(2013) 11 AP CK 0061

Andhra Pradesh High Court

Case No: Writ Petition No. 32783 of 2010

Akula Mallesham		APPELLANT
	Vs	
The General Manager, Bharat Sanchar Nigam Limited and Others		RESPONDENT

Date of Decision: Nov. 8, 2013

Citation: (2014) 3 ALD 135 : (2014) 2 ALT 140

Hon'ble Judges: Dama Seshadri Naidu, J

Bench: Single Bench

Advocate: Sudha, for the Appellant; B. Narasimha Sarma and Sri R.S. Murthy for Respondent Nos. 1 to 3, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Dama Seshadri Naidu, J.

The present writ petition is filed questioning the order dated 27.08.2010 in I.A. No. 53 of 2009 in I.D.L.C. No. 69 of 2006 whereby the 4th respondent, i.e., Central Government Industrial Tribunal-cum-Labour Court, Hyderabad (for short ''the Tribunal''), dismissed the application filed by the petitioner seeking restoration of Industrial Dispute L.C. No. 69 of 2006 to the file by setting aside the order dated 23.03.2009, whereby a nil award was passed. The facts in brief are that initially the petitioner herein raised an industrial dispute in I.D.L.C. No. 69 of 2006 on the ground that he had put in more than 240 man-days in each completed year of his service, having been engaged as Full Time Mazdoor in the office of 1st respondent from July, 2001 onwards. But later his services were orally terminated w.e.f. 01.05.2005, which is in clear violation of Section 25F of the Industrial Disputes Act, 1947 (for short ''the Act'').

2. Needless to elaborate on the facts since the issue is narrow in scope. The record reveals, as has been contended by the learned Standing Counsel for the respondents, that after numerous adjournments, when the petitioner does not seem to have been present, the 4th respondent Tribunal finally posted the matter to 23.03.2009. Since the petitioner was not present on that day too, the Tribunal was constrained to pass orders dated 23.03.2009 returning a ''nil'' award.

3. It is the specific contention of the petitioner that there was no intimation about passing of the award, and that much later he came to know about that by verification of the records with the 4th respondent. The petitioner has supplied the reasons for his absence stating that in view of the returning of the brief by his previous counsel, he engaged another advocate to look after the matter. But the said advocate too, unfortunately, did not appear before the Tribunal on the date when the matter stood posted, nor did the said learned counsel make any alternative arrangements in his absence. It has, thus, resulted in dismissal of the industrial dispute. Though the petitioner subsequently filed I.A. No. 53 of 2009 putting forth the reasons for his absence and sought the relief of restoration of the I.D.L.C. onto record, the same was dismissed by the 4th respondent on the ground that the award has already been published in the Official Gazette of Government of India dated 15.08.2009, and as such, the Tribunal has no power to review or recall the award, which has been published in the Gazette. Since the petitioner has not come within 30 days from the date of award, it is reasoned by the 4th respondent, the application has hopelessly been barred by time, for which no sufficient grounds have been supplied by the petitioner. Aggrieved by the said dismissal, the petitioner has filed the present writ petition.

4. The respondents 1 to 3 Company, i.e., Bharat Sanchar Nigam Limited, filed its counter affidavit and has opposed the said writ petition on various grounds, including that there was a delay of 148 days in filing I.A. No. 53 of 2009 and that there is a statutory bar to entertain the said application. Only in the light of the said statutory bar was the 4th respondent justified in passing the impugned award. It has also been placed on record by the respondent Company that on many previous occasions too, apart from the day when the ID was dismissed, the petitioner had been absent.

5. It is contended by Smt. T. Sudha, learned counsel for the petitioner, that the petitioner''s removal was totally unjustified and that his case falls squarely within the scope of Section 2A of the Industrial Disputes Act, 1947. Confining her submissions to the dismissal of the interlocutory application filed subsequently for the restoration of the ID., the learned counsel has submitted that the delay on the part of the petitioner was genuine and was beyond his control. On one occasion of his absence, one of the petitioner''s close relatives died and that disabled him from attending the Tribunal. On the last occasion, though he made every bona fide effort, the counsel who was subsequently engaged did not appear before the Tribunal, nor

did he make any arrangement to see that the petitioner''s interests were represented before the Tribunal. Thus, for the reasons beyond his control the petitioner had to be absent.

