

Id. NO. 158/22012

1st March, 2023

Present : Sh. Vinay Kumar, proxy A/R for the claimant with the Gen Secy.
Sh. Vijender Singh.
Shri M.C Kochhar, Ld.A/R for the management.

The record has been put up today pursuant to an application filed by the respondent BSNL for early hearing of the matter for the grounds taken in the application.

A/R for both the parties are present. Heard argument on the application filed by the respondent BSNL praying grant of interim stay for the execution of the award dated 23.02.2021 in this industrial dispute.

The facts leading to filing the present application in short that the claimant workman through their General Secretary had raised an industrial dispute demanding regularization of their service. The tribunal award dated 23.02.2021 held that the action of the mgt is illegal and further directed the mgt to pay lump sum compensation of Rs. 4 Lac to each of the retrenched workmen and to pay the wages to the serving workmen as per the regular pay scale of their as per regular employees with a further direction to implementation of the award within 3 months from the date of publication of the same. The workmen thereafter took step for execution of the said award.

At this juncture, the respondent BSNL came up with an application for setting aside the award dated 23.02.2021 and with a separate petition seeking an order of interim stay on the execution of the award. Copy of the application being served the claimant workmen filed their reply to the application. During the hearing the Ld. A/R for the respondent submitted that the award dated 23.02.2021 was obtained by the workmen by playing fraud on the tribunal. The award has been challenged before the Hon'ble High Court of Allahabad and an application

for stay on execution of an award has been filed and the same is pending. But the executing authority has issued recovery notice for realization of the amount awarded. Not only that the executing authority have also taken steps for putting lock on the premises of the respondent. If the action proposed by the executing authority would not be prevented by an interim order of stay pending disposal of the application for setting aside the ex-parte award, serious prejudice shall be caused. Moreover, BSNL is a state own corporation and there is least chance of fleeing away of the reach of law. Not only that BSNL is the Govt. originations providing internet facilities to all Govt. offices including the courts. If the premises of BSNL would be lock the activities of all the offices and departments will be seriously impacted. Hence, he insisted for the grant of interim stay on the execution of the award. He placed reliance in the case of Haryana Suraj Multing Ltd. Vs. Phool Chand (2018) 16 SCC 567 to argue that tribunal has power to recall the award passed and it doesnot becomes functus officio for the reason that the award has been published. He also argued that the application for setting aside the award has been filed after delay but the limitation act doesn't apply to the industrial dispute. His other argument is that when the award was obtained by playing fraud the same is a nullity and cannot be and shall not be a binding award. With these assertion he argued that the applicant respondent have a strong prima facie case for setting aside the award and till an order is passed on the application filed for the purpose, the interest of justice, demands that the execution be stayed by an interim order.

The Ld. A/R for the claimant counter argued that the application has been filed after an unreasonable period of time when the award has already been published. Moreover, the Tribunal has no power to review its own order. He also pointed out that the applicant respondent has admitted that the matter is pending before the High Court of Allahabad and the claimants have furnished the number of writ petition pending

before the Hon'ble High Court of Allahabad i.e writ (c)no. 26365 of 2021. On behalf of the claimants reliance has been placed in the case of Kapra Mazdoor Ekta Union Vs. Birla Curtains Spinning and Weaving Mills Ltd. (2005) 13 SCC 777 to argued that the tribunal has no power under the ID. Act of reviewing its own order either expressly or by necessary implication. Since, the respondent applicant are seeking a review on merit the same cannot be entertained.

On perusal of the application filed by the respondent, it clearly appears that the award dated 23.02.2021 has been challenged before the Hon'ble High Court of Allahabad and an application for interim stay is also pending there. It seems that the applicant respondent has moved the matter in both the forums i.e Hon'ble High Court of Allahabad as well as before this Tribunal which amounts to forum shopping. In such a situation and when the writ challenging the award is pending before the Hon'ble High Court of Allahabad. It is held that the prayer for interim stay of the execution proceeding cannot be entertained. The petition for interim stay is accordingly rejected.

Call the matter on *24-05-2023* for hearing on the other application filed by the respondent containing the prayer for setting aside the ex-parte award if the same survives in view of the writ petition pending before the Hon'ble High Court of Allahabad.

Presiding Officer
CGIT-II