

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 7700 OF 2018

Amrut S/o Ramchandra Wanjari,
Aged about 45 years, Occ. Nil
R/o Neri (Gada), Ungaon (Umthala),
Teh. Kamptee, Dist. Nagpur

...Petitioner

// VERSUS //

1. Land and Water Management Pilot Proj. Wainganga Nagar, Ajni Nagpur through Project Officer.
2. The Sub Divisional Engineer, Pench Irrigation Management Sub Division, Wainganga Nagar, Ajni, Nagpur, Dist. Nagpur
3. Assistant Engineer, Pench Irrigation Management Branch, Ghorpad, Kamptee, Dist. Nagpur
4. Assistant Engineer, Pench Irrigation Management Branch, Tekadi, Tah. Kamptee, Dist. Nagpur

... Respondents

Shri J.L.Bhoot Advocate for the petitioner.

Shri Vinay Rathi, Advocate h/f Shri Purushottam Patil, Advocate for the respondent nos. 2 to 4

CORAM : ANIL S. KILOR, J.

DATED : 7th JULY, 2023.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. In this writ petition, the judgment and order dated 20th November, 2016 passed by the Labour Court, Nagpur in Misc. Application (IDA) No. 16/2013 rejecting the application for setting aside the exparte award dated 24th December, 2012 and for permission to file statement of claim on record, is under challenge.

3. The learned Labour Court, Nagpur has recorded the reasons for rejecting of the application in paragraphs 15 and 16 of the impugned judgment and order which read thus:

15. In the present case, the question arise, whether the party no.2 has approached the Court within 30 days of the receipt of the copy thereof. In this case, the award was passed on 24.12.2012. According to party no.2, he had immediately approached to the Labour Court for the certified copy of the award and he was told by the Clerk that award will be sent to him. The party no.2 contends that thereafter, he had approached to the office of Additional Commissioner of Labour and he was told that award will be sent to him by post. He states that he was waiting for 3-4 months and on 09.10.2013, he was told by the office of the Labour Commissioner that the award has sent to him by post on 14.08.2013. It is pertinent to note that while filing application for setting aside award, the party no.2 had not approached alongwith copy of award, then the question arise why the party no.2 has not approached within 30 days from the date of passing of the award. The certified copy of the award is filed by the party no.2 on 30.10.2013.

16. On this background, Sections 17 and 17-A of I.D.Act are required to be perused. Section 17 deals with the publication of reports and award. It speaks that every report of Board or Court, every arbitration award and every award of the Labour Court, Tribunal or National Tribunal shall, within a period of 30 days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit. The award published shall be final and shall not be called in question in any Court. According to

Section 17-A, an award shall become enforceable on the expiry of 30 days from the date of its publication. In this case, it appears that the award was published on 19.08.2013, when it was displayed by the Additional Commissioner of Labour on the notice board of the Court. On this background, I am of the opinion that the period to challenge the award was within 30 days from the publication of award i.e. from 19.08.2013. After 30 days, the Court, which has passed an award becomes functus officio and has no power to set aside the award and to restore the adjudicated reference.

4. It is evident that the findings recorded in paragraph 16 are contrary to the judgment of the Hon'ble Supreme Court in the case of Harayana Suraj Malting Limited Vs. Phool Chand¹ wherein it has held thus:

35. It is a matter of natural justice that any party to the judicial proceedings should get an opportunity of being heard, and if such an opportunity has been denied for want of sufficient reason, the Labour Court/Tribunal which denied such an opportunity, being satisfied of the sufficient cause and within a reasonable time, should be in a position to set right its own procedure. Otherwise, as held in *Grindlays*, an award which may be a nullity will have to be technically enforced. It is difficult to comprehend such a situation under law.

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37. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is

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bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent.

5. In the light of above referred observations, as I have observed that the findings recorded by the Labour Court in paragraph 16 of the impugned judgment and order, are erroneous and not sustainable in the eyes of law, I am of the opinion that the matter needs to be remanded back to the Labour Court for reconsideration of the application after hearing both the parties. Accordingly, I pass the following order.

- i. Writ petition is partly allowed.
- ii. The judgment and order dated 20th November, 2016 passed by the Labour Court, Nagpur in Misc. Application (IDA) No. 16/2013 is hereby quashed and set aside and the matter is remanded back to the Labour Court, Nagpur for deciding the same afresh after hearing both the parties.
- iii. All the points are kept open.

[ANIL S. KILOR, J.]