

Grindlays Bank Ltd.

Vs

Central Government Industrial Tribunal And Others

Civil Appeal No. 2355 of 1979

(CJI Y. V. Chandrachud, A. P. Sen JJ)

12.12.1980

JUDGMENT

A. P. SEN, J. -

1. This appeal by special leave from a judgment of the Calcutta High Court by which it refrained from interfering with an order of the Central Government Industrial Tribunal, Calcutta, constituted under Section 7-A of the Industrial Disputes Act, 1947, Setting aside an ex parte award made by it.

2. The facts giving rise to the appeal are these : The Government of India, Ministry of Labour by an order dated July 26, 1975 referred an industrial dispute existing between the employers in relation to the Grindlays Bank Ltd., Calcutta and their workmen to the Central Government Industrial Tribunal in exercise of its powers under Section 10 of the Industrial Disputes Act, 1947 for adjudication. By a notice dated March 6, 1976 the Tribunal fixed peremptory hearing of the reference for May 28, 1976, but the hearing was adjourned from time to time on one ground or other. Eventually, the hearing of the reference was fixed for December 9, 1976. On December 9, 1976 counsel appearing on behalf of respondent 3, the Commercial Establishments Employees Association, representing respondents 5 to 17, sought an adjournment on the ground that the General Secretary of the Association had suffered a bereavement as his father had died on November 25, 1976, and, therefore, he had to leave to perform the shradhha ceremony falling on December 9, 1976. In support of his prayer for adjournment, the counsel produced a telegram but the Tribunal refused to grant any further adjournment and proceeded to make an ex parte award. On the basis of the statement recorded by the manager of the appellant the Tribunal held that the respondents 5 to 17 were employed as driver by the officer of the appellant and were not the employees of the appellant and therefore, they were not entitled to the benefits enjoyed by the drivers employed by the appellant. On January 19, 1977, respondent 3, acting for respondent 5 to 17 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 on December 9, 1976. The Tribunal by its order dated April 12, 1977 set aside the ex parte award on being satisfied that there was sufficient cause within the meaning of Order IX. Rule 13 of the Code of Civil Procedure, 1908. The appellant challenged the order passed by the Tribunal setting aside the ex parte award but the High Court declined to interfere.

3. Two question arise and the appeal, namely (1) whether the Tribunal had any jurisdiction to set aside the ex parte award, particularly when it was based on evidence, and (2) whether the Tribunal became functus officio on the expiry of 30 days from the date of publication of the ex parte award under Section 17, by reason of sub section (3) of Section 20 and, therefore, had no jurisdiction to set aside the award and the Central Government alone had the power under sub-section (1) of Section

17-A to set it aside.

4. It is contended that neither the Act the rules framed thereunder confer any powers upon the Tribunal to set aside an ex parte award. It is urged that the award although ex parte was an adjudication on merits as it was based on the evidenced led by the appellant, and, therefore, the application made by respondent 3 was in reality an application for review and not mere application for setting aside an ex parte award. A distinction is sought to be drawn between an application for review and application for setting aside an ex parte award based on evidence led before the Tribunal, there, may be power to set aside an ex parte award, but if the award is based on evidence, the setting aside of the award cannot but virtually amount to a review.

5. In dealing with these contentions, it must be borne in mind that the Industrial Disputes Act, 1947 is a piece of legislation calculated to ensure social justice to both employers and the employees and advance progress of industry by bringing harmony and cordial relation between the parties. In other words, the purpose of the Act is to settled disputes between workmen. In other words, the purpose of the Act is to result in strikes or lock out and entail dislocation of work, essential to the life of the community. The scheme of the Act shows that it aims at settlement of all industrial disputes arising between the capital and labour by peaceful methods and through the machinery of conciliation arbitration and if necessary by approaching the Tribunals constituted under the Act. It, therefore, endeavours to resolve the competing claims of employees and employers by finding a solution which is just and fair to both the parties.

6. We are of the opinion that the Tribunal had power to pass the impugned order if it though fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed there under giving the Tribunal Jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body 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. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.

7. Sub section (1) of Section 11 of the Act, as substituted by Section 9 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, is in these terms :

11. (1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, labour Court. Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.

The words "shall follow such procedure as the arbitrator or other authority may think fit are the widest amplitude and confer ample power upon the Tribunal and other authorities to devise procedure as the justice of the case demands. Under clauses (a) to (c) of sub section (3) of Section 11, the Tribunal and other authorities have the same powers as are vested in civil courts under the Code of Civil Procedure, 1908 of (a) enforcing the attendance of any person and examining him on oath (b) compelling the production of document and material objects and (c) issuing commissions for the examination of witnesses, Under clause (d) thereof, the Tribunal or such other authorities have also the same powers as are vested in civil courts under the Code of Civil procedure, 1908 in respect of such other matters as may be prescribed.

Although the Tribunal or other authorities specified in Section 11 are not courts but they have the trappings of a court, and they exercise quasi-judicial functions.

