

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9105 OF 2015

The Sarpanch Grampanchayat
Office Isarwadi-Borgaon,
Tq. Paithan Dist. Aurangabad,
through Sarpanch Shri
Dnyaneshwar Kakasaheb Bobade,
Aged 35 years, Occ. Sarpanch,
R/o Isarwadi, Tq. Paithan,
District Aurangabad

..Petitioner

Versus

Gangadhar Bhanudas Bobde
Age 66 years, Occ. Agriculture,
R/o Borgaon, Post Dhorkin,
Taluka Paithan, Dist. Aurangabad.

..Respondent

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Advocate for Petitioner : Shri Imale Ramesh R.
Advocate for Respondent : Shri Khandelwal Rajesh K.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 09, 2015
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ORAL JUDGMENT :-

1. Heard.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the judgment and order dated

13.4.2015, delivered by the Labour Court, Aurangabad in Misc. Reference (IDA) Application No.3 of 2013.

5. The petitioner submits that the Labour Court had delivered an ex-parte judgment and award dated 29.11.2012 in Reference (IDA) No. 78 of 2007. A Misc. Application for recalling the ex-parte judgment was filed on 15.3.2013. The competent authority - Deputy Commissioner of Labour, Aurangabad accepted the award dated 29.11.2012 and requested the Labour Court to publish the award on/or before 27.1.2013. It is stated in the impugned order that the award was published on 27.1.2013.

6. The petitioner contends that the Labour Court should have considered the fact of the award being ex-parte, which has resulted in a miscarriage of justice. Reinstatement with continuity and 50% backwages have been granted without there being any evidence on record. The petitioner, therefore, prays that this petition be allowed and the impugned judgment be set aside.

7. Shri Khandelwal, learned Advocate has appeared on behalf of the sole respondent and has filed an affidavit-in-reply. He has categorically raised the issue of the Labour Court being '*functus officio*' as the award was published and after 30 days of the publication of the award, the Labour Court lost jurisdiction. He, therefore, prays for the dismissal of this petition.

8. This Court, in the matter of Dnyaneshwar Anantrao Kulkarni Vs. The Superintendent Engineer, PWD and others Writ Petition No. 11605 of 2014, by judgment, dated 1.7.2015 has considered an identical controversy. It has been concluded that the view taken by this Court in the matter of Chabada Petrol Pump Vs. Shaikh Hassan [2007 (5) Mh.L.J. 738], cannot be followed in the light of the ratio laid down in the following judgments :-

- (a) Grindlays' Bank Vs. Central Government Industrial Tribunal & others - 1981 1 LLJ 327 = AIR 1981 SC 606,
- (b) Sangham Tape Company Vs. Hans Raj
2004 LLR 1098 = 2004 (103) FLR 699 = (2005) 9 SCC 331,
- (c) Vasant Govind Shirsekar Vs. M/s Mhatre Pen and Plastics
2005 (3) Mah.L.J. 272, and
- (d) Kiran Machine Tools Vs. D.D.Hinge and another
2006 (1) Mh.L.J. 286.

9. The observations of this Court in paragraph Nos. 8, 11 to 17, 24 and 25 are as under:-

“8. Be that as it may, the issue before me is as to when did the Labour Court become “FUNCTUS OFFICIO” and therefore lost jurisdiction over Ref.(IDA) No.22/2004 (Old No.90/1996). It requires no debate that once the Labour Court became “FUNCTUS OFFICIO”, all subsequent orders passed would be rendered a nullity as the Labour Court was divested of this jurisdiction.

11. It is thus clear that after the appropriate Government receives the award from the Labour Court or the Tribunal, it shall, within 30 days, publish the award in the official gazette if it

considers that the Award is important thereby opting for such mode of publication. If the award is considered to be not as important, it may cause a copy thereof together with a notification u/s 17 to be forwarded to the Labour Court or Tribunal, which has delivered the Award for publication on its notice board.

