpose of giving effect to the provisions of the Act. Under Section 38 of the Act the Central Government and many State Governments have framed rules. The case in hand coming from Maharashtra is governed by the provisions of the Industrial Disputes (Bombay) Rules (hereinafter referred to as the Bombay Rules). Rule 26 of the Bombay Rules lays down the circumstances in which an industrial court may proceed ex parte as also the conditions on which it may set aside an ex parte award. It reads as follows:

"26. Board Court, Labour Court, Tribunal or Arbitrator may proceed ex-parte -

(1) If without sufficient cause being shown, any party to a proceeding before a Board, Court, Labour Court, Tribunal or an Arbitrator fails to attend or to be represented the Board, Court, Labour Court, Tribunal or Arbitrator may proceed ex-parte (2) Where any award, order or decisions made ex-parte under sub-rule(1), the aggrieved party, may within thirty days of the receipt of a copy thereof, make an application to the Board, Court, Labour Court, Tribunal or an Arbitrator, as the case may be, to set aside such award, order or decision. If the Board, Court, Labour Court, Tribunal or Arbitrator is satisfied that there was sufficient cause for non-appearance of the aggrieved party, it or he may set aside the award, order or decisions so made and shall appoint a date for proceeding with the matter:

Provided that, no award, order or decision shall be set aside on any application as aforesaid unless notice thereof has been served on the opposite party]. (n) [It may be stated here that originally rule 26 was limited to what now comprises sub-rule 1;

sub-rule 2 was added by govt. notification dated 20 August 1970 and the original and the added provisions were numbered as sub-rules 1 and 2 respectively.]

6. Rule 31A of the Bombay Rules provides as follows:

"Publication of report or award etc. - (1) Within thirty days of the date of receipt of the report of a Board or award of a Labour Court or Tribunal by it the State Government, -

(a) shall, if it considers that having regard to the importance of such report or award its publication in the Official Gazette is necessary cause it to be published in the Official Gazette;

(b) If it considers that the report or award is not sufficiently important it may cause a copy thereof together with a notification under section 17 to be forwarded to the Board or a Court or Tribunal, as the case may be, for publication on the Notice Board at its office.

(2) Where the report or award is published in the Official Gazette or on notice board of the Board, Court or Tribunal, the State Government shall at the time of such publication forward a copy thereof to the parties to the dispute, and where the report or award is published on notice board of the Board, Court or Tribunal, such board, Court or Tribunal, shall inform the State Government and the parties concerned of the date of such publication on the notice board."

7. It is undeniable that the order of the Labour Court recalling the ex- parte award was completely in accord with Rule 26(2) of the Bombay Rules. The petition for recall was filed by respondent no.1 within two days of the receipt of a copy of the award and he was also able to fully satisfy the Labour Court that there was sufficient cause for his non appearance since no notice was ever served on him.

8. However, Mrs. Issar, learned counsel appearing for the appellant tried to question the validity of rule 26(2) itself. She submitted that under Section 17-A of the Act an award becomes enforceable on expiry of thirty days from the date of its publication whereupon the labour court is rendered functus officio. Hence, any application for recall could only be made within thirty days from the date of publication of the award, otherwise it would not be open to the Labour Court to entertain it, as the matter would have gone completely beyond its authority. In support of the submission she relied upon certain observations in the decision in Grindlays Bank vs. Central Government Industrial Tribunal & Ors., 1980 (Supp) SCC 240. She further submitted that the provision of rule 26(2) of the Bombay Rules was in derogation of Section 17-A of the Act in so far as it extended the time for making an application for recall of the award and stretched it to a point where the Labour Court ceased to have any control or authority over the matter. Learned counsel submitted that rule 26(2) of the Bombay Rules was in conflict with Section 17-A of the Act and tended to supplement it. The provision of the rule must, therefore, be held to be invalid and inoperative. In support of the submission she relied upon a number of decisions which it is not necessary to mention here.

9. We are unable to accept the submissions made on behalf of the appellant and we think any reliance placed on the decision in Grindlays Bank is quite misplaced. In Grindlays Bank an order passed by the Labour Court, recalling its award, was assailed on the same lines as advocated by Mrs. Issar before us. In view of the submissions made before it in that case the Court framed the second question arising for its consideration as follows:

"Whether the Tribunal becomes functus officio on the expiry of 30 days from the date of publication of the ex- parte award under Section 17, by reason of sub-section (3) of Sec. 20 and, therefore, had no jurisdiction to set aside the award and the Central Government alone had the power under sub (1) of Sec.17-A to set it aside."

