State of Uttar Pradesh

Vs

Lakshmi Ice Factory & Others

Civil Appeals Nos. 51 and 52/61

(P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo JJ)

07.02.1962

JUDGMENT

SARKAR, J. -

These two appeals have been heard together. The appellants in each case are the State of Uttar Pradesh, for short called U.P. and some of its officers and the respondents in one appeal are Lakshmi Ice Factory and certain of its workers and in the other the Prakash Ice Factory and certain of its workers. These appeals involve a question of construction of certain provisions of the U.P. Industrial Disputes Act, 1947, hereafter referred to as the Act.

By a Notification issued on February 10, 1956, the Government of U.P. referred certain disputes which had cropped up between each of the Ice Factories and its respective workmen, to an Industrial Tribunal for adjudication. The details of these disputes are not material for these appeals. The Tribunal heard the matters but failed to pronounce its award in open court. Instead, on November 8, 1956, the Registrar of the Tribunal informed the Ice Factories that the award of the Tribunal had been submitted to the Government. On December, 15, 1956, the award was published in the U.P. Gazette and it appeared from this publication that the award was dated November 8, 1956. On December 26, 1956, the Regional Conciliation Officer appointed under the Act called upon the Ice Factories to implement the award immediately. Thereupon the Ice Factories moved the High Court at Allahabad on January, 3, 1957 under Art. 226 of the Constitution in for writs quashing the award and prohibiting the Government and the workmen from taking steps to implement it. They contended that the award sought to be enforced was nullity as it had not been pronounced in open court as required by certain rules to which reference will presently be made. By a judgment passed on September 23, 1959, the High Court allowed the petitions of the Ice Factories and issued writs quashing the Notification publishing the award. The appeals are against this judgment of the High Court.

Section 3 of the Act gives the Government power in certain circumstances to make provisions by general, or special order (1) for appointing Industrial courts, (2) for referring any industrial dispute for adjudication in the manner provided in the order and (3) for matters incidental or supplementary to the other provisions of the order. Under this power the Government had issued an Order dated July 14, 1954 and this Order is hereafter called the "Statutory Order." It was under powers conferred by the Act read with the Statutory Order that the Government had issued the Notification of February 10, 1956.

In exercise of powers conferred by cl. 8 of the Statutory Order the Government had set up the Tribunal. Clause 9 of the Statutory Order provides for the procedure to be followed by the Tribunal.

Sub-Clause (7) of this clause is in these terms : "The decision of the Tribunal shall be in writing and shall be pronounced in open court and dated and signed by the member or members of the Tribunal, as the case may be, at the time of pronouncing it." Clause 11 of the Statutory Order gives power to Government to refer any industrial dispute to the Tribunal.

Sub-clause (9) of Cl. 9 of the Statutory Order gives power to the Tribunal to make Standing Orders relating to its practice and procedure. Under this sub-clause the Tribunal framed certain Standing Orders. Standing Order No. 36 provided. "Judgment shall be pronounced in open court either immediately after the close of the arguments or on a subsequent date of which previous notice shall be given to the parties. It shall then be signed and dated by the Tribunal."

Acting presumably under Standing Order No. 36, the Tribunal in the present case had fixed a date on which it would pronounce its judgment in open court. This date does not appear on the record but on September 25, 1956, the Tribunal informed the parties that the date for the pronouncing the award had been changed to October 9, 1956. On that date, however, the award was not pronounced in open court, nor was any intimation of any other date for its pronouncement given to the parties. The Ice Factories first came to know of the making of the award from the letter of the Registrar of the Tribunal dated November 8, 1956 earlier referred to. The award had in fact never been pronounced in open court.

The first question is whether the provisions in sub-cl. (7) of Cl. 9 are imperative. The High Court held that they were and thereupon quashed the Notification publishing the award. The appellants contend that the High Court was in error and that the provisions are only directory and that the failure of the Tribunal to pronounce the award in open Court did not result in the award becoming void. The Ice Factories contend for the contrary view.

Mr. Aggarwala for the appellants referred us to the rule of construction stated in Maxwell on Interpretation of Statutes, 10th ed. at p. 381, which is as follows : "Where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the Legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words as directory only." He said that the sub cl. (7) of cl. 9 of the Statutory Order imposed a public duty on the Tribunal and as none of the contesting parties to the proceedings before the Tribunal had any control over it, the provision in the Statutory Order as to how the Tribunal is to discharge its duty must be regarded as merely directory and therefore a disregard of that provision by the Tribunal would not render the thing done by it a nullity.