6. Adverting to the statutory limitation of 30 days for filing the set-aside petition, the learned counsel has submitted that the factum of delay cannot be taken into account in the case of the petitioner since there was no proper communication of the award to him at any point of time. Eventually, it has been contended by the learned counsel that the matter is required to be decided on merits instead of throwing it out on technicalities.

7. Per contra, Sri R.S. Murthy, the learned Standing Counsel appearing for the respondents 1 to 3, has vehemently, in his characteristic style, stressed the aspect that the petitioner was insouciant in his approach and has never been diligent in pursuing the case. After raising the industrial dispute, he never appeared before the Tribunal by filing necessary pleadings or evidence, much less facing the trial. Having absented himself on numerous occasions, rather belatedly the petitioner has come with the application to set aside the ex parte award on totally untenable grounds. Even to have any prima facie case to be considered, originally the petitioner has not established even a semblance of sufficient cause analogous to the grounds under Order 9, Rule 13 of CPC to entertain the application. The learned Standing Counsel, in this regard, has also placed reliance on Sangham Tape Company Vs. Hans Raj,

8. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents 1 to 3, apart from perusing the record.

9. Time and again, this Court as well as the Hon''ble Supreme Court, has held that as far as possible matters are required to be adjudicated upon merits. It does not mean, nor can it be understood, that in all cases however negligent a person may be in pursuing his case, he is entitled to relief on merits at whatever length of time. In any event, once a cause is dismissed on the ground of absence of the party, if he comes back, justifiably within reasonable time, and provides a sufficient reason, which may not be palatable completely, still the Courts and Tribunals have been, as a matter of established practice, making every effort to decide the matter on merits, by interpreting the concept of ''sufficient cause'' rather liberally.

10. In the present case, the past absence of the petitioner cannot be taken into account while deciding the matter of restoration of the proceedings to the file, as has been held numerous times by the Constitutional Courts. What matters is the cause of absence on the day when the matter came to be dismissed. In the present case, the petitioner has submitted the reason to the effect that though he engaged a counsel to take care of his case, he did not appear, nor did he inform the petitioner in advance to enable him to make any alternative arrangement. On the other count, to know about the dismissal of the proceedings for default, admittedly there was no communication of the award to the petitioner. Be that as it may, there

is no quarrel with regard to the settled principle of law that the Tribunal becomes functus officio once an award is published. In any event, this delay is required to be reckoned from the date of knowledge, actual or constructive, on the part of the petitioner. The petitioner has persistently submitted that the award was not communicated to him and that as soon as he came to know of the dismissal of the proceedings before the Tribunal.

11. The issue is required to be approached from another direction as well. Section 2(b) of the Act defines ''Award'' as follows:

2.(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made u/s 10A;]

12. Section 11 of the Act permits the Labour Court and other authorities under the Act to follow such procedure as they may think fit, but subject to any rules that may be made in this regard. u/s 15 of the Act, which prescribes the duties of Labour Courts, Tribunals and National Tribunals, it is mandated that where an industrial dispute has been referred to a Labour Court, etc., it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-section (2A) of section 10, submit its award to the appropriate Government.

13. Once the award is submitted, what follows is stated in section 17 of the Act, which is to the effect that every award of a Labour Court, etc., shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit. Only then does the award, in terms of Section 17A of the Act, become enforceable.

