(1991) 05 KL CK 0011

High Court Of Kerala

Case No: OP. No. 5826 of 1989-R

C.J. Thomas and Another		APPELLANT
	Vs	
Labour Court and Another		RESPONDENT

Date of Decision: May 30, 1991

Acts Referred:

- Industrial Disputes Act, 1947 - Section 17, 33C(2)
- Kerala Industrial Disputes Rules, 1957 - Rule 23

Citation: (1993) 1 LLJ 278

Hon'ble Judges: K.A. Nayar, J

Bench: Single Bench

Advocate: S. Venkitasubramonia Ayyar, for the Appellant; K.G. Anil Babu, Govt. Pleader For Respondent No. 1 and 2; B.S. Krishnan, for the Respondent

Final Decision: Allowed

Judgement

K.A. Nayar, J.

This original petition is to quash Exhibit P-6 order of the Labour Court, Quilon. The petitioners who raised dispute regarding denial of employment to them by the third respondent, got an award in their favour in I.D. No. 1 of 1986 by which the third respondent-management was directed to reinstate the petitioners in service with back-wages and other benefits due to them as if they had continued in service. That award was passed by the Labour Court on July 19, 1986 and it was published in the Kerala Gazette dated November 25, 1986. The petitioners have produced the same as Exhibit P-l. The issue referred there was denial of employment to C.J. Thomas and N.K. Kuttappan from March, 1981. In the award it is stated that the management did not enter appearance even after accepting the notice and it was declared ex parte. It was thereafter, examining the petitioners as WWs-1 and 2, that the award was passed directing the management to reinstate the petitioners in service with all back-wages and other benefits due to them as stated above. Since the award was not implemented, the petitioners approached the management for implementing

the same. When no positive response was forthcoming, the petitioners filed an application u/s 33-C(2) of the Industrial Disputes Act, 1947 (for short "the Act"). The first petitioner claimed an amount of Rs. 65,927 and the second petitioner claimed an amount of Rs. 65,729. Thus, the total claim was for Rs. 1,31,656. The application was numbered as C.P. No. 129 of 1987. Notice was issued on the claim petition to the management. The management accepted the notice, but did not appear and contest the case. The claims of the petitioners were proved by affidavit. Thereafter, the claim petition was allowed by the Labour Court by order dated January 27, 1988 by which the amount due to the first petitioner was determined at Rs. 65,927 and the amount due to the second petitioner was determined at Rs. 65,729. The management was once again approached by the petitioners after the order of the Labour Court computing the benefits due to the petitioners. A notice in writing was also sent to the third respondent by the petitioners which is produced as Exhibit P-4, dated May 5, 1988. The petitioners were also informed by the District Labour Officer, Alleppey, that they could file an application in Form No. K-l under Rule 62 (1) of the Industrial Disputes (Central) Rules (for short "the Rules") and Section 33-C(2) of the Act for recovering the amount from the management. u/s 33-C(1), where any money is due to a workman from an employer under a settlement or an award, the workman himself or any other person authorised by him in writing in that behalf can make an application before the appropriate Government for the recovery of the money due to him and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue. The application has to be made within one year from the date on which the money became due to the workman from the employer. Such an application may be entertained even after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period. This procedure was not necessary in this case as a petition was filed u/s 33-C(1) and the decision of the Labour Court had been forwarded to the appropriate Government. Sub-section (4) of Section 33-C authorises the Government to recover the money as provided in Sub-section (1). Any way, by way of abundant caution, the petitioners have filed an application in Form No. K-l also. The Government, acting through the Tahsildar, Cherthala, issued notice u/s 7 of the Revenue Recovery Act on October 10, 1988 through the Village Officer, Cherthala, to the third respondent. No amount has been remitted by the defaulter. The petitioners also submitted an application before the Tahsildar, Cherthala.rcquesting to expediate the revenue recovery proceedings. Thereafter, action was initiated to attach the immovable properties. An extent of 28 cents of land owned by the society in Sy. No. 250/4-3 C, of Cherthala, North Village, was already attached on January 12, 1988 for realising sales tax arrears due from the society. Therefore, sale notice u/s 49 (2) of the Revenue Recovery Act was issued on May 24, 1989 stating that the land attached would be sold on June 29, 1989 in public auction. It is seen from the counter- affidavit of the second respondent that in the

meantime, the society filed a petition along with an affidavit before the Labour Court, Quilon, praying for setting aside the order in C.P. No. 129 of 1987 and for staying all further proceedings pursuant to the order of the Labour Court including the revenue recovery proceedings. The Labour Court, then granted a stay. It is the order of stay issued by the Labour Court viz., Exhibit P-6, that is sought to be quashed in these proceedings.