10. Here it needs to be noted that the case of Grindlays Bank arose under the Industrial Disputes (Central) Rules. In the Central Rules there is nothing like rule 26(2) of the Maharashtra Rules but rule 22 is almost identical to rule 26(1) of the Maharashtra Rules. Rule 22 of the Central rules reads as follows:

"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."

11. Further, rule 24 of the Central Rules gives to the Industrial Tribunal, Labour Court (and the other authorities under the Act) certain powers under the Civil Procedure Code as vested in a Civil Court when trying a suit. The powers enumerated under the rule include the power of granting adjournments.

12. In Grindlays Bank this Court held that rules 22 and 24 (b) were sufficiently the source of power for the industrial courts to recall an ex-parte award. It was pointed out that in terms of rule 22 the industrial courts could proceed ex parte in the matter only in case a party to the proceeding failed to attend or be represented without showing sufficient cause. The Court held that power to proceed ex-parte under rule 22 carried with it the power to inquire whether or not there was sufficient cause for the absence of the party at the hearing and in case the party was able to show sufficient cause for its non appearance on the date the court had proceeded ex parte against it, to recall the award. (vide paragraph 11 of the decision).

13. Similarly, the Court pointed out, the provision of rule 24(b) empowered the industrial courts to refuse to adjourn the hearing and to proceed ex-parte. Hence, in a case in which the industrial court makes an ex-parte award the provisions of Order 9 Rule 13 of CPC would be clearly attracted. It logically follows that the Tribunal is competent to entertain an application to set aside an ex parte award. (vide paragraph 12 of the decision)

14. The Court thus founded the industrial court's jurisdiction and power to recall an ex-parte award on rule 22 and 24 (b) of Central Rules.

15. It is thus to be seen that in Grindlays Bank what this Court held to be implicit in rule 22 of the Central Rules is made explicit and clear in the Bombay Rules in the form of sub rule (2) of rule 26.

16. Coming now to the submission based on Sec.17-A of the Act the Court in paragraph 14 of the decision held and observed as follows:

"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 Section 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 Section . Under Section of the Act, 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 up to 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 . 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 3, acting on behalf of respondents 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."

(emphasis added)

17. From the above quotation it would appear that in Grindlays Bank the recall application was filed within 30 days from the date of publication of the award and hence, the objection raised on the basis of Sec.17A did not arise in this case. In Grindlays Bank this Court didn't say that the industrial courts would have no jurisdiction to entertain an application for setting aside an award made after 30 days of its publication. Nevertheless, on the basis of the passage marked in italics in the above quotation Mrs. Issar strongly contended that is the true import of the judgment.

18. We are unable to accept. The position is made clear in the later decision in Anil Sood vs. Presiding Officer Labour Court II, (2001) 10 SCC

534. In Anil Sood interestingly the Labour Court had rejected the recall application on the very same ground that after making the award it became functus officio in the matter. The order of the Labour Court was challenged before the High Court but the High Court also took the same view. In appeal this Court noted that the award was made on 11.09.1995 and the application for its recall was filed on 6.11.95. The Court referred to the earlier decision in Grindlays Bank and the provisions of sub-sections (1) and (3) of Section 11 of the Act and in paragraphs 6, 7, and 8 of the decision observed and held as follows:

"6. The aspect that the party against whom award is to be made due opportunity to defend has to be given is a matter of procedure and not that of power in the sense in which the language is adopted in Section 11. When matters are referred to the tribunal or court they have to be decided objectively and the tribunals/courts have to exercise their discretion in a judicial manner without arbitrariness by following the general principles of law and rules of natural justice.

"7. The power to proceed ex-parte is available under Rule 22 of the Central Rules which also includes the power to inquire whether or not there was sufficient cause for the absence of a party at the hearing, and if there is sufficient cause shown which prevented a party from appearing, then if the party is visited with an award without a notice which is a nullity and therefore the Tribunal will have no jurisdiction to proceed and consequently, it must necessarily have power to set aside the ex-parte award.

"8. If this be the position in law, both the High Court and the Tribunal (sic Labour Court) fell into an error in stating that the Labour Court had become functus officio after making the award though ex-parte. We set aside the order made and the award passed by the Labour Court and affirmed by the High Court in this regard, in view of the fact that the learned counsel for the respondent conceded that application filed by the appellant be allowed, set aside the ex-parte award and restore the reference."

19. In light of the decision in Anil Sood we find no substance in the appellant's submission based on Section 17-A of the Act. There being no substance in the first limb of the submission there is no question of any conflict between rule 26(2) of the Maharashtra Rules and Section 17-A of the Act.

20. We find no merit in the appeal. It is accordingly dismissed. Having regard to the fact that the appellant is a workman we refrain from imposing any costJ. [Tarun Chatterjee]J. [Aftab Alam] New Delhi, November 21, 2008.