

Before P. C. Jain, C.J., and S. S. Kang, J.  
**WARRING CO-OPERATIVE AGRICULTURE SERVICES  
 SOCIETY,—Appellant.**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents.**

Letters Patent Appeal No. 1113 of 1985.

February 28, 1986.

*Industrial Disputes Act (XIV of 1947)—Sections 17 and 20(3)—Ex-parte award rendered by the Labour Court—Such award duly published under Section 17 of the Act—Application for setting aside the award made to Labour Court after the expiry of 30 days of its publication—Such application rejected by the Labour Court—Order of the Labour Court—Whether valid—Said Court—Whether becomes functus officio after 30 days of the publication of the award.*

*Held*, that it is manifest from a reading of sections 17 and 20(3) of the Industrial Disputes Act, 1947, that the appropriate government is enjoined by law to publish the award of the Labour Court within 30 days of its receipt. When the award is published by the Government, it becomes final and cannot be called in question by any Court in any manner whatsoever. The proceedings before the Labour Court which commenced on the reference of the dispute for adjudication under Section 10-A of the Act are deemed to have concluded on the date on which the award becomes enforceable under Section 17-A, i.e., on the expiry of 30 days of the date of its publication under section 17. It is patent that the Labour Court remains seized of the matter only until the time the award becomes enforceable. Till then it has jurisdiction to entertain any application regarding the dispute pending before it. As such after 30 days of the publication of its award, the Labour Court becomes functus officio and the order of the Labour Court refusing to entertain the application for setting aside the ex-parte award is, therefore, valid.

(Para 5)

M/s. Ram Sarup Jiwan Lal vs. Gurdas Ram and others.  
 Civil Writ Petition No. 2157 of 1983 decided on September 9, 1985.

(Over-ruled)

*Letters Patent Appeal under Clause X praying that the appeal be allowed, the judgment of the learned Single Judge, dated 24th July, 1985, of Hon'ble Mr. Justice Pritpal Singh passed in Civil Writ Petition No. 1 of 1985 be set aside and the writ petition be allowed with costs.*

Arun Jain, Advocate, for the appellant.

J. C. Verma, Advocate for respondent No. 3.

Nemo, for others.

## JUDGMENT

*Sukhdev Singh Kang, J.—*

(1) “Whether an application for setting aside on *ex parte* award made by a Labour Court on a reference under Section 10(1) of the Industrial Disputes Act (‘the Act’ for short) filed after the expiry of 30 days of the publication of the award under section 17 of the Act is competent in the face of clear language of section 20(3) of the Act” is the prestinely legal issue, raised in this Letters Patent Appeal. The legality and validity of the *ex parte* award dated 3rd June, 1984 of the Labour Court is also sought to be challenged.

(2) A broad-brush factual back-drop will help illumine the contours of the forensic controversy;

The applicant-society terminated the services of its Secretary Harjit Singh, respondent No. 3, on June 12th, 1981 because he had acted prejudicially to the interest of the society and his continuance in service was not considered to be in the interest of the Society. Harjit Singh raised an industrial dispute and the same was referred to the Labour Court for adjudication under Section 10(1) of the Act. Harjit Singh, the workman, appeared before the Labour Court, Bhatinda. However, nobody appeared on behalf of the appellant-Society. The Labour Court came to the conclusion that service had been effected on the Society. It took *ex parte* proceedings and ultimately passed an *ex parte* award on June 3, 1984, accepting the reference and quashing the orders of termination of service of respondent No. 3. This award was published in the Gazette on June 22, 1984.

(3) The appellant-Society moved an application on September 24, 1984, before the Labour Court seeking the setting aside of the *ex parte* award. It was pleaded therein that in December, 1983, the Managing Committee of the Society ceased to function and an Administrator was appointed in its place. The workman played a fraud and got the summons issued by the Labour Court delivered on a person, who was not competent to receive the same on behalf of the appellant-Society. The Administrator of the Society did not receive any summons and was not served in any manner. The Administrator came to know about the *ex parte* award on September 21, 1984, when Harjit Singh visited the Society’s Office and apprised the Administrator about the award and sought his permission to join duty.