2. The question is whether the Labour Court has jurisdiction to stay the execution proceedings. u/s 17 of the Industrial Disputes Act, the award of the Labour Court has to be published within a period of 30 days from the date of its receipt by the appropriate Government. Section 17(2) says that subject to the provisions of Section 17A, the award published under Sub-section (1) of Section 17 shall be final and shall not be called in question by any court in any manner whatsoever. In Section 17A it is provided that an award shall become enforceable on the expiry of thirty days from the date of its publication u/s 17 subject to the right of the appropriate Government or Central Government to declare that the award shall not become enforceable on the expiry of the said period of 30 days if they are of the opinion that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or part of the award.

3. The award in J.D. No. 1 of 1986 was published in the Kerala Gazette, dated November 25, 1986 and it became enforceable, in view of Section 17A, on the expiry of 30 days from the date of publication. Of course, the award passed was an ex-parte award and there is power under Rule 23 for setting aside the ex-parte decision. Rule 23 says that the Labour Court may, for sufficient cause, set aside after notice to the opposite party, the ex-parte decision on an application made within 15 days of the ex-parte decision. The Labour Court also may extend the time on sufficient cause being shown. The Labour Court has power to set aside an ex-parte award even if the award is published. But the power is limited. "Award" is defined under the Industrial Disputes Act to mean interim or final determination of an industrial dispute or of any question relating thereto. The award is made by the industrial adjudication machinery pursuant to the reference of the dispute made to it for adjudication u/s 10 of the Act. The proceedings before the Labour Court or Industrial Tribunal shall be deemed to have commenced on the date of the reference of the dispute and shall be deemed to have concluded on the date on which the award becomes enforceable u/s 17A. As already stated, u/s 17-A, the award shall become enforceable on the expiry of 30 days from the date of its publication u/s 17 of the Act. That means, the proceedings will be pending or deemed to be pending before the Labour Court or Tribunal from the date of reference until the expiry of 30 days from the date of publication of the award. Section 17 requires the Government to publish the award within a period of 30 days from the date of receipt of the award by the Government. Section 11 of the Act regulates the procedure before the Labour Court or Tribunal. The Labour Court or Tribunal can follow such procedure as it may think fit. On a reading of Section 11, it

is seen that it is mainly concerned with the procedure adopted until the decision is rendered and the award is passed. There had been controversy as to whether without conferment of such specific power, the Labour Court or Tribunal can set aside the ex-parte award or not. The matter is now settled by the decision of the Supreme Court reported in Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, The Supreme Court held (at page 331):

"The contention that the Tribunal had become functus officio and, therefore, had no jurisdiction to set aside the 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 u/s 17-A. u/s 17-A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication u/s 17. The proceedings with regard to a reference u/s 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 over 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 u/s 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 was filed by respondent No. 3, acting on behalf of respondent Nos. 5 to 17 on January 19, 1977, i.e., before the expiry of 30 days of 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."

4. This principle has been reiterated by the Supreme Court in a subsequent decision in Satnam Verma v. Union of India 1984 I LLJ 79 SC). In paragraph 6, the Supreme Court ob-served as follows (at pages 80-81):

"In the case of Grindlays Bank Ltd., (supra) the specific contention canvassed was whether where an ex-parte award is made and published in the Official Gazette, the Industrial Tribunal has the jurisdiction to entertain the application for setting it aside if sufficient cause is shown for absence of appearance on the date on which an ex-parte award was made and it was answered in the affirmative. This Court referred to Rule 22 and Rule 24(b) of the Industrial Disputes (Central) Rules, 1957 and held that the Industrial Tribunal had the power to pass an order setting aside

the ex-parte order. In reaching this conclusion, the Court observed that if the Tribunal has the power to proceed ex-parte as provided by Rule 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 Rule 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 terms of Rule 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 Rule 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 Rule 24(b) and held that where the Tribunal or other body makes an ex-parte award, the provisions of Order IX, Rule 13 of the CPC are clearly attracted and it logically follows that the Tribunal was compenent 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."