14. On the aspect of procedure it is required to be stated that Section 38 of the Act, read with section 11, gives the power to the appropriate government to make rules for the purpose of giving effect to the provisions of the Act. Apart from the Central Government, the Government of Andhra Pradesh too has framed Rules, viz., AP Industrial Disputes Rules, 1958, through G.O.Ms. No. 2883, Home (Labour-IV), dated 16.12.1958. Rule 12 of the Rules delineates the procedure to be adopted for conducting the proceedings before the Labour Court. What is relevant for our purpose is Rule 24 speaks of ex-parte proceedings, and the rule is as follows:

24. (Power of the Board, Court, Labour Court, Tribunal or Arbitrator to proceed ex-parte etc):--

If without sufficient cause being shown any party to the proceeding before a Board, Court, Labour Court, Tribunal or Arbitrator fails to file the statement of demands/rejoinder and, or to attend or to be represented the Board. Court, Labour Court, Tribunal or Arbitrator may proceed as if the party has nothing to file the statement of demands/rejoinder and as if the party had duly attended or had been

represented.

Provided that in case where one of the parties fails to file statement of demands rejoinder and, or to attend or to be represented, the Board, Court, Labour Court. Tribunal or Arbitrator may proceed ex-parte.

Provided further in case both the parties fail to file statement of demands rejoinder and, or to attend or to be represented the Board, Court, Labour Court, Tribunal or Arbitrate or may close the proceedings as having not been pressed by the parties.

(emphasis added)

15. It is interesting to note that an analogous provision is found in the Industrial Disputes (Central) Rules, 1957. Rule 22 of the said Central Rules is as follows:

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

(emphasis added)

16. It is evident from the above provision that if there is a default on the part of one of the parties to the proceedings, a legal fiction has been created to the effect that the Labour Court may proceed as if the party has nothing to file the statement of demands/rejoinder and as if the party had duly attended or had been represented. In terms of granting adjournments, Rule 26 of the State Rules permits application of the provisions of the Code of Civil Procedure.

17. The Labour Court initially returned a ''nil'' award on 23.03.2009 in I.D.L.C. No. 69 of 2006 in the following manner:

Parties were directed to adduce their respective evidences on 16.2.2009 Petitioner called absent while Respondent''s counsel is present. There is none to file affidavit on behalf of Petitioner as such, petitioner''s evidence is close. Hence, Nil Award is passed in absence of any evidence.

18. Subsequently, when the said award was sought to be set aside by the petitioner, the Labour Court, has disposed of IA No. 53 of 2009 in IDLC No. 69 of 2006, through its order, dt. 27.08.2010, which is as follows:

I have heard both the parties and has perused the record. Petitioner contended that the was absent due to the sudden death of one of his relatives on 23.3.2009 and thereafter he himself fell ill, but he has filed this petition on 6.10.2019, that is after 196 days of the passing of the award. Moreover, the award has already been published in the official gazette of the Government of Indian dated 15.8.2009, as such, this tribunal has got no power to review or recall the award which has been

published in the Gazette. The Petitioner has not come within 30 days from the date of passing of the award. The application is hopelessly time barred for which sufficient ground has not been made out. Petition is devoid of merit and deserves to be dismissed. Hence, is dismissed.

19. This Court, on an earlier occasion, in Andhra Handloom Weavers Co-operative Society Vs. State of Andhra Pradesh and Others, had the occasion to examine the characteristics of a valid award to be passed by the Labour Court. Referring to the validity of an ex parte award, the Court, per Gopalakrishnan Nair, has admirably laid down as follows:

5. Admittedly, the Labour Court did not adjudicate upon the merits of the dispute referred to it. Nor did it solve the dispute. Yet it is claimed on behalf of the petitioner that there was a final determination of an industrial dispute by the Labour Court. I find it extremely difficult to accede to this contention. The "determination" of any "industrial dispute" within the meaning of Section 2(b) of the Act means an adjudication of the dispute between the parties. The object of the decision called the award is to resolve the differences between the disputants.

But it is urged for the petitioner that the word ''determination'' in the definition just means ''putting an end to'' the proceedings in the whatever manner it be. As the order of dismissal for default put an end to the proceedings before the Labour Court, there was a ''determination'' satisfying the requirements of Section 2(b), runs the argument of the petitioner.

