

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.12758/1997
(From the judgement and order dated 06/01/1997 in CWP 1831/95
of The HIGH COURT OF DELHI AT N. DELHI)

KANTA RANI

Petitioner (s)

VERSUS

R.L. CHUGH & ORS
(With Appln(s). for c/delay in filing SLP)
(For Final Disposal)
(With Office Report)
With
SLP(C)No.12759/1997,SLP(C)No.14742/1997

Respondent (s)

Date : 1.12.2000: These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Petitioner (s) Mr. G.B. Pai, Sr. Adv.
Mr B.S. Mor, Adv.
Mr. Mahinder Singh Dahiya,Adv.

Mr. Roy Birbal, Sr. Adv.
Mr. Rakesh K. Khanna, Adv.
Ms. Pallavi Chaudhary, Adv.
Mr. Surya Kant, Adv.

Ms. M. Qamaruddin, Adv. for
Mr M. Qamaruddin, Adv.

For Respondent (s) Ms. Rukhsana Choudhary, Adv. for
Ms. S. Janani,Adv.

Mr. Umesh Sharma, Adv.
Mr. R.C.Kaushik, Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....J
.SP2

SLP(C) No. 12759/1997 & SLP(C) No.12758/1997@@
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Leave granted.
Appeals are allowed in terms of the signed order.

SLP(C) No. 14742/1997@@
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List after service is complete on all the parties.

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(Meenu Sethi) (Meena Trikha)
Court Master Court Master
Signed order is placed on the file

.....L.....I.....J
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CIVIL APPEAL NO. OF 2000@@

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(Arising out of Special leave petition No.(C) No.12759 of 1997)

Anil Sood .. Appellant

Vs.

Presiding Officer, Labour Court II .. Respondent

WITH

Civil Appeal No...../2000(@ SLP(C) No.12758 of 1997)

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.....L.....I.....J
.SP2

C.A. No...../2000 @ SLP(C) No.12759/1997@@
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Leave granted.

A reference was made under the Industrial Dispute Act to the Labour Court in respect of a dispute between the parties to this proceeding. An award was made on 11.9.1995. An application was filed by the appellant on 6.11.1995 averring that he had no notice of the proceedings in the reference. That application came to be dismissed on the ground that the Labour Court has become functus officio having passed an award Thereupon a Writ petition was filed before the High Court which also did not end in their favour. Hence this appeal.

Learned counsel for the appellant submitted that there are ample powers with the Labour Court to set aside the award made ex-parte if sufficient cause is shown as enunciated by

this Court in 1980(Sup) SCC 420- Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and others.

Learned counsel for the respondents submitted that in fact a finding had been recorded by the Labour Court in the award that the appellant had been served with notice and in spite of which did not appear. Therefore in the proceedings he had been set ex-parte. He submitted that material is sufficient to hold that there was service of notice upon the appellant and hence there is no cause for the appellant to come before this Court against rejection of the application made by the Labour Court which has been affirmed by the High Court in a Writ proceedings.

This Court in Grindlays Bank Ltd. (supra) case examined the scheme of the provisions under the Industrial Disputes Act and enunciated that Section 11 of the Industrial Disputes Act conferred ample powers upon the Tribunal to devise its own procedure in the interest of justice which includes powers which bring out the adjudication of an existing industrial dispute. Sub-Section (1) and (3) of Section 11 of the Act thereby indicate the difference between procedure and powers of the Tribunal under the Act while the procedure is left to be devised by the Tribunal to suit carrying out its

functions under the Act, the extent of powers of Civil Court are clearly set out.

The aspect that the party against whom award is to be made due opportunity to defend has to be given is a matter of procedure and not that of power in the sense in which the language is adopted in Section 11. When matters are referred to the Tribunal or Court they have to be decided objectively and the Tribunals/Courts have to exercise their discretion in a judicial manner without arbitrariness by following the general principles of law and rules of natural justice.

The power to proceed ex-parte is available under Rule 22 of the Central Rules which also includes the power to inquire whether or not there was sufficient cause for the absence of a party at the hearing, and if there is sufficient cause shown which prevented a party from appearing, then if the party is visited with an award without a notice which is a nullity and therefore the Tribunal will have no jurisdiction to proceed and consequently, it must necessarily have power to set aside the ex-parte award.

If this be position in law both the High Court and the Tribunal fell into an error in stating that the Labour Court had become functus officio after making the award though ex-parte. We set aside the order made and the award passed by the Labour Court and affirmed by the High Court in this regard, in view of the fact that the learned counsel for the respondent conceded that application filed by the appellant be allowed, set aside the ex-parte award and restore the reference. To decide the matter afresh, the parties shall appear before the Labour Court on 11.12.2000 to take further directions as regards the proceedings. As the matter is very old, it would be appropriate for the Labour Court to dispose of this reference as expeditiously as possible but not later than six months from today.

Appeal is allowed accordingly.

C.A. No...../2000 @ SLP(C) No. 12758/1997@@

CC

Leave granted.

The questions that arise in this appeal are identical to those considered by us in C.A. No...../2000 (arising out of SLP(C) No.12759/1997). In view of the decision in the said appeal and for the reasons stated therein, this appeal is allowed in the same terms as set forth therein. The parties

shall appear before the Labour Court on 11.12.2000 to take further directions as regards the proceedings. As the matter is very old, it would be appropriate for the Labour Court to dispose of this reference as expeditiously as possible but not later than six months from today. The appeal is allowed.

.....J@@
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(S. RAJENDRA BABU)@@
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(B.N.AGRAWAL) @@
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New Delhi,@@
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December 1, 2000.@@
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