

Narayan Vs. Government of India

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Court : Karnataka

Decided On : Nov-28-1994

Reported in : 1992CriLJ3969; ILR1995KAR269; 1995(2)KarLJ321

Judge : Kumar Rajaratnam, J.

Appeal No. : W.P. No. 1893 of 1988

Appellant : Narayan

Respondent : Government of India

Judgement :

ORDER

Kumar Rajaratnam, J.

1. There is no dispute that the second respondent has held that there was sufficient cause shown for the petitioner's absence and that the petition to set aside the exparte award was rejected solely on the ground that when once an award is published in the Official Gazette, there is no power for the Industrial Tribunal to entertain an application for setting aside the exparte award.

2. This Court in an unreported judgment in the case of The Karnataka State Road Transport Corporation and Another v. Sindhanoor Veerabhadrapa and Another W.P. No. 756 of 1988 DD 20.1.1988 while making reference to the Grindlay's Bank

case : (1981)ILLJ327SC has held as follows :-

'Therefore, if the workman was prevented from sufficient cause to appear before the Labour Court, then it is an award resulting without notice to him, as observed by the Supreme Court. In such cases, if the Court leans in favour of the workman, having regard to the object of the Industrial Disputes Act and its adjudication before the Tribunal is proved or not proved, this Court must lean in favour of the workman and hold that the Labour Court had not become functus officio on the mere fact that the award was published in the gazette and 30 days having lapsed.'

3. It is brought to my notice that the order of the single Judge is confirmed in WA 323/1988 also. The learned counsel for the petitioner further drew my attention to judgment of the Supreme Court reported in Satnam Verma v. Union of India : (1985)ILLJ79SC . The Court while referring to the Grindlay's Bank case has held as follows :-

'In the case of Grindlays Bank Ltd., the specific contention canvassed was whether where an exparte award is made and published in the Official Gazette, the Industrial Tribunal has jurisdiction to entertain the application for setting it aside if sufficient cause is shown for absence of appearance on the date on which an exparte award was made and it was answered in the affirmative. This Court referred to Rule 22 and Rule 24(b) of the Industrial Dispute (Central) Rules, 1957 and held that the Industrial Tribunal had the power to pass an order setting aside the exparte order. In reaching this conclusion, the Court observed that if the Tribunal has the power to proceed exparte as provided by R. 22, it 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. The Court then proceeded to examine the scheme of the relevant rules and observed that R. 22 unequivocally confers jurisdiction on the Tribunal to proceed ex parte. The Tribunal can proceed ex parte if no sufficient cause for absence of a party is shown. This power was interpreted to comprehend that if sufficient cause was shown which prevented a party from appearing, then in the terms of R. 22, the Tribunal will have had no jurisdiction to proceed ex parte and consequently, it must necessarily have power to set aside the ex parte award.

The Court in terms observed that the power to proceed ex parte is subject to the fulfilment of the condition laid down in R. 22 and therefore it carried with it the power to enquire whether or not there was sufficient cause for the absence of a party at the hearing. The Court then referred to R. 24(b) and held that where the Tribunal or other body makes an ex parte award, the provision of O.1 X.R. 13 of the Code of Civil Procedure are clearly attracted and it logically follows that the Tribunal was competent to entertain an application to set aside an ex parte award. The Court then proceeded to examine the contention that once an award is published in the Official Gazette, be it an ex parte one, does the Tribunal become functus officio and therefore, will have no jurisdiction to set aside the ex parte award and that as contended before us the appropriate Government alone could set it aside and rejected it holding that no finality is attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Court held that 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. We have extensively referred to this decision because it effectively answers all the limbs of the contention canvassed before us and which unfortunately, found favour with the Labour Court and the High Court.

8. It needs hardly to be pointed out that R. 22 and R. 24(b) of Industrial Disputes (Central) Rules 1957 are in pari materia with Rules 22 and 24 of the Industrial Disputes (Punjab) Rules, 1958 which are applicable to the facts of the present case. Therefore, the decision of this Court would mutatis mutandis apply in the matter of interpretation of the Punjab Rules. It must follow as a necessary corollary that the Labour Court as well the High Court denied to itself the jurisdiction vested in it to entertain an application for setting aside an ex parte award and reached an erroneous conclusion'.

4. The learned Counsel for the respondent referred the judgment of Warring Co-operative Agriculture Services Society Ltd. v. State of Punjab & Ors. 1987 LAB. I.C. 359 where a Division Bench of Punjab and Haryana High Court has held in para-12 as follows :-

'Lastly, it was contended by the learned counsel for the appellant that the impugned award was passed in violation of the principles of natural justice. Service of the summons was effected on Ex-President of the Society and not on the Administrator who had taken charge of the society on the suspension of the previous Managing Committee. Then plea was raised before the learned single judge and he did not entertain the same because this factual assertion had not been accepted by Harnek Singh, workman, in his reply to the Writ Petition. He had pleaded therein that the Managing Committee was functioning when the service on the president was effected. So adjudication of the this issue required determination of a disputed question of fact. The learned single Judge refused to go into the disputed questions. It is well settled that the writ jurisdiction was not the proper forum for settling the factual disputes.'

5. In this judgment, the learned Judge took the view that no the facts of the case it would not be a fit case for setting aside the award since there was no violation of principles of Natural Justice.

6. There can be no dispute that there is power vested with the High Court under Articles 226 to remand a case to the Industrial Tribunal for fresh adjudication if sufficient cause has been shown. In this particular case the impugned order at Annexure-A clearly reveals that sufficient cause has been shown. There is a clear finding by the Industrial Tribunal in the following words :-

'On facts I therefore find that the petitioner has shown sufficient reason for his non-appearance when the matter was called at Hubli sitting on 29.8.1985.'

7. Taking into account, the various issues raised in this Writ Petition, I am of the view that the High Court undoubtedly has power to remand the matter back to the Industrial Tribunal or to the Labour Court if sufficient cause is shown. In these circumstances and on the facts of this case I have no hesitation in allowing the Writ Petition. The Writ Petition is accordingly allowed. The order passed by the Industrial Tribunal at Annexure-A and Annexure-B is quashed as contrary to the principle of Natural Justice and the matter is remitted back to the second respondent in Central Reference Number 1/1983. The second respondent will take up the matter and dispose of the Reference as expeditiously as possible. Both the

parties are directed to appear before the second respondent on 1.2.1995 at Bangalore Camp. Both the parties agree that they will co-operate with the second respondent in disposing of the Reference as expeditiously as possible.

8. With these observations, this Writ Petition is allowed. There will be no order as to costs.

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