8. The object of giving such wide powers is to mitigate the rigour of the technicalities of the law, for achieving the object of effective investigation and settlement of industrial disputes, and thus assuring industrial peace and harmony. The discretion thus conferred on these authorities to determine the procedure as they may think fit however is subject to the rules made by an appropriate to Government in his behalf Part III of the Industrial Disputes (Central) Rules 1957 makes rules in this behalf. Rule 9 to 30 are the relevant rules regulating procedure. State Government too have made their own corresponding rules. Except to the extent specified in sub section (3) of Section 11 of the Act and the rules framed thereunder, the provision of the Code of Civil Procedure, 1908 are not applicable to proceeding before the authorities mentioned in sub-section (1). The provisions of the Evidence Act, in their strict sense, like wise do not apply to proceedings before the authorities. Nevertheless all these authorities being quasi judicial in nature objectively determining matters referred to them, have to exercise their discretion in a judicial manner, without caprice, and according to the general principal of law and rules of natural justice.

9. Rule 22 of the Industrial Disputes (Central Rules), 1957 framed by the Central Government in exercise of its powers under Section 38 of the Act provides :

22. If without sufficient cause being shown, any party to proceedings before a Board, Court, Labour Court, Tribunal, National or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.

Rule 24 (b) provides that the Tribunal or other body shall have the power of a civil court under the Code of Civil procedure, 1908 in the matter of grant of adjournment. It runs thus :

24. In addition to the powers conferred by the Act, Boards Courts, labour Courts Tribunal Courts and National Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters namely -

(b) granting adjournment;

10. When sub-section (1) of Section 11 expressly and in clear terms confers powers upon the Tribunal to regulate its own procedure, it must necessarily be endowed with all powers which bring about and adjudication of an existing industrial dispute, after affording all the parties an opportunity of a hearing. We are inclined to the view that where a party is prevented from appearing at the hearing due to a sufficient cause, and is faced with an ex parte award, it is as if the party is visited with an award without a notice of the proceedings. It is needless to stress that where the Tribunal proceeds to make an award without notice to party, the award is nothing but also the duty to set aside the ex parte award and to direct the matter to heard afresh.

11. The language of Rule 22 unequivocally makes the jurisdiction of the Tribunal to render an ex parte award conditional upon the fulfillment of its requirements. If there is no sufficient cause for the absence of a party, the Tribunal undoubtedly has jurisdiction to proceed ex parte. But if there was sufficient cause shown which prevented a party from appearing, then under the terms of Rule 22, the Tribunal will have had no jurisdiction to proceed and consequently, it must necessarily have

power to set aside the ex parte award. In other words, there is power to proceed ex parte, but such power is subject to the fulfillment of the condition laid down in Rule 22.

The power to proceed ex parte under Rule 22 carries with it the power to enquire whether or not there was sufficient cause for the absence of a party at the hearing.

12. Under Rule 24 (b) a Tribunal or other body has the powers of a civil court under Order XVII of the Code of Civil Procedure, relating to the grant of adjournments. Under Order XVII, Rule 1, a civil court has the discretion to grant or refuse an adjournment. Where it refuses to adjourn the hearing of a suit, it may proceed either under Order XVII, Rule 2 or Rule 3. When it decides to proceed under Order XVII, Rule 2, it may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX, or to make such other order as it thinks fit. As necessary corollary, when the Tribunal or other body refuses to adjourn the hearing, it may proceed ex parte. In a case in which the Tribunal or other body makes an ex parte award, the provisions of Order IX, Rule 13 of the Code are clearly attracted. It logically follows that the Tribunal was competent to entertain an application to set aside an ex parte award.

13. We are unable to appreciate the contention that merely because the ex parte award was based on the statement of the manager of the appellant, the order setting aside the ex parte award, in fact, amounts to review. The decision in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* is distinguishable. It is an authority for the proposition that the power of review is not an inherent power, it must be conferred either specifically or by necessary implication. Sub-sections (1) and (3) of Section 11 of the Act themselves make a distinction between procedure and powers of the Tribunal under the Act. While the procedure is left to be devised by the Tribunal to suit carrying out its functions under the Act, the powers of civil court conferred upon it are clearly defined. The question whether a party must be heard before it is proceeded against is one of procedure and not of power in the sense in which the words are used in Section 11. The answer to the question is, therefore, to be found in sub-section (1) of Section 11 and not in sub-section (3) of Section 11. Furthermore, different considerations arise on review. The expression 'review' is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on that face of the record. It is in the latter sense that the court in *Patel Narshi Thakershi* case held that no review lies is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal.

14. The contention that the Tribunal had become functus officio and, therefore, had no jurisdiction to set aside the ex parte award and that the Central Government alone could set it aside, does not commend to us. Sub-section (3) of Section 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable under Section 17-A. Under Section 17-A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17. The proceedings with regard to a reference under Section 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction the dispute referred to it for adjudication and up to that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under Section 17-A. In the instant case, the Tribunal made the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The

application for setting aside the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the ex parte award was filed by respondent 3, acting on behalf of respondents 5 to 17 on January 19, 1977 i. e, before the expiry of 30 days its publication and was, therefore, rightly entertained by the Tribunal. It had jurisdiction to entertain it and decide it on merits. It was, however, urged that on April 12, 1977 the date on which the impugned order was passed, the Tribunal had in any event become functus officio. We cannot accede to this argument. 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. There is no finality attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. 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.

15. The result, therefore, is that the appeal must fail and is dismissed with costs throughout.

</html