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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No. 4127 of 1996

Ashok Kumar Jaiswal S/o Shri Narayan Jaiswal, Librarian, R/o Hardi Bazar Khathora, District – Bilaspur, M.P. (now CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Higher Education Department, Mahanadi Bhawan, New Raipur, (Chhattisgarh)

1A. Principal, Government Gramya Bharti Mahavidyala (College), Hardi Bazar, Korba, District – Korba, Chhattisgarh

2. Presiding Officer, Labour Court, Bilaspur

---- Respondents

For Petitioner	:	Shri Vishnu Koshta and Shri Sobhit Koshta, Advocates
For State/R-1	:	Shri B. Gopa Kumar, Dy. Advocate General
For Respondent 1A	:	Ms. Priya Mishra, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26.04.2017

The present writ petition has been filed assailing the order dated 08.08.1996 passed in Misc. Case No. 4/IDA/1995.

2. The relevant facts for adjudication of the present dispute are that the petitioner who was working as a Librarian in the Government Gramya Bharti College, Hardi Bazar, Korba had raised an industrial dispute before the Conciliation Officer in respect of the illegal termination of his service. The State Govt. finally vide its order dated 30.06.1988 referred the matter to the Labour Court, Bilaspur with the following terms of reference:

> "Whether the termination of the services of Shri Ashok Kumar Jaiswal was legal and proper? If not, what relief he is entitled for and in this respect, what direction can be given to the employer."

3. The matter was registered before the Labour Court, Bilaspur as Case

No. 9/IDA/88(Ref.). Notices were issued to either of the parties. The petitioner workman entered appearance and filed his written submission. The respondent No.1A, after service of notice, initially appeared through his counsel but thereafter, there was no representation on his behalf, therefore, the Labour Court proceeded *ex parte* against him. Finally, an *ex parte* award was passed on 30.01.1995. The said award was sent for publication which was published on 06.06.1995. After the award was published, respondent No.1A moved an application on 21.07.1995 for setting aside of the *ex parte* award which was registered as Misc. Case No. 4/IDA/95. This application was finally allowed by the Labour Court on 08.08.1996 setting aside the original award dated 30.01.1995.

4. It is this order dated 08.08.1996 which is under challenge in the present writ petition.

5. Contention of the learned counsel for the petitioner is that the order passed by the Labour Court was per se illegal as the Labour Court did not have any jurisdiction to entertain an application for setting aside an ex parte award beyond the period prescribed under Section 17A of the ID Act. He submits that the law in this regard is well settled by the Supreme Court in the case of **Grindlays Bank Ltd. Vs. the Central Government Industrial Tribunal and others** reported in **AIR 1981 SC 606**. Counsel for the petitioner submits that admittedly in the instant case, the application for setting aside of the ex parte award was passed beyond the period of 30 days from the date the award was published. The award was published on 06.06.1995 and the application was filed on 21.07.1995. The provisions of Section 17A of ID Act clearly stipulates that an award shall become enforceable on the expiry of 30 days from the date of its publication. In the instant case, in view of Section 17A of ID Act, the award became operational from 07.07.1995 onwards. Section 17A provides that the award becomes enforceable after the period of 30 days provided any application for setting aside of the award or seeking

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modification of the said award is sought to be made within a period of 30 days from the date of its publication which in the instant case has not been done.

6. This factual position is not disputed by either of the counsel appearing for the respondents. At this juncture, it would be relevant to quote the law laid down by the Supreme Court in the case of Grindlays Bank Ltd. (supra) which is reproduced hereunder:

> "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 S. 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 S. 17-A. Under S. 17-A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under S. 17. The proceedings with regard to a reference under 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."

7. The law laid down in the aforesaid judgment has further been reiterated by the Supreme Court in the case of **M/s Sangham Tape Company Vs. Hans Raj** reported in **AIR 2004 SC 4776** wherein the Supreme Court in very categorical terms referring to the law laid down in Grindlays Bank Ltd. (supra) has held as under:

> "7. This Court in Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others [(1980) Supp. SCC 420] held that the Tribunal does not become functus officio provided an application for setting aside the award is filed within thirty days of publication of award having regard to the provisions contained in Section 11 of the Act and Rules 22 and 24 of the Industrial Disputes (Central) Rules, 1957 stating :
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> "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 over the dispute referred to it for

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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 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 of its publication and was, therefore, rightly entertained by the Tribunal."

8. The said decision is, therefore, an authority for the proposition that while an Industrial Court will have jurisdiction to set aside an ex parte award but having regard to the provision contained in Section 17A of the Act, an application therefor 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.

9. It is not in dispute that in the instant case, the High Court found as of fact that the application for setting aside the award was filed before the Labor Court after one month of the publication of the award.

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, as 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."

8. This view has further been reiterated by the Supreme Court in the case of **Jammu Tehsil Vs. Hakumar Singh and others** reported in **(2006) 12 SCC 193** wherein in paragraphs – 4 & 5 the Supreme Court has held as under:

"4. An industrial adjudication is governed by the provisions of the Act and the Rules framed thereunder. The Rules framed under the Act may provide for applicability of the provisions of CPC. Once the provisions of CPC are made applicable to the industrial adjudication, indisputably the provisions of Order 9 Rule 13 thereof would be attracted. But 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 under Section 17-A 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 the Labour Court becomes functus officio. This Court in Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal held that the Tribunal does not become functus officio provided an

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application for setting aside the award is filed within thirty days of publication of the award having regard to the provisions contained in Section 11 of the Act and Rules 22 and 24 of the Industrial Disputes (Central) Rules, 1957 stating: (SCC at pp. 425-26, para 14)

"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 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 under Section 17-A. In the instant case, the Tribunal made the ex parte award on 09-12-1976. That award was published by the Central Government in the Gazette of India dated 25-12-1976. The application for setting aside the ex parte award was filed by Respondent 3, acting on behalf of Respondents 5 to 17 on 19-01-1977 i.e. before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal."

5. The said decision is, therefore, an authority for the proposition that while an Industrial Court will have jurisdiction to set aside an ex parte award, but having regard to the provision contained in Section 17-A of the Act, an application therefore must be filed before the expiry of 30 days from the publication thereof. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication, and only up to that date, it has the power to entertain an application in connection with such dispute. It is not in dispute that in the instant case, the High Court found as of fact that the application for setting aside the award was filed before the Labour Court after one month of the publication of the award. In view of this Court's decision in Grindlays Bank case 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 17-A of the Act, the Labour Court or the Tribunal, as 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."

9. In view of the authoritative decisions laid down by the Supreme Court in the aforementioned three judgments, when compared to the facts of the present case, this Court does not have any hesitation in reaching to the conclusion that it was wrong on the part of the Labour Court to have entertained the application for setting aside of the ex parte award beyond the period of 30 days which is not in dispute in the instant case. Once when the award of the Tribunal has become enforceable, that is after 30 days from the date of publication of the award, the Labour Court becomes functus officio." The Tribunal having become functus officio, the only remedy available to the respondents was for challenging the award before the appropriate forum.

10. In view of the same, the order dated 08.08.1996 Annexure P-8 enclosed with this petition passed in Misc. Case No. 4/IDA/95 is set aside. Consequences to be followed. The writ petition stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE

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