12. *It is apparent that there are only two modes of publication in the light of Rule 31A of the Rules. The first mode of publication is in the Official Gazette and the second mode of publication is on the Notice Board of the Labour Court or the Tribunal, which delivers the Award.*

13. *The notification issued by the concerned authority under Section 17 of the Central Act does not tantamount to and cannot be construed to mean a publication of the Award. The date of the notification is not the date of publication and is insignificant since there is no third mode of publication prescribed by law or the Rules. The said notification only indicates to the Labour Court or the Tribunal, which has delivered the Award that the Award has been accepted. It is thus a request to the concerned Labour Court or Tribunal to publish the Award on its Notice Board. The date on which the concerned Court / Tribunal publishes the Award, shall be the date of publication of the Award. In the instant case, the date of publication of the ex-parte Award dated 10.8.2000 is 23.11.2000.*

14. *The issue as to when would the Award become enforceable, thereby, rendering the Labour Court / Tribunal "FUNCTUS OFFICIO" is no longer res integra. The Honourable Supreme Court dealt with the issue of the Labour Court / Tribunal becoming "FUNCTUS OFFICIO" in the case of Grindlays' Bank Vs. Central Government Industrial Tribunal and others [1981 1 LLJ 327 = AIR 1981 SC 606, which was decided on 12.12.1980. The two questions that arose for the consideration in the Civil Appeal before the Apex Court are set out in paragraph No.3 as under:-*

"3. Two questions arise in 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 the 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 17A to set it aside."

15. The Apex Court answered the said issues by its observations in paragraph No.14, which reads as under :-

" 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 [17A](#). Under Section [17A](#) 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 over the dispute referred to it for adjudication and upto 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 [17A](#). 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 respondents 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.”

16. *It was, thus held by the Apex Court that once the Award was published by the Court / Tribunal, the Award would not become enforceable for a period of thirty days from the date of its publication under Section 17. After the expiry of thirty days, the Award would become enforceable thereby consequentially rendering the Court / Tribunal which delivered the award, “FUNCTUS OFFICIO”. Needless to state, on the date the Award becomes enforceable, the Court / Tribunal would lose jurisdiction over the said reference proceedings.*

17. *In the light of the above and since the Rules framed under the Central Act are “Hand Maid” to the provisions of the Act, the effect of Sections 17 and 17A of the Central Act would render the words, “within thirty days of the receipt of a copy thereof”, in Rule 26(2) insignificant for the reason that after thirty days of the publication of the Award, the Award becomes enforceable and the Court / Tribunal becomes “FUNCTUS OFFICIO”.*

24. As has been held by the Apex Court in the Grindlay's case (supra) and Sangham Tape Company (supra), the Labour Court / Tribunal would become "FUNCTUS OFFICIO" the moment the award becomes enforceable on the expiry of 30 days from the date of its publication u/s 17. As such, Rule 26 will have to be interpreted to mean that the 30 days are required to be computed from the date of publication of the award for the simple reason that the Labour Court / Tribunal, which has become "FUNCTUS OFFICIO" after 30 days of the publication of the award, cannot be invested with jurisdiction by Rule 26.

25. The Rules which are hand-maid to justice, cannot create jurisdiction in a Court or Tribunal, which has become "FUNCTUS-OFFICIO". In these circumstances, I am of the view that Rule 26(2) is inconsistent with Sec.17 and 17A of the Industrial Disputes Act. I am, therefore, unable to follow the ratio laid down by the learned Single Judge in Radhakrishna Mani Tripathi Vs. L.H.Patel 2006(3) BCR 227 and Chhabda Petrol Pump Vs. Shaikh Hasan 2007(6) BCR 624."

10. It is, therefore, concluded that though Rule 26 of the Industrial Disputes (Bombay) Rules speaks of "date of knowledge" of the award, the said Rule would not create jurisdiction in the labour Court, keeping in view the fact that the Court become functus officio after 30 days of the publication of the award and does not retain jurisdiction so as to be extended to a period of 30 days from the date of knowledge of the award.

11. In the light of the above, since the Misc. Application preferred by the petitioner was filed beyond 30 days from the date of publication of the

award, the Labour Court has rightly rejected the same. Nevertheless, the petitioner can challenge the judgment and award dated 29.11.2012, before this Court and in the event it is so done, within a period of four weeks from today, the time spent before the Labour Court from 15.3.2013 and before this Court in this petition, shall be considered as a good ground for condonation of delay.

12. With the above observations, this petition is disposed off without causing any interference in the impugned judgment and order.

13. Rule stands discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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