....

6. The definition in Section 2(b) plainly requires an industrial dispute or any question relating thereto be determined by a Labour Court. The terms of Section 10(1)(c) speak of the dispute being referred to the Labour Court for adjudication. Therefore, on a reference u/s 10(1)(c), the Labour Court is to adjudicate on the dispute, and not just close or end the proceedings before it by any method which does not involve adjudication or resolution of the dispute referred to it. If it were otherwise, the very object of reference to it would be frustrated, it is possible, as has happened in the cases under discussion, to put an end to the proceedings before the Labour Court without going into the dispute between the parties. But such a termination is not an adjudication of the dispute and is not, therefore, an award. Such termination keeps the dispute outstanding as ever before; the dispute continues and is in no way resolved. A technical termination of the proceedings by an order of ''dismissal for default'' does not, therefore, serve the purpose of the reference or the object of the Act. I suppose this is why the Act does not make any provisions for dismissal for default. Indeed, a dismissal for default as under Order 9 of the CPC seems to be inappropriate and alien to proceedings under the Act. It cannot be gainsaid that the Act is conceived to establish industrial peace and harmony between the employers and the employees. This object would not be achieved or advanced by a mere

technical termination of the proceedings before Industrial Tribunals and labour Courts. On the contrary such a mechanical and technical order of termination of proceedings might further embitter the relations between management and labour and create a more difficult situation for both. The Legislature could not have contemplated an order with such potentiality for evil to be an award within the intendment of the Act. The provisions of the Act cannot be interpreted in such a manner as to bring about a result so plainly contrary to the object of the legislation. An interpretation likely to advance the remedy and suppress the mischief has to be adopted. Otherwise, the intention of the legislation will be defeated....

(emphasis added)

20. It may be noted that the above ratio was laid down by this Court way back in 1969. Subsequently, much adjudicatory water has flowed under the judicial bridge. Recently, in Sangham Tape Company Vs. Hans Raj, the Hon''ble Supreme Court has another occasion of examining the scope of the ex-parte award and powers of the Labour Court to set it aside. Their Lordships have held that an industrial adjudication is governed by the provisions of the Industrial Disputes Act, 1947 and the rules framed thereunder, that the rules framed under the Act may provide for applicability of the provisions of the Code of Civil Procedure. Once the provisions of the CPC are made applicable to the industrial adjudication, indisputably the provisions of Order IX Rule 13 thereof would be attracted. It is further held that unlike an ordinary Civil Court, the Industrial Tribunals and the Labour Courts have limited jurisdiction in that behalf. An award made by an industrial court becomes enforceable u/s 17A of the Act on the expiry of 30 days from the date of its publication. Once the award becomes enforceable, the Industrial Tribunal and/or Labour Court becomes functus officio.

21. Further elaborating on the issue, the Hon''ble Supreme Court has held as follows:

8. The said decision is, therefore, an authority for the proposition that while an Industrial Court will have jurisdiction to set aside an ex part award but having regard to the provision contained in Section 17A of the Act, an application therefore must be filed before the expiry of 30 days from the publication thereof. Till then Tribunal retains jurisdiction over the dispute referred to it for adjudication and only upto that date, it has the power to entertain an application in connection with such dispute.

....

10. In view of this Court''s decision in Grindlays Bank (supra), such jurisdiction could be exercised by the Labour Court within a limited time frame, namely, within thirty days from the date of publication of the award. Once an award becomes enforceable in terms of Section 17A of the Act, the Labour Court or the Tribunal''s the case may be, does not retain any jurisdiction in relation to setting aside of an

award passed by it. In other words, upon the expiry of 30 days from the date of publication of the award in the gazette, the same having become enforceable, the Labour Court would become functus officio.

