

The Chief Engineer Cpwd Vs. Jay Narayan and ors.

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Court : Delhi

Decided On : Oct-29-2014

Judge : Suresh Kait

Appellant : The Chief Engineer Cpwd

Respondent : Jay Narayan and ors.

Judgement :

\$~9 * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

29. h October, 2014 + W.P.(C) 6254/2013 THE CHIEF ENGINEER CPWD
Represented by: Petitioner Mr. Saqib, Advocate. Versus JAY NARAYAN &
ORS. Represented by: Respondents Mr.N.K.Verma, Advocate for Respondent
Nos. 1 to 7. CORAM: HONBLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

(Oral) W.P.(C) 6254/2013 1. Vide the present petition, the petitioner has assailed the ex parte award dated 12.06.2008 and order dated 29.04.2013 passed by the learned Presiding Officer, Central Government Industrial Tribunal No.1, Karkardooma Court, Delhi, in Industrial Dispute No.188 of 1998.

2. To the claim filed by the respondents/workmen, petitioner filed the written statement on 14.05.1999 and continued to appear before the Tribunal, however, all of a sudden stopped appearing with effect from 28.05.2002. Therefore, vide order dated 16.02.2003, the petitioner was proceeded ex parte. Thereafter on 04.07.2008, after the gap of more than 5 years, the petitioner moved an

application challenging the ex parte award dated 12.06.2008 passed by the learned Tribunal, which was decided vide order dated 29.04.2013, wherein held as under:

15. As projected above, rule 22 of the Rules put an objection on the management to show sufficient cause for its non-appearance before the Tribunal on 16.02.2003 and on subsequent dates on which matter was adjourned from time to time. As detailed in the application, the management claims that since officers from N Division were transferred, it lost track of the proceedings of the matter pending before the Tribunal. When ordinary man appreciates above submissions, he would form an opinion that the management is trying to forge a story. It could not show any cause for its non-appearance before the Tribunal on 16.02.2003 and thereafter, not to talk of showing sufficient cause for its absence. It is abundantly clear that the management abstained from the proceedings intentionally without any justification. It went in hibernation since 28.05.2002 and came out of slumbers when above referred award was published by the absence before the Tribunal, on 25.08.2002 or thereafter. Absence of the management on 16.2.03 was without any justification. No reasons are there to recall order dated 16.2.03 and award dated 12.6.2008. It is crystal clear that the management is not entitled to any indulgence. Application is, accordingly, brushed aside.

3. Mr.Saqib, learned counsel appearing on behalf of the petitioner submits that while passing the order dated 29.04.2013, the learned Tribunal over looked the fact that the appropriate Government had referred the dispute for adjudication to the CGIT-II vide order dated 01.09.1998. The said case was originally being heard before the Labour Court-Cum-Industrial Tribunal, Trikut Bhawan, Bhikaji Cama Place, New Delhi. Thereafter, the case was transferred by the Ministry of Labour and Employment to CGIT-II vide its order dated 11.02.2008 for further adjudication. Subsequently, vide notification dated 03.04.2013, the matter came to be heard by the Presiding Officer, CGIT-I, Karkardooma Court, Delhi. Thus, the instant case was not dealt with before one Forum and it is a reasonable ground that the department may have lost track of the case proceedings due to improper reporting of case status.

4. Learned counsel further submits that in such a situation, the learned Tribunal ought to have set aside the ex parte order and liberty should have been granted to the petitioner to lead evidence to rebut the claim filed by the respondents/claimants. He submits that the impugned order dated 29.04.2013 is contrary to the legal position explained by the Apex Court in *Kapra Mazdoor Ekta Union Vs. Management of M/s. Birla Cotton Spinning and Weaving Mills Ltd. & Ors.*, AIR 2005 SC1782 wherein three Judges Bench of the Apex Court held as under:

15. We shall first take up the second question namely whether the Tribunal was functus office 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 factious office and had jurisdiction to entertain the application for recall. This view also finds supports from the judgment of this Court in *Grindlays Bank Ltd. v. Central Government Industrial Tribunal and Ors.* (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. v. Central Government Industrial Tribunal and Ors.* (supra) has been reiterated by this Court in *Satnam Verma v. Union of India* (supra), *J.K. Synthetics Ltd. v. Collector of*

Central Excise (1996) 6 SCC92 and M.P. Electricity Board v. Hariram etc. JT2004(8) SC98 16. 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 factious office.

17. 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 v. Management of Hindu Kanya Maha Vidyalaya, Sitapur (U.P.) and Ors. (1987) 4 SCC525 and Patel Narshi Thakershi and Ors. v. Pradyumansinghji Arjunsingji, AIR 1970 SC1273 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. v. Central Government Industrial Tribunal and Ors. (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.

5. Mr. Saqib further submits that the learned Tribunal did not take into consideration that the impugned ex parte award was passed on 12.06.2008 and same was notified and published under Section 17 of the Industrial Disputes Act, 1947, on 23.06.2008 and the application for recalling of the order dated 16.02.2003 was filed on 04.07.2008, which was within the time before the impugned order dated 12.06.2008 could have become enforceable. Therefore, the

learned Tribunal did not become functus officio.

6. On perusal of the order dated 29.04.2013, it reveals that the learned Tribunal opined that operative words of Section 11(3) of the Act cannot be construed to confer power for review on the Authorities mentioned therein expressly or by necessary implication. Therefore, the Tribunal does not have power to alter, modify, clarify or even interpret the award which it has already made except the power to correct the clerical mistakes.

7. Moreover, the learned Tribunal recorded that in the review application, the petitioner claimed that since officers from N Division were transferred, it lost track of the proceedings of the matter pending before the Tribunal.

8. Admittedly, the petitioner filed reply to the claim petition and thereafter stopped appearing before the Tribunal. The learned Tribunal not only dismissed the application on the ground that it had no power to alter or review the award once it is passed and sent for the publication, however, also recorded that the petitioner could not show any cause for its non-appearance before the Tribunal on 16.02.2003 and thereafter.

9. As asserted by Learned counsel for the petitioner that vide afore- noted application dated 04.07.2008, the petitioner never sought review of the impugned award dated 12.06.2008, however, sought recalling of the order dated 16.02.2003, whereby the petitioner was proceeded ex parte. The fact remains that the award has already been passed on 12.06.2008, i.e., much before moving the said application and if the same was allowed by recalling the order dated 16.02.2003, then it would automatically set aside the award dated 12.06.2008. Moreover, the petitioner has overlooked the matter since 2003 and made application only on 04.07.2008, i.e., after around five and a half years. The explanation given by the petitioners for the afore-mentioned period is not proper and thus, has no bearing.

10. In view of the above noted facts and discussion, I find no reasons to interfere with the impugned order dated 29.04.2013 passed by the learned Tribunal.

11. Accordingly, the instant petition is dismissed with no order as to costs. CM No.13669/2013 (for stay) With the dismissal of the petition itself, this application has become infructuous. The same is accordingly dismissed. SURESH KAIT (JUDGE) OCTOBER29 2014 Sb/RS

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