It seems to us that the rule read from Maxwell is not applicable to this case. It applies only when to hold the prescription in a statute as to the performance of a public duty to be imperative would work injustice and hardship without serving the object of the statute. None of these conditions are present in the statute now before us. The rule may be illustrated by reference to the case of Montreal Street Railway Co. v. Normandin ((1917) A.C. 170.) which is cited in Maxwell's book. That was a case in which certain statutory provisions as to how the jury list was to be revised had not been followed and the question arose whether the verdict of a jury empannelled out of a list revised in disregard of the provision was a nullity. It was held that the verdict was not a nullity as the provision regarding the revision of the jury list was merely directory. It was further held that the object of the provision was to distribute the burden of jury equally between all liable to it, to secure effective jurors likely

to attend and lastly to prevent packing of the jury. It was said that "It does far less harm to allow cases tried by a jury formed as this one was with the opportunities there would be object to any unqualified man called into the box, to stand good, than to hold the proceedings null and void. So to hold would not, of course, prevent the courts grating new trials in cases where there was reason to think that a fair trial had not been had" : (P. 176).

The case in hand is wholly different. The proceedings that were had before the Tribunal would not become null and void if we hold cl. 9(7) of the Statutory Order to be imperative. A view that the provision was imperative would cause no serious hardship to any one. The Government can always require the Tribunal to pronounce its decision in open court extending, if necessary for the purpose, the time fixed for giving its decision. Either party to the proceeding can also ask the Government to call upon the Tribunal to pronounce its award in open court. There is no doubt that the Government will so call upon the Tribunal when the defect is brought to its notice for the Government itself referred the matter to the Tribunal for its decision. As soon as the Tribunal pronounces its award in open court, the proceedings will become fully effective.

It is also an accepted rule of construction that enactments regulating the procedure in courts are usually imperative : Maxwell on Interpretation of the Statutes, 10th ed. p. 379. It further appears to us that the object of the legislature would be defeated by reading cl. 9(7) of the Statutory Order as containing a provision which is merely directory. We now proceed to ascertain that object from the other provisions in the Statutory Order, the Act and connected legislation.

Section 6 of the U.P. Act provides as follows :-

> (1) When an authority to which an industrial dispute has been referred for adjudication has completed its enquiry, it shall, within such time as may be specified, submit its award to the State Government.
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> (2) The State Government may ..... enforce for such period as it may specify all or any of the decisions in the award.

It was under this section that the Tribunal submitted its award to the Government and the Government issued the Notification in the Gazette dated December 15, 1956 earlier mentioned and directed that the award be enforced for a period of one year from the date of the publication.

Since the award has to be submitted to the Government by the Tribunal under s. 6 of the Act, the award has to be in writing, for a verbal award cannot obviously be submitted to the Government. It would therefore appear that the provision in sub-cl. (7) of cl. 9 of the Statutory Order that the decision of the Tribunal shall be in writing is imperative. This would be an indication that the other provision in the same sub-clause connected with it were intended to be equally imperative.

Then we find that cl. 18 of the Statutory Order is in these terms : "The Tribunal or the adjudicator shall hear the dispute and give its or his decision within 180 days (excluding holidays but not annual vacations observed by courts subordinate to the High Court) from the date of reference made to it or him by the State Government and shall thereafter as soon as possible, supply a copy of the same to the parties to the dispute..... Provided that the State Government may extend the said period from time to time." It seems to us that the provision in this clause in clearly mandatory. The Tribunal has no power to make an award after the time mentioned in it; if it had, the proviso to cl. 18 would be wholly unnecessary. The result therefore is that it is obligatory on the Tribunal to give

its decision within 180 days from the date of the reference. A decision given, that is an award made, beyond this period would be a nullity. Now when cl. 18 talks of giving a decision, it can only mean giving it in the manner indicated in sub-cl. (7) of cl. 9 of the Statutory Order, that is, by pronouncing it in open court, for that is the only manner of giving a decision which that order contemplates. It would follow that the terms of cl. 9(7) were imperative, for otherwise no one would know whether the terms of cl. 18 of the Statutory Order had been complied with, that is to say, no one would know whether the award was void or not. The provisions of cl. 18 may thus be rendered nugatory by holding cl. 9(7) to be only directory. It would follow that unless the provision as to the pronouncement of the award in open court was mandatory, the intention of the framers of the Statutory Order would be defeated.

Sub-clause (2) of cl. 24 of the Statutory Order also leads to the same conclusion. That sub-clause is in these terms : "Clerical or arithmetical mistakes in decisions or awards, or errors arising therein from any accidental slip or omission may, within one month of giving the decision or award be corrected by the Tribunal or the adjudicator, either of its or his own motion or on the application of any of the parties." Under this rule therefore clerical or arithmetical errors or slips may be corrected within one month of the giving of the decision and the parties have the right to apply for such corrections within that time. The Tribunal has no right to correct an error beyond that time. Nor has a party a right to move the Tribunal for making any such corrections after the time has expired.

