

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1874 OF 2015

Dilip Zumbar Raut,
Age : 47 years, Occupation : Nil,
R/o At Walvad, Post Rehkuri,
Taluka Karjat, District Ahmednagar.

...PETITIONER

-VERSUS-

Zilla Parishad, Ahmednagar.
Through its Chief Executive Officer.

...RESPONDENT

...
Advocate for Petitioner : Shri Barde Parag Vijay.
Advocate for Respondent : Shri Shelke Shivaji T.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th January, 2017

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner/ Workman is aggrieved by the award dated 21.02.2012 by which the Second Labour Court, Ahmednagar has answered the Reference in the negative for the reason that the Petitioner having failed to file the Statement of Claim, may not be interested in the

adjudication of the reference. The award was published by the Labour Court on 21.02.2012. The Petitioner moved an application on 25.05.2012 for restoration of the reference. The grievance is that by the impugned order dated 09.12.2013, the said application has also been rejected. Further grievance is that the Labour Court or Tribunal, cannot dismiss a reference in default.

3 I have heard the learned Advocates for the respective sides for quite sometime.

4 The issue as regards computing 30 days from the date of publication of the award and the Labour Court or the Tribunal being rendered *functus-officio*, has been dealt with by this Court (Coram : R.V.Ghuge, J.) in *Dnyaneshwar Anantrao Kulkarni vs. Superintendent Engineer, Public Works Division, Osmanabad*, **2016(2) Mh.L.J. 144**. Considering the law laid down, as the award was published on 21.02.2012 and the Miscellaneous Application was filed on 25.05.2012, the impugned order dated 09.12.2013 does not call for any interference as the Labour Court was rendered functus-officio.

5 Insofar as the purported award dated 21.02.2012 is concerned, there is no dispute that the Labour Court has not answered the

reference by delivering an award. It has negated the reference by observing that despite adjournments, the Petitioner did not file the Statement of Claim and hence, "It seems that party No.2 is not interested for adjudication of the Reference.", was the conclusion.

6 In the matter of *Sangitabai w/o Bhaskar Kamble vs. The Commissioner, Aurangabad Municipal Corporation*, this Court (Coram : R.V.Ghuge, J.) has concluded in its judgment dated 20.12.2016 in *Writ Petition No.12096/2016* and a group of petitions, that the reference made to the Industrial Court or the Industrial Tribunal cannot be dismissed in default. The reference cannot be negated on account of non prosecution. The observations of this Court in paragraphs 8, 9, 10 and 11 are reproduced as under:-

- "8. The law is well settled that a Reference made to the Labour Court or the Tribunal is not to be dismissed in default. Once a reference has been made by the order of the competent authority under Section 12(4) read with Section 10(1) and Section 12(5) of the Industrial Disputes Act, the Labour Court or the Tribunal as the case may be, is under a legal obligation to decide the reference cases. Even if the second party workman does not file its statement of claim, the Labour Court / Tribunal is expected to deliver its award on the material available and the reference could then be answered in the negative.
9. The learned Single Judge of the Karnataka High Court in the matter of *T.S.Zingade Vs. Karnataka State Road Transport Corporation* [1979 (38) FLR 202], has held that the term 'Award' used in Section

15 of the Industrial Disputes Act means a decision on the merits of the question / terms of reference addressed to the Court. In my view, once a reference has been made to the Tribunal / Court, the reference has to be answered. Section 2(b) indicates that a decision delivered by the Court would constitute an Award. There must be a determination on the terms of reference and questions addressed / referred to the Court. In the absence of a statement of claim, the Labour Court could very well scan the available record and decide the reference.

10. In the matter of Yadvinder Sharma Vs. State of H.P. and others - Civil Writ Petition NO.683 of 2011, dated 28.11.2011 (High Court of Himachal Pradesh), it has also been held that a reference case cannot be dismissed in default. The learned Division Bench of the Himachal Pradesh High Court has held in paragraph Nos.3 to 6 as under:-

"3. Section 16 provides that the Award of the Labour court or Tribunal shall be in writing. Under Section 17, the same has to be published and within 30 days of publication, the Award becomes enforceable, as provided under Section 17-A. Section 2(b) defines an Award as follows:

"(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 under section 10-A."

