Supreme Court of India
Tulsipur Sugar Company Ltd. vs State Of U.P. And Ors. on 1 March, 1969
Equivalent citations: AIR 1970 SC 70, (1969) IILLJ 662 SC, (1969) 2 SCC 100, 1970 1 SCR 35
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Bench: J Shelat, V Bhargava
JUDGMENT J.M. Shelat, J.

1. Two questions arise for determination in this appeal, by special leave, against the judgment of the Appellate Bench of the High Court of Allahabad, namely, (1) whether a correction in its award by the Labour Court, Lucknow, was one of an error arising from an accidental omission within the meaning of Section 6(6) of the U.P. Industrial Disputes Act, XXVIII of 1947 (hereinafter referred to as the Act), and (2) whether, even if it was so, it could so correct after its award was published and had become enforceable.

2. The Central Wage Board for sugar industry, appointed by the Union Government for determining a wage-structure, revision of categories of workmen, their fitment into such categories and for fixing the principles governing the grant of bonus, had made certain recommendations. Amongst its recommendations, the Wage Board recommended that its decision should be brought into effect as from November 1, 1960. By its notification dated April 27, 1961, the U.P. Government accepted those recommendations including the one that they should be brought into force with effect from November 1, 1960. On a dispute having arisen between the appellant company and its workmen on the company failing to implement the said recommendations, the State Government referred it to the Labour Court for adjudication under Section 4(k) of the Act. The dispute involved two questions (1) whether the company should fit the workmen named in the reference in the revised categories and in the new wage scales and (2) if so, with effect from what date. By its award dated November 6, 1963 the Labour Court held that two of the said workmen should be fitted in Grade II(B) and Grade IV respectively and directed the company to do so within one month after the award became enforceable. It, however, omitted to fix the date from which such fitment should have the effect. On December 7, 1963 the said award was published in the State Gazette. The company thereafter fitted the two workmen in the said two grades from a date one month hence after the award became enforceable and not from November 1, 1960. The workmen's union thereupon applied to the Labour Court to amend its award on the ground that it had omitted to answer the second question arising under the reference and the Labour Court accordingly amended its award directing that the two workmen should be placed in the said grades with effect from November 1, 1960. The order amending the said award was gazetted on June 20, 1964. The company filed a petition in the High Court for certiorari and for quashing the said order of amendment. Nigam, J. who heard the petition in the first instance dismissed it holding that (1) the Labour Court had made an error arising from an accidental omission to answer the said second question and therefore had the power to correct it under Section 6(6) of the Act, and (2) even if there was no such error arising from accidental omission, the amendment merely provided what was already contained in the notification dated April 27, 1961, that once the Labour Court had directed the company to fit the workmen in the said grades, such fitment had, under the force of that notification, to take effect from November 1, 1960 and that that result was arrived at not by reason of the correction of the award but by force of the original award read with the said notification. On a letters patent appeal having been filed against

the said judgment, the Appellate Bench of the High Court agreed with Nigam, J. that the correction amounted to one of an error arising from the accidental omission to answer the said second question within the scope of Section 6(6) of the Act. The Appellate Bench, however, proceeded to examine the various provisions and the scheme of the Act and held (1) that the jurisdiction of the Labour Court under the Act was of a limited character, (2) that it gets seisen of an industrial dispute only when its jurisdiction is invoked by a reference under Section 4(k) or by a voluntary reference to arbitration under Section 5B, (3) that under Section 4D proceedings before it are deemed to commence from the date of such reference and are deemed to be completed on the date when its award becomes enforceable, (4) that its jurisdiction which emanates from the reference gets exhausted on the completion of the proceedings before it and the Labour Court itself becomes functus officio on the date when its award becomes final and enforceable, (5) that it cannot thereafter reconstitute itself or take seisen of a dispute, which it has already adjudicated and proceedings relating to it have become concluded, without a fresh reference and (6) that, therefore, its correctional jurisdiction under Section 6(6), unlike that of a civil court under Section 152 of the CPC, is not unlimited. The Appellate Bench on this reasoning held that the two extreme points during which the Labour Court could correct its award were the date of its signing it and the date when the award becomes final and enforceable. Consequently, the Labour Court had no jurisdiction to correct the award after it became final and enforceable, i.e., after January 7, 1964, on expiry of 30 days from December 7, 1963 when it was published and the correction, therefore, was in excess of its jurisdiction and invalid. The Appellate Bench, however, declined to issue the writ on the ground that the correction did no more than doing justice to the workmen by ordering implementation of the said notification of April 27, 1961 and observing that equity was on the side of the two workmen dismissed the appeal as also the said petition.