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(4) The Labour Court,—*vide* his orders dated December 13, 1984, dismissed the application. It held that the application had been filed after the expiry of more than 30 days of the publication of the award. It had become *functus officio*. The application was incompetent, Aggrieved the appellant-society filed Civil Writ Petition No. 1 of 1985 under Articles 226/227 of the Constitution of India impugning the *ex parte* award and the order of the Labour Court dated December 13, 1984. The learned Single Judge upheld the orders of the Labour Court dismissing the appellant-Society's application as incompetent and dismissed the writ petition. Still undaunted, the appellant-Society has come up in this Letters Patent Appeal.

(5) It has been argued by Shri Arun Jain, learned counsel for the appellant that summons issued by the Labour Court were not served on a person competent to represent the Society. The Managing Committee of the Society had been superseded and an Administrator had been appointed in its place. The summons should have been served on the Administrator. No notice or summons were issued or served on the Administrator of the Society. Service on the Ex-president of the Society was no service in the eye of law. An application for setting aside the *ex parte* award was made on September 24, 1984, i.e., within three days of coming to know about it. The Act or the Rules framed thereunder do not prescribe any limitation for filing an application for setting aside an *ex parte* award. The purpose behind making the award final under sub-section (2) of section 17 of the Act was only to exclude the jurisdiction of the Civil Courts to adjudicate upon disputes challenging the validity of an award of a Labour Court. The intention was not to make the award sacrosanct. Even if it be accepted that the Labour Court becomes *functus officio* on the publication of the award, that will not take away its jurisdiction to entertain an application for setting aside the *ex parte* award or order. An *ex parte* award/order never becomes final. Even a Civil Court after passing an *ex parte* decree becomes *functus officio*. However, it has powers to set aside the same on a proper application made to it within the period prescribed for this purpose by the Limitation Act. The same principles should apply and govern an application for setting aside an *ex parte* award of the Labour Court. He further contended that the interpretation placed on the various statutory provisions by the learned Single Judge does not advance the cause of justice and is not in consonance with the objects of the Act. An unscrupulous party to a labour dispute may

fraudulently obtain a false report of service of summons on its adversary and may be able to get an *ex parte* award in its favour and the other party may not come to know about the award within 30 days of its publication, then the injustice meted out to it shall be perpetuated. The award will not be challengeable in a Civil Court. The writ petition will not be the appropriate and efficacious remedy. The adjudication of the question of service will entail the determination of disputed questions of fact which the High Court in the exercise of its extra-ordinary jurisdiction may not like to undertake. Since the controversy hinges on the construction of various provisions of the Act, it will be apposite to extract those provisions so far as they have a bearing on the controversy :

“S. 17. *Publication of reports and awards.*—(1) Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

(2) Subject to the provisions of Section 17-A, the award published under sub-section (1) shall be final and shall not be called in question by any court in any manner whatsoever.”

S. 17-A(1) *Commencement of the award.*—(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under Section 17:

Provided that—

- (a) if the appropriate Government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or
- (b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal;

that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of

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the award, the appropriate Government or as the case may be, the Central Government may, by notification in the official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

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S. 20. *Commencement and conclusion of proceedings:*

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(3) proceedings before an arbitrator under section 10-A or before a Labour Court, Tribunal or National Tribunal shall be deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication, as the case may be, and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under Section 17-A".

