

Asbestos Cement Ltd.

Vs

P. D. Sawarkar and Others

Civil Appeal No. 2448 of 1969

(J. M. Shelat, G. M. Mitter JJ)

23.02.1970

JUDGMENT

SHELAT, J. -

1. This appeal by special, leave raises the question as to whether an order dismissing a writ petition challenging the validity of an industrial award, which disposes of one of the items of a charter of demands by workmen but leaves the rest of the demands to be adjudicated by a subsequent award, is a final order in a civil proceeding of a High Court within the meaning of Article 133 (1) of the Constitution.

2. The following are the relevant facts :

The appellant-company conducts factories at Mulund in Greater Bombay, Mysore, Calcutta and Podanur. The present dispute relates to the factory at Mulund where the company employs more than 1,700 workmen and has its Head Office also. On September 21, 1962 the 4th respondent union on behalf of the workmen of the Mulund factory submitted a charter of demands consisting of 20 Items including the demand for increased dearness allowance. By an agreement dated November 26, 1964 between the appellant-company and the 4th respondent union made under Section 10-A of the Industrial Disputes Act, 1947, the said demands were referred for adjudication to a board of arbitrators consisting of Respondents 1 to 3. A notification dated December 5, 1964 referring the said disputes to Respondents 1 to 3 was issued by the Maharashtra Government and published in the Government Gazette. Demand No. 1-A in the said charter of demands related to dearness allowance to be paid to both monthly and daily rated workmen at the rates therein set out. The arbitrators decided to hear and dispose of first the dispute as to dearness allowance and then to deal with the rest of the disputes relating to other demands. Accordingly, the parties were heard and ultimately the arbitrators gave their award which they called Part I Award dated March 27, 1965. The said award was a majority decision in the sense that one of the arbitrators dissented from the opinion of the other two. So far as the present appeal is concerned, it is not necessary to set out the contents of the award. The said Part I award was thereafter published in the Government Gazette dated April 15, 1965 and became enforceable under Section 17-A of the Act on the expiry of 30 days from the date of its publication. If the Appellant-company were to be right, the said award imposed a burden of about Rs. 40 lakhs by way of arrears, the award having been made retrospective in operation, and Rs. 5.58 lakhs as and by way of recurring liability every year.

3. Aggrieved by the said award the appellant-company filed a writ petition under Article 226 of the Constitution being Special Civil Application No. 824 of 1965 in the High Court of Bombay for quashing the said award on diverse grounds. The writ petition came up for hearing before a Division

Bench and was dismissed on merits by an order dated April 10, 1968. The appellant-company thereupon filed an application being Supreme Court Civil Application No. 2687 of 1968 for leave to appeal to this Court. That application was rejected by an order dated November 25, 1968 which stated :

"No application lies under Article 226 of the Constitution as there is further arbitration."

It appears that the words "Article 226" were mentioned in the said order through inadvertence. What was meant was that as the arbitration proceedings were still pending and the board of arbitrators had yet to adjudicate on the rest of the reference, the disputes between the parties could not be said to have been finally disposed of, and that, therefore, the said Part I award was an interlocutory order. Consequently, neither that award nor the order dismissing the writ petition against that award was a final order within the meaning of Article 133 (1). This appeal challenges the correctness of this order.

4. The only question arising in this appeal, is whether the High Court's order dated November 25, 1968 dismissing the writ petition is a final order within the meaning of Article 133 (1). There is no dispute that the question of dearness allowance along with several other questions was, by agreement between the parties, referred to the arbitration of Respondents 1 to 3 as provided by Section 10-A of the Act and that a copy thereof was published in the Government Gazette as required by sub-section 3 of that Section. There is similarly no dispute that the arbitrators, instead of determined the disputes at one time, first took up the question of dearness deciding to take up the rest of the disputes at a subsequent stage and gave their award calling it Part I Award. Under sub-section 4 of Section 10-A, the arbitrators submitted the said Part I Award duly signed by all of them to the Government. As required by Section 17 (1), the said Part I Award was published in the manner prescribed therefor by the State Government and thereupon under Section 17 (2) it became final and could not be called in question by any court in any manner whatsoever. Under Section 17-A (1), the award became enforceable on the expiry of 30 days from the date of its publication under Section 17 - in the present case, as from May 15, 1965. Therefore, so far as the question of dearness allowance, among other disputes was concerned, Part I Award became final and binding on the parties and nothing further remained to be done or determined in respect of the controversy between the parties on the question of dearness allowance. The award, therefore, was not an interlocutory order in the sense of any dispute in respect of its subject-matter remaining to be finally adjudicated by the arbitrators or the rights of the parties in relation thereto remaining pending any further determination. In this sense there can be no doubt that so far as the dispute as to dearness allowance was concerned, the arbitrators by the said Part I Award finally adjudicated it and gave their decision leaving nothing to be adjudicated or decided upon at any subsequent stage of the arbitration.

5. Quite apart from this consideration, the petition filed by the appellant-company for a writ of certiorari and for quashing the Part I Award under Article 226 was a proceeding independent of the dispute between the parties. Such a writ proceeding was not an interlocutory proceeding nor was the order dismissing it an interlocutory order leaving any question raised in the writ petition to be determined at any later stage. Once the High Court dismissed the writ petition, the controversy between the parties raised therein was finally determined and therefore came to an end. In *Ramesh v. Seth Gendalal* (1966 (3) SCR 198) a similar question arose for consideration and this Court held that a writ petition under Article 226 is a civil proceeding of a High Court, that such a proceeding is quite independent of the original controversy between the parties and that a decision in exercise of jurisdiction under that article, whether interfering with the proceedings impugned or declining to do

so, is a final decision in so far as the High Court is concerned, if the effect is to terminate the controversy before it and the order must in that case be regarded as final for the purpose of an appeal to the Supreme Court. (See also *Mohan Lal Magan Lal Thacker v. State of Gujarat*). (1968 (2) SCR 685)

6. It is clear that the effect of the dismissal of the writ petition by the High Court was that the said Part I Award, subject to any appeal to this Court, was not liable to be questioned on the grounds alleged in that writ petition and the appellant-company would be bound to pay to its workmen dearness allowance at the rates provided in that award. The controversy between the parties on questions raised in the writ petition was finally determined and brought to an end as a result of the order of dismissal. In view of the decision in *Ramesh v. Seth Gendalal* (*supra*) the High Court must be said to be in error no holding that its order dismissing the writ petition was not a final order within the meaning of Article 133 (1) and that no appeal, therefore, lay therefrom to this Court.

7. The appeal succeeds. The High Court's order dated November 25, 1968 is set aside and the case is sent back to the High Court for disposal in accordance with law. In the circumstances of the case there will be no order as to costs. The Special Leave Petition No. 148 of 1969 filed against the High Court's Judgment and order dated April 10, 1968 dismissing the said writ petition is allowed to be withdrawn. Stay granted by this court will continue for ten days from today.

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