3. Dr. Singhvi, who, on behalf of the company, disputed the correctness of the judgment, contended that (a) no clerical or arithmetical error through any accidental slip or omission had arisen, that Section 6(6), therefore, did not apply to the facts of this case, and if at all, the application ought to have been under Section 11B, which however, was never invoked; (b) that power under Section 6(6) could be exercised only until the date on which the said award became enforceable and not thereafter, that the correctional jurisdiction under Section 6(6) is not without any limit as to time within which it could be invoked or exercised and expired or exhausted itself when the award became final; (c) that the principles of industrial law postulate the finality of an award made under it and that subject to exceptions as in Section 6A, once the award had become final it did not contemplate any disturbance of it by amendment or otherwise, and (d) that the High Court was in error in refusing remedy on a supposed consideration of equity once it found lack of jurisdiction in the Labour Court as it in fact did and, therefore, ought to have issued the remedial writ and quashed the impugned order of correction.

4. As already stated, the Wage Board had recommended revised wage scales, revised categories and fitment of workmen in their respective categories on the revised wage scales as from November 1, 1960. The State Government had accepted those recommendations fully including the date of their implementation and the consequent fitment of workmen in appropriate categories and revised wage scales. Its notification made it clear that such fitment on the revised wage scales should be as recommended by the Wage Board as from November 1, 1960. In the belief, perhaps, that the said

recommendations and their acceptance by the Government were not binding on it, the company did not implement them and hence the union raised the dispute which was-ultimately referred to the Labour Court. The terms of that reference leave no doubt that it comprised of two questions, (1) of fitment and (2) the date from which it was to have effect. The award of the Labour Court that the company was liable to fit the two workmen in grades II and IV respectively and pay them at the revised scales in respect of these grades was binding and therefore the company was liable to carry out the fitment and pay the revised scales in accordance with such fitment. But the award did not decide or fix the date from which the said fitment, when made was to have effect. As rightly held by the High Court, the Labour Court thus omitted to answer the second question as it was bound to do and the reference remained partly un-adjudicated. The Labour Court, no doubt, did direct that the award should be implemented within one month after it became enforceable under the Act, i.e., on or before February 7, 1964. But that direction meant only that the company should fit the two workmen in the two grades it had ordered and still left the question, as to the date from which such fitment was to have effect, unanswered. Thus, the fact that the Labour Court failed to answer the second question admits of no doubt. There can also be no doubt that since the first question was answered by it in accordance with the Wage Board's recommendations and the Government's notification accepting them fully, if its attention had been drawn it would in all probability have answered the second question also in consonance with those recommendations and the said notification. There is, therefore, no question that there was an error in the award due to an accidental omission on the part of the Labour Court, which error it undoubtedly had the jurisdiction to correct under Section 6(6). The error was that there was no direction in the award as to the date from which the fitment of the two workmen in the said grades and the revised scales should take effect, arising from an accidental omission to answer that part of the reference.

5. The next question is whether there is under the Act any time limit within which the correction of the award can be made. The impugned correction, no doubt, was made by the Labour Court after its award had become final and enforceable. The principal premise in the High Court's reasoning as also in that of counsel for the company was that the jurisdiction of the Labour Court to correct the award ceased when the award became final and enforceable. It may be observed at the very outset that no time limit within which such correction can be made has been laid down in any express terms in Section 6(6). The question, therefore, is whether any such time limit can be inferred either from Section 6 or from the other provisions of the Act. Section 4(k) enables the State Government to refer an industrial dispute which either exists or is apprehended to the Labour Court if the matter of the industrial dispute is one of those contained in the First Schedule to the Act or to a Tribunal if it is one contained in the first or the second Schedule. Even if the dispute relates to a matter in the second Schedule, if it is not likely to affect more than 100 workmen, the Government can, if it so thinks fit, refer such a dispute to the Labour Court. Under Section 5B where any industrial dispute exists or is apprehended and the employer and the workmen agree, they may refer the dispute to arbitration of such person or persons including the presiding officer of a Labour Court or a Tribunal as may be specified in the arbitration agreement. Section 6(1) enjoins upon the Labour Court and the Tribunal to which an industrial dispute is referred for adjudication to hold us proceedings expeditiously and submit its award to the State Government as soon as it is practicable on the conclusion thereof. Sub-section 3 provides that subject to the provisions of Sub-section 4 every arbitration award and the award of a Labour Court or a Tribunal shall, within 30 days from the date