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It is manifest from a reading of the above quoted provisions of law that the appropriate government is enjoined by law to publish the award of the Labour Court within 30 days of its receipt. When the award is published by the Government, it becomes final and cannot be called in question by any court in any manner whatsoever. The proceedings before the Labour Court which commenced on the reference of the dispute for adjudication under section 10-A of the Act are deemed to have concluded on the date on which the award becomes enforceable under Section 17-A, i.e., on the expiry of 30 days of the date of its publication under section 17. It is patent that the Labour Court remains seized of the matter only up till the time the award becomes enforceable. Till then it has jurisdiction to entertain any application regarding the dispute pending before it." After 30 days of the publication of its award it became *functus officio*. It cannot entertain and adjudicate upon any application in relation to the industrial dispute adjudicated upon by it. The provisions of the Act have been designed to provide for the investigation and settlement of industrial disputes and to promote industrial harmony by

providing for speedier resolution of industrial disputes by removing the delays occasioned by procedural technicalities governing the courts. The ultimate object of industrial adjudication is to help growth and progress of the national economy. It is for this reason that industrial disputes are settled by industrial adjudication based on principles of fair play and justice. It is in the interest of the society at large that industrial disputes are resolved in the shortest possible time and they should not remain pending for years leading to disaffection and tension resulting in decreased production. With that end in view the award of the Labour Court is declared to be final and the jurisdiction of the civil courts to adjudicate thereupon has been barred. The purpose underlying section 20(3) is to declare that the proceedings before the Labour Court come to an end after 30 days of the publication of the award. The matter should rest there. The disputes should not go on endlessly. No appeal is provided against the award of the Labour Court for this reason.

(6) It was not necessary to expressly provide for any period of limitation for filing application for setting aside an *ex parte* award because the Labour Court retains its jurisdiction to deal with the dispute only upto 30 days after the publication of the award. Thereafter it becomes *functus officio* and cannot entertain any application in respect of the reference or award.

(7) With the publication of the award, the disputants become aware of the award. They have 30 days to approach the Labour Court for redressal of any grievance. It is not necessary to analyse the above statutory provisions on first principles any further because the matter is not *res integra*. A learned Single Judge of this Court had an occasion to construe the provisions of sections 17, 17-A and 20(3) of the Act in *Sarbjit Singh and another v. Nankana Sahib Transport Company (P) Ltd., and others* (1). It has been observed:

The proceedings with regard to a reference are deemed to be concluded only on the day the award becomes enforceable, that is, on the expiry of thirty days after publication under S. 17-A of the Industrial Disputes Act. Till then the Tribunal or Labour Court retains jurisdiction over the dispute referred to it for adjudication and up to that date any application in connection with the dispute can be made.

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(1) 1972 (2) Labour Law Journal, 341.

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This issue again cropped up before I. S. Tiwana, J., in *Ved Parkash and others vs. The State of Punjab and others* (2). The view taken in Sarabjit Singh's case (*supra*) was affirmed and it was held that an application for setting aside an *ex parte* award of a Labour Court can be made upto the expiry of 30 days after the publication of the said award under section 17-A of the Act and after that the Court becomes *functus officio* and does not retain the jurisdiction to set aside the *ex parte* award. The matter has been set at rest by a decision of the final Court in *Grindlays Bank Ltd. v. The Central Government Industrial Tribunal and others* (3). In that case on the date fixed for hearing the representative of the workman failed to appear before the Industrial Tribunal and the Industrial Tribunal had taken *ex parte* proceedings and ultimately passed an *ex parte* award. An application was made for setting aside the *ex parte* award on the ground that the petitioner was prevented by sufficient cause from appearing before the Tribunal when the reference was taken up for hearing. The Tribunal was satisfied that the absence of the representative of the workman was sufficient cause. He allowed the application and set aside the *ex parte* award. The employer challenged that order by way of a writ petition in the High Court. The High Court dismissed the writ petition. The employer went up in appeal to the Supreme Court. One of the questions raised before their Lordships was:

“Whether the Tribunal became *functus officio* on the expiry of 30 days from the date of publication of the *ex parte* award under S. 17 by reason of sub-section (3) of S. 20 and, therefore, had no jurisdiction to set aside the award and the Central Government alone had the power under sub-section (1) of S. 17-A to set it aside.”