22. To appreciate the ratio laid down by the Supreme Court, the factual back drop of the said case requires consideration. The Labour Court initially set aside the ex-parte order passed by it, by entertaining an application for the said purpose beyond 30 days. That interlocutory order of the Labour was challenged before a Division Bench of the Punjab & Haryana High Court. The Division Bench, in turn, has held that the Labour Court did not have the power to entertain the application beyond 30 days from the date of the award. Accordingly, reversed the order of the Labour Court. Aggrieved, the Company, for whose benefit the Labour Court set aside the ex-parte award, took the matter before the Supreme Court. Thus, what has fallen for consideration is whether the Labour Court, a creature of a statute, has the power to provide a relief beyond the statutory mandate. The answer was given in the negative. Thus, the order of the Labour Court cannot be found fault with.

23. Having held that the Labour Court did become functus officio beyond the 30 days prescribed u/s 17B, this Court reminds itself of the fact that the refusal of the Labour Court to entertain the interlocutory application is not on merits, but on the ground of its inherent lack of jurisdiction to entertain the same. As a natural corollary, this Court further poses unto itself a question whether the petitioner, whose application was dismissed on the ground of a statutory shortcoming or limitation, rather than on merits, should be rendered remedy less, if his case otherwise merits attention? More particularly, when the said issue is being considered by this Court under Article 226 of the Constitution of India.

24. It may have to be stated that relying on Sangham Tape Company (3 supra) the learned Standing Counsel for the respondents has strenuously contended that no award can be set aside beyond 30 days. In terms of Article 142 of the Constitution of India, there cannot be two views on the proposition, nay principle, that the ratio laid down by the Supreme Court binds all the Courts and tribunals throughout the territory of India. Yet, in the same judgement their Lordships have, pertinently, observed in para 12 as follows:

12. This Court in Anil Sood Vs. Presiding Officer, Labour Court II, did not lay down any law to the contrary. The contention raised on the part of Mr. Jain to the effect that in fact in that case an application for setting aside an award was made long after 30 days cannot be accepted for more than one reason. Firstly, a fact situation obtaining in one case cannot be said to be a precedent for another. (See Mehboob Dawood Shaikh Vs. State of Maharashtra,

(emphasis added)

25. Firstly in Sangham Tape Company (supra) the Hon''ble Supreme Court has put its judicial imprimatur on the judgement of the Punjab & Haryana High Court, affirming

the principle of functus officio. Secondly, the scope of the proceedings before the Punjab & Haryana High Court and subsequently before the Supreme Court is to determine the powers of statutory, albeit adjudicatory, body. Thus, it can safely be held that ratio laid down in Sangham Tape Company is confined to the powers of the Labour Court, which comes under the sweep of functus officio.

26. The issue could have ended here, if no further precedential developments have happened subsequent to Sangham Tape Company. In fact, a contrary view was taken by a co-equal Bench of the Supreme Court in Radhakrishna Mani Tripathi Vs. L.H. Patel and Another, In fact, in R.M. Tripathi, a specific issue was framed to the effect:

Whether the Tribunal becomes functus officio on the expiry of 30 days from the date of publication of the ex-parte award u/s 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 17A to set it aside.

27. Eventually, placing reliance once again on Anil Sood Vs. Presiding Officer, Labour Court II,], it is held that there is no substance in the appellant''s submission based on Section 17A of the Act. It is further held that there being no substance in the first limb of the submission there is no question of any conflict between Rule 26(2) of the Maharashtra Rules and Section 17A of the Act.

28. Later, noticing the conflict, another co-equal Bench of the Hon''ble Supreme Court in M/s. Haryana Suraj Malting Ltd. v. Phool Chand (SLP (C) No. 6091/2010 has referred the said issue to a larger Bench.

29. Be that as it may, in all the above cases what has fallen for consideration is the power of the Labour Court to recall its own order passed ex-parte beyond the statutory period of 30 days, and the impact of common law concept of functus officio. Now the further question that falls for consideration is whether this Court can issue a certiorari against a court or a tribunal that has become functus officio, in other words, that has ceased to exist in the eye of law, at least to the extent of the order being assailed?