of its receipt by the State Government, be published in such manner as the State Government thinks fit. Sub-s. 4, to which Sub-section 3 is made subject, authorises the State Government before publication of an award of a Labour Court or a Tribunal to remit it for, its reconsideration and provides that after such reconsideration it shall submit its award to the Government and the State Government shall thereupon publish it in the manner provided in Sub-section 3. Sub-s. 5 provides that subject to the provisions of Section 6A an award published under Sub-section 3 shall be final and shall not be called in question in any court in any manner whatsoever Section 6A, to the provisions of which Section 6(5) is made subject, provides by its Sub-section 1 that an award, including an arbitration award, shall become enforceable on the expiry of 30 days from the date of its publication. The first proviso thereof empowers the State Government, if it is of the opinion that it is inexpedient on public grounds affecting national or State economy or social justice to give effect to the whole or any part of the award, to declare by notification in the official gazette that it shall not become enforceable on the expiry of the said period of 30 days. The second proviso provides that an arbitration award shall not become enforceable if the State Government is satisfied that it was given or obtained through collusion, fraud or misrepresentation. Thus, even though an award has been published under Section 6(3) and has become final and would ordinarily become enforceable on expiry of 30 days from such publication, the State Government can make a declaration under the first proviso and under Sub-section 2 can within 90 days from its publication make an order either rejecting or modifying it, in which event it has to lay the award and its said order before the State Legislature. Sub-s. 3 provides that if an award is rejected or modified by an order under Sub-section 2 and is laid before the Legislature, it shall become enforceable within 15 days from the date it is so laid. But where no such order under Sub-section 2 has been made, it shall become enforceable on the expiry of 90 days referred to in Sub-section 2. Sub-s. 4 provides that subject to Sub-sections 1 and 3, an award shall come into operation with effect from such date as may be specified therein but where no such date is specified it shall come into operation on the date when the award becomes enforceable under Sub-section 1 or Sub-section 3, as the case may be. The "provisions of Section 6 and Section 6A thus make it clear that whereas the former provides for the award becoming final, the latter provides for its enforceability and the time from which it has to be implemented. The two characteristics of the award, i.e., its finality on publication and its enforceability under Section 6A, are distinct, having different points of time and should not. therefore, be mixed up, for, though an award has become final on its publication under Section 6 it becomes enforceable in accordance with and subject to the eventualities provided in Section 6A. There are thus three different stages in the case of an award; (1) when it is signed by the adjudicating authority, (2) when it is published by the State Government in the prescribed manner and (3) when it becomes enforceable. Even though an award may have become final on its being published, it becomes enforceable subject to the expiry of the different periods and the events prescribed in Section 6A.

6. The scheme of Sections 6 and 6A is to retain a certain amount of control over awards, including an arbitration award, with the State Government. An award, therefore, does not become final as it ordinarily would be when the adjudicating authority signs it but becomes final when it is published in the manner prescribed by the State Government. Before such publication the Government is given the power to remit it to the adjudicating authority for reconsideration and the State Government has to publish it on its being resubmitted to it. In spite of its becoming final on such publication it becomes enforceable only on the expiry of 30 days after it has become final as laid

down by Sub-section 1 of Section 6A. But it does not so become enforceable if the Government were to make a declaration under the first proviso and an order under Sub-section 2 or the award specifies a date which is later than 30 days after its publication. Therefore, the words "subject to the provisions of Section 6A" in Sub-section 5 of Section 6 must mean that though an award has become final on its being published it does not immediately or automatically begin to be operative as that finality is subject to the expiry of periods and the powers of the State Government under Section 6A.

7. Having seen the effect of the provisions of Sections 6 and 6A, we have next to consider the scope of the correctional jurisdiction conferred or the adjudicating authority under Sub-section 6 of Section 6. As already observed, the Sub-section does not lay down in any express terms any time limit within which such jurisdiction is to be exercised. It contemplates a correction both before and after the publication of the award, i.e. after it has become final. If it is corrected before its publication the correction would be carried out without anything further having to be done. But if it is corrected after its publication and after it has become final, a copy of the order of correction has to be sent to the State Government and the provisions as to publication of an award under Section 6(3) are mutatis mutandis applicable. The correctional jurisdiction is limited only to cases where clerical or arithmetical mistakes or errors arising from an accidental slip or omission have occurred. Though Section 6(6) does not expressly provide for any time limit, the High Court appears to have been much impressed by Section 6D which lays down the two points as to the commencement and the completion of proceedings before a labour court and a tribunal. From these two limits it came to the conclusion that though no time limit is expressly provided in Section 6(6) it must be inferred that the correctional jurisdiction under Section 6(6) can only be exercised upto the time that the award becomes final and enforceable. It will be observed that though Section 6(6) empowers all the three adjudicating authorities, namely, a labour court, a tribunal and an arbitrator, to correct the award, Section 6D lays down the two points of commencement and completion of proceedings only in the case of a labour court and a tribunal. Section 6D, therefore, does not furnish an indication or a ground for inferring a time-limit in Section 6(6) in the case of an award by an arbitrator. Would that mean that though, according to the High Court, there is a period within which a labour court and a tribunal can exercise the correctional jurisdiction, there would be no such limit in the case of an award by an arbitrator? In our view no such result could have been contemplated. It would thus, appear that the two extremities of time provided in Section 6D cannot be used as a ground for inferring a time limit for the correctional jurisdiction under Section 6(6).