This question was answered as under:—

“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

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(2) 1981 (1) S.L.R. 818.

(3) A.I.R. 1981 S.C. 606.

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. That stage is not reached till the award becomes enforceable under S. 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 No. 3, acting on behalf of respondents Nos. 5 to 17 on January 19, 1977, i.e., before the expiry of the 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."

(Emphasis supplied).

This view was reiterated by the Apex Court recently in *Satnam Verma v. Union of India* (4).

(8) Shri Arun Jain, learned counsel for the appellant brought to our notice a decision of a learned Single Judge of this Court in *M/s. Ram Sarup Jiwan Lal vs. Gurdas Ram and others* (5), which, indeed,

(4) A.I.R. 1985 S.C. 294.

(5) CW 2157 of 1983 decided on 9th September, 1985.



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does support the contention of Mr. Jain that an *ex parte* award is never final and can always be set aside on sufficient cause being shown. It seems that the decision of this Court in *Sarbjit Singh's case*, (supra) and *Ved Parkash's case* (supra) were not brought to the notice of the learned Single Judge. It is also apparent that the observations of their Lordships in *Grindlays Bank's case* (supra) that the proceedings with regard to a reference under S. 10 of the Act are 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, were not highlighted by the learned counsel for the respondent. The observations from *Grindlays Bank's case* (supra) extracted in *M/s. Ram Sarup Jiwan Lal's case* are followed by the under quoted observations:

“The Tribunal had the power to deal with an application properly made before it for setting aside an *ex parte* award and pass suitable orders.”

A reading of the whole of para 14 of the report in *Grindlays Bank's case* (supra) leads to an irresistible conclusion that proceedings in a reference under Section 10 of the Act are not deemed to be concluded until the expiry of 30 days after 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. Impliedly thereafter it became *functus officio* and cannot entertain an application for setting aside an *ex parte* award. In this situation we are in respectful disagreement with the view taken in *M/s. Ram Sarup Jiwan Lal's case* (supra). It does not lay down correct law. It runs counter to the ratio of this court's decisions in *Sarbjit Singh's case* (supra) and *Ved Parkash's case* (supra), and the two decisions of the Final Court in *Grindlays Bank's case* (supra) and *Satnam Verma's case* (supra). We over rule it.

(9) We are of the considered view that the analogy of an *ex parte* order or decree of a civil court does not apply to an *ex parte* order or award of a Labour Court. There are no provisions analogous to subsection (2) of sections 17-A and 20 (3) of the Act in the Civil Procedure Code which governs the proceedings in the trial of a suit by the

civil Court. The Civil Procedure Code does not declare that any order or decree of a civil court shall be final or that the proceedings before a civil court shall be concluded within the prescribed time of the publication of such order or decree. An elaborate procedure has been enacted in rule 13 of Order IX of the Civil Procedure Code for setting aside an *ex parte* order or decree and imitation has been provided therefore. We answer the question posed at the threshold in the negative.

(10) Lastly, it was contended by the learned counsel for the appellant that the impugned award was passed in violation of the principles of natural justice. Service of the summons was effected on the Ex-President of the Society and not on the administrator who had taken charge of the society on the suspension of the previous Managing Committee. This plea was raised before the learned Single Judge and he did not entertain the same because this factual assertion had not been accepted by Harjit Singh, workman, in his reply to the writ petition. He had pleaded therein that the Managing Committee was functioning when the service on the president was effected. So adjudication of this issue required determination of a disputed question of fact. The learned Single Judge refused to go into the disputed questions. It is well settled that the writ jurisdiction was not the proper forum for settling the factual disputes.

(11) For the aforesaid reasons we find no merit in the appeal and the same is dismissed with costs. Counsel's fee Rs. 300.

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H.S.B.