In order that the intention of cl. 24(2) may be given effect to, it is necessary that the date of the giving of the decision should be known. It cannot promptly be known to the parties unless the award is pronounced in open court. If any other manner of the giving of the decision was permissible as would be the result if it was not obligatory to pronounce the decision in open court, then a party may be deprived of its right under cl. 24 to move the Tribunal for correction of errors. It is for this reason that cl. 9(7) provides that the decision shall be dated and signed at the time of pronouncing it in open court. This signing and dating of the award after its pronouncement in open court makes it possible to see whether the terms of cls. 18 and 24 (2) have been complied with in any case.

The third thing which to our mind indicates that pronouncement in open court is essential is cl. 31 of the Statutory Order. That clause is in these terms : "Except as provided in this Order and in the Industrial Disputes (Appellate Tribunal) Act, 1950, every order made or direction issued under the provisions of this Order shall be final and conclusive and shall not be questioned by any party thereto in any proceedings." The Industrial Disputes (Appellate Tribunal) Act, 1950 provides for appeals from decisions of certain Industrial Tribunals to the Appellate Tribunal established under it. Clause 31 therefore makes a decision of the Tribunal on a reference to it final subject to an appeal if any allowed under the Industrial Disputes (Appellate Tribunal) Act, 1950. Under s. 7 of the Act of 1950, an appeal shall lie to the Appellate Tribunal from any award or decision of an Industrial Tribunal concerning certain specified matters. Now an Industrial Tribunal mentioned in s. 7 includes a Tribunal set up under a State law which law does not provide for an appeal : See s. 2(c)(iii) of the Act of 1950. The U.P. Act does not provide for any appeal expressly but cl. 31 of the Statutory Order makes a decision of the Tribunal final subject to the provisions of the Act of 1950. It would therefore appear that an appeal would lie under the Act 1950 to the Appellate Tribunal constituted under it from a decision of a Tribunal set up under the Statutory Order. Now under s. 10 of the Act of 1950, an appeal is competent if preferred within thirty days from the date of the publication of the award where such publication is provided for by the law under which the award is made, or from the date of the making of the award where there is no provision for such publication. Now the U.P. Act or the Statutory Order does not provide for any publication of an award. Therefore an appeal from the Tribunal set up under the Statutory Order has to be filed within thirty days from the

making of the award. Hence again it is essential that the date of the making of the award shall be known to the parties to enable them to avail themselves of the right of appeal. This cannot be known unless the judgment is pronounced in open court for the date of award is the date of its pronouncement. Hence again pronouncement of the judgment in open court is essential. If it were not so, the provisions for the appeal might be rendered ineffective.

For all these reasons it seems to us that the clear intention of the legislature is to make it imperative that judgments should be pronounced in open court by the Tribunal and judgments not so pronounced would therefore be a nullity.

In the view that we have taken it is unnecessary to deal separately with Standing Order No. 36. The provisions of that Standing Order and cl. 9(7) of the Statutory Order are substantially the same. They should therefore be interpreted in the same way. In any case since we have held the cl. 9(7) of the Statutory Order to be imperative, it would not matter whatever view is taken of the Standing Order for the latter cannot affect the former.

Mr. Aggarwala then argued that cl. 9(7) of the Statutory Order and Standing Order No. 36 were ultra vires as being in conflict with the Act under which they had been framed. His contention was this : Under s. 6 of the Act all that the Tribunal has to do is to submit its award to the Government after the conclusion of the enquiry before it. The section does not require the Tribunal to pronounce its decision in open court. The provisions in the Statutory Order and the Standing Order both of which were made under powers contained in the Act, were therefore in conflict with s. 6 and of no effect. Hence he contended that the question whether the provisions of cl. 9(7) of the Statutory Order or of the Standing Order No. 36 were imperative did not really arise.

It seems to us that this contention of Mr. Aggarwala is without any foundation. Section 6 when it requires that the Tribunal shall submit its award to the Government necessarily contemplates the making of the award. Neither s. 6 nor any other provision in the Act provides now the award is to be made.

Under s. 3(g) however the Government has power by general or special order to provide for incidental or supplementary matters necessary for the decision of an industrial dispute referred for adjudication under any order made under s. 3. The provision as to the pronouncement of the decision in open court in cl. 9(7) of the Statutory Order clearly is within the powers contemplated in s. 3(g). Section 6 does not prohibit the making of such a provision. Its main purpose is to direct that the Tribunal shall submit the award to the Government so that it may be enforced. It has nothing to do with the manner in which the Tribunal is to make its award. A rule duly framed under the Act requiring the Tribunal to pronounce its decision in open court is therefore not in conflict with s. 6.

The result is that these appeals fail and are dismissed with costs.

Appeals dismissed.

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