8. Acceptance of the High Court's reasoning becomes still more difficult when we examine the premises of that reasoning. The High Court does not appear to be sure whether the limit as to time is to be the date of finality of the award or its enforceability, for, it states that the correctional jurisdiction can be exercised until the award has become final and enforceable. As already stated, the concepts of finality and enforceability of an award are distinct and have been dealt with by the Legislature separately in Sections 6 and 6A. If it is to be reasoned that the correctional jurisdiction can be exercised till the date when the award is published and becomes final, such a reasoning would be contrary to the provisions of Section 6(6) themselves which envisages correction of an award even after it is published and has become final. Sub-s. 6 expressly provides that when so corrected, the order correcting it has to be published in the manner prescribed under and within the time provided in Section 6(3). It is, therefore, manifest that the date when an award becomes final

cannot be the date within which the power under Section 6(6) has to be exercised. If, it is to be held, on the other hand, that the power to correct is to be exercised until the award has become enforceable, the difficulty would be that there is nothing either in Section 6 or Section 6A or Section 6D which warrants such a limitation by implication. Is it that an award is really final when it becomes enforceable? Such a conclusion would, firstly, be contrary to the clear language of Section 6 and, secondly, would lead to a curious result that though it has become final on publication, it is not really so, as that finality is subject to the provisions of Section 6A. In that case, an award can be challenged in a court during the interval between its publication and the date when it becomes enforceable. That would be so, despite the clear language of Section 6(5) that an award becoming final on publication cannot thence be challenged in any court whatsoever. Laying down by implication the time limit during which the correctional jurisdiction under Section 6(6) can be exercised upto the time of the award becoming final under Section 6(5) or becoming enforceable under Section 6A creates difficulties, besides, it would appear, being contrary to the provisions of these two sections and is therefore not commendable. The correctional jurisdiction conferred on the adjudicating authority under Section 6(6) is in terms identical with the one conferred under Section 152 of the CPC and rule 28 of the Industrial Disputes (Central) Rules 1957 and is in consonance with the first and foremost principle that no party should suffer any detriment on account of a mistake or an error committed by an adjudicating authority. The circumstance that the proceedings before a labour court and a tribunal are deemed to be concluded under Section 6D when their award becomes enforceable or that thereupon they become functus officio would also be no ground for inferring any limitation of time in Section 6(6), for, that would also be the case in the case of a civil court or an adjudicating authority under the Industrial Disputes Act, 1947 even without a provision like Section 6D and yet the legislature has not chosen in the case of either of them to lay down any limitation of time for exercising its correctional jurisdiction. In our view, there are no compelling reasons to read into Section 6(6) any such limitation by implication.

9. We are also not impressed with the difficulty which the High Court supposed would result in case Section 6(6) is interpreted as not having by implication any time limit within which the correctional power can be exercised by any of the three adjudicating authorities. The High Court felt that if there is no such time limit an award, even after it has become enforceable and in some cases even implemented, would be rendered unsettled. But as already stated, the power is a limited one which can be exercised only in cases where a mistake, clerical or arithmetical or an error arising from an accidental slip or omission has occurred. The award thus would have to be corrected only within this circumscribed field. It may be that the correction of an award might to a certain extent have an unsettling effect to what has already become settled, but the correction is made not due to any fault of the parties but of the adjudicating authority whose accidental slip or omission cannot be allowed to prejudice the interests of the parties. We do not visualise any substantial hardship resulting from the exercise of this power which the High Court thought might arise if an award is allowed to be amended even after it has become enforceable or even if it has been enforced. A similar difficulty can also be imagined when a civil court exercises a similar power under Section 152 of the CPC. But no one has so far suggested that because of that difficulty a limitation must be inferred in that section. A similar difficulty would also arise under Rule 28 of the Industrial Disputes (Central) Rules, 1957. But so far no one has read a similar limitation in the correctional power provided by that rule.

10. In our view the error which the Labour Court corrected clearly fell within Section 6(6) and could be corrected even after the award had become final as a result of its having been published and had become enforceable under Section 6A. In this view it is not necessary to consider Section 11B or its effect especially as it is nobody's case that it was at any stage invoked or resorted to. In the view that we have take it was Section 6(6) and not Section 11B which could on the facts of this case be resorted to. The appeal, therefore, is dismissed though for reasons different from those given by the High Court. The appellant-company will pay the costs of this appeal to the respondents.