30. Black''s Law Dictionary (9th Edn.) defines functus officio as having performed his or her office; of an officer or an official body, without further authority or legal competence because the duties and functions of the original commission have been fully accomplished. It is interest to note that once a subordinate judicial forum has rendered itself functus officio having passed a particular order, what would be its impact on the power of certiorari of the High Court under Article 226 of the Constitution has been considered by a seven-Judge bench of the Hon''ble Supreme Court in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, Their Lordships have held to the effect:

13. As we are concerned in this appeal with certiorari to quash a decision, it is necessary only to examine whether having regard to its nature such a writ for quashing can be issued to review the decision of a Tribunal, which has ceased to exist. [functus officio].

(material in the square brackets incorporated)

31. In this context, the Supreme Court has referred to the Corpus Juris Secundum (Volume 14 at page 123), which says that it is not a proceeding against the tribunal or an individual composing it; it acts on the cause or proceeding in the lower court, and removes it to the superior court for reinvestigation. Further elaborating, their Lordships have held as follows:

16. The writ for quashing is thus directed against a record, and as a record can be brought up only through human agency, it is issued to the person or authority whose decision is to be reviewed. If it is the record of the decision that has to be removed by certiorari, then the fact that the tribunal has become functus officio subsequent to the decision could have no effect on the jurisdiction of the court to remove the record. If it is a question of issuing directions, it is conceivable that there should be in existence a person or authority to whom they could be issued, and when a certiorari other than one to quash the decision is proposed to be issued, the fact that the tribunal has ceased to exist might operate as a bar to its issue. But if the true scope of certiorari to quash is that it merely demolishes the offending order, the presence of the offender before the court, though proper, is not necessary for the exercise of the jurisdiction or to render its determination effective.

(emphasis added)

32. Now, in the light of the above definitive pronouncement of the Hon''ble Supreme Court, this Court, while exercising its power under Article 226 of the Constitution of India, it is entirely justified, once the necessary grounds have been supplied for holding a particular order unsustainable, to quash the said order in a writ of certiorari, of course, subject to the other well established precedential parameters. In any event, the entire endeavour would be to see that the petitioner gets the reasonable opportunity during the enquiry or hearing. I hasten to add that, though the learned Standing Counsel has repeatedly contended that the petitioner has no iota of merit, nor a semblance of justification in raising the industrial dispute, while considering the matter at an interlocutory stage, especially while reviving the proceedings in the manner aforesaid, merit of the matter may not play any role.

33. It is further relevant to observe that in the same writ petition the petitioner sought certiorari to quash both the interlocutory order, dated 27.08.2010 in I.A. No. 53 of 2009 and the Award, dt. 23.03.2010 in LCID No. 69 of 2006. Keeping the technicality aside as to the appropriateness of such compendious writ petition, this Court, ex debito justicia, deems it desirable to consider both the reliefs together, the latter being consequential to the former.

34. Ipso facto, to let the petitioner have the issue decided on merits, rather than perish at the procedural altar, it is in the interest of justice to set aside the Order, dated 27.08.2010 passed by Labour Court in I.A. No. 53 of 2009 in IDLC No. 69 of 2006. Further consequently, the Award, dated 23.03.2009, is also hereby set aside, thus, restoring the said IDLC No. 69 of 2006 to file. Accordingly, the writ petition is allowed in the manner indicated above. As a natural corollary, the matter is remitted back to the 4th respondent to be adjudicated on merits with opportunity to both the parties to the proceedings. In any event, it is made clear that no further indulgence be shown to the petitioner, who shall not seek any further adjournments, but proceed with the matter as per the convenience of the 4th respondent-Labour Court for expeditious disposal. Any further adjournments at the behest of the petitioner, not to the satisfaction of the Labour Court, shall be at the petitioner''s own peril of suffering the adverse statutory consequences. No costs. As a sequel to it, miscellaneous petitions, if any pending in this writ petition, shall stand closed.