5. These decisions are the authority for the proposition that even without specific rule like Rule 23 of the Kerala Industrial Disputes Rules for setting aside an ex-parte decision, the Labour Court has an inherent power to set aside the ex-parte decision properly made. But, it should be emphasised that such a power is being given to be exercised by the Tribunal or Labour Court when the matter is pending or deemed to be pending before the Tribunal or Labour Court. The power can be exercised only when the proceedings are pending or deemed to be pending before the Labour Court or Tribunal in terms of Section 20(3) of the Act. It is enough that an application for setting aside the ex-parte award is filed within time. If such application is filed within time, even if the ex-parte award is published, the Labour Court or Tribunal has power to set aside the award. We need not embark on the general principle as there is specific provision in the Kerala Rules, viz., Rule 23, for setting aside ex-parte decision. The ambit of the power under Rules 22 and 23 have been discussed by this

Court in the decision reported in F.A.C.T. Employees'' Association Vs. F.A.C.T. Limited and Others, Rule 23 provides that:

"23. Setting aside ex-parte decision -(1) The Board, Court, Labour Court, Tribunal or arbitrator may for sufficient cause set aside after notice to the opposite party the ex-parte decision either wholly or hi part on an application made within fifteen days of the ex-parte decision. The Board, Court, Labour Court or Tribunal or arbitrator may extend the time on sufficient cause being shown.

(2) Such an application must be supported by an affidavit."

This means, an application for setting aside ex-parte decision can be filed within 15 days of the ex-pdrte decision and even beyond with a prayer to extend the time, but within the outer limit mentioned in Section 20(3), for the Tribunal retains power to deal with the award until that date as the matter will be deemed to be pending before the Labour Court/Tribunal till then. This position is also clear from the decision of this Court in Workmen of Travan-core Rayons Ltd. v. Travancore Rayons Ltd., 1967-I-LLJ-518 and the Punjab and Haryana High Court in Warring Co-operative Agriculture Services Society Ltd. v. State of Punjab. (1986) 69 FJR 121.

6.1n this case, the award has become final and only thereafter the petition u/s 33-C(2) was filed on November 18, 1987, i.e., nearly an year after the publication of the award in the Official Gazette. The order on the claim petition u/s 33-C(2) was also passed in terms of the award computing the benefits due to the petitioners. Exhibit P-3 is the order computing the benefits due to the petitioners. That order was passed on January 27, 1988. The petition to set aside the ex-parte order could have been filed by the management under Rule 23 within 15 days of the ex-parte decision or, thereafter, with a petition for condonation of delay. But that also had not been done, as stated at the Bar, until revenue recovery proceedings were taken against the management. According to the management, the management came to know regarding the existence of the award and the order only then. But the award and the order, Exhibits P-l and P-3, show otherwise. In Exhibit P-3 order u/s 33-C(2), it is stated that the management accepted notice, but did not appear. The claim petition will disclose the existence of the award and, therefore, from the claim petition atleast, the management would have learnt about the earlier award against it. Both in Exhibits P-l and P-3, there are clear statements that the management has accepted the notice, but did not enter appearance.

7. It is now well-settled that the Industrial Tribunal and Labour Court get power for adjudication from the reference. In adjudicating the dispute, the Tribunal and the Labour Court have power mentioned in Section 11. The Labour Court has the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the matters specified in Sub-section (3) of Section 11, viz., enforcing the attendance of any person and examining him on oath; compelling production of documents and material objects; issuing commission for the examination of

witnesses; and in respect of such matters as may be prescribed. In short, all the powers under the CPC have not been conferred. The power to set aside an ex-parte order is given by rules framed as contemplated in Section 11(3)(d) and in that context, Rule 23 has to be looked into. Under Rule 23, the Labour Court/Tribunal is given power to set aside the ex-parte decision, after notice to the opposite party, if an application for that purpose is made within fifteen days of the ex-parte decision. The Labour Court/Tribunal is also era-powered to extend the time on sufficient cause being shown. But this will not confer on the Labour Court power to stay the revenue recovery proceedings already initiated by the Government. What is stated at the Bar is that an application under Rule 23 has been filed before the Labour Court for setting aside the ex-pane award as well as the ex-parte order in the claim petition. Since those applications were admittedly filed long after the time prescribed under the rules, nearly three years after ex-parte decision, a petition for condonation of the delay and for extending the time for filing the application for setting aside the ex-parte decision has been filed. Therefore, it cannot be stated that the Labour Court is not seized of the dispute. However, there is no jurisdiction in the Labour Court to stay the revenue recovery proceedings taken in implementation of the award and the order on the claim petition passed u/s 33-C(2) of the Act. If the third respondent is aggrieved by the revenue recovery proceedings, it has other remedies under the law.

8. Without prejudice to the right, if any, of the third respondent to challenge the revenue recovery proceedings, I allow this writ petition and quash Exhibit P-6 order of the Labour Court in M.P. No. 27 of 1989 in CP. No. 129 of 1987.