Section 2(k) defines Industrial dispute, which reads as follows:

"(k) 'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

4. Settlement of industrial dispute being the main object behind the Industrial Disputes Act, 1947, the provisions as extracted above would show that

once an industrial dispute which could not be settled in conciliation, the same is referred to the Labour Court or the Industrial Tribunal, as the case may be, for adjudication. The purpose of adjudication is determination of the industrial dispute and the same is expressed in the form of an Award. Therefore, once a Reference under Section 10 of the Industrial Disputes Act is made to the Labour court or the Industrial Tribunal, the said forum is to determine the dispute or question referred to it by appropriate adjudication. The Government along with the Reference also forwards the relevant materials also to the Court or the Tribunal. Thus, once a Reference is made, the Court or the Tribunal has to decide the same on the basis of the materials available on record. Whether any party to the dispute cooperates or not is immaterial. Hence, there arises no question of dismissal of the Reference for default. The Reference can be disposed of only by passing an Award whereby the question referred to it has been determined by the Labour Court or the Tribunal by passing an Award. The Presiding Officer, on the basis of the materials available on record should consider the matter on merits and enter the findings.

5. Under Section 18 of the Land Acquisition Act also, the Collector makes a Reference to the Civil Court in the matter of fixation of compensation. In that process also the available materials are made available to the Civil Court. The Reference Court is bound to consider the matter referred to it and take a decision as to the just and proper compensation. The Court cannot dismiss the same for default. This principle has been settled by the Supreme Court in *Khazan Singh (dead) by L.Rs vs. Union of India* reported in AIR 2002 SC 726, wherein it has been held as follows:

“The reference made by a Collector under S. 18 of the Land Acquisition Act, 1894 cannot be dismissed for default. The provisions of Ss. 18, 20, 26 make it clear that the Civil Court has to pass an award in answer to the reference made by the Collector under S. 18 of the Act. If any party to whom

notice has been served by the Civil Court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the concerned party. But non-participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default.”

6. A Division Bench of the Punjab and Haryana High Court had occasion to consider the question as to whether the Labour Court is free to dismiss a Reference for non-prosecution by the decision in *K.K. Rattan vs. Presiding Officer, Labour Court and others*, reported in *High Court, Punjab and Haryana* 378. It has been held that the Labour Court has no power to dismiss a Reference for non-prosecution. It is bound to adjudicate on merits even if the workman is absent. To quote:

“When a dispute is referred to the Tribunal, it has to decide it on merits. There is no power conferred on it to dismiss a reference for non-prosecution. It is the duty of the Labour Court to consider the claim statement of the workman and the written statement of the management and any other record before it and answer the point referred to it on merits.”

11. *This Court (Coram : Smt. Nishita Mhatre, J.), in the matter of Rajman Shrikrishna Morya Vs. Marshal Security Pvt. Ltd. - Writ Petition No. 8682 of 2009, dated 6.9.2010, has concluded that an order of dismissing a reference in default is not an award and as such, the same would be unsustainable since a reference has to be answered either way, whether the litigating sides participate in the proceedings or not.”*

7 In the light of the above, this Writ Petition is partly allowed. The purported award dated 21.02.2012 is quashed and set aside. Reference (IDA) No.33/2005 is restored to the file of the Second Labour

Court, Ahmednagar. The litigating sides shall appear before the Labour Court on 15.02.2017. Formal notices need not be issued by the Labour Court.

8 Considering the laxity on the part of the Petitioner, in the event the reference is answered in the affirmative, the Petitioner shall be deprived of monetary benefits from 21.02.2012 till 15.02.2017 in order to ensure that the Petitioner will not derive any advantage of his own wrong.

9 Needless to state, the Labour Court shall decide the reference proceedings on its own merits and all contentions of the litigating sides are kept open.

10 Rule is made partly absolute in the above terms.