

ENFORCEMENT OF AWARDS

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1. What is an Award?

AN "AWARD" means "an interim or final determination by an Industrial Tribunal of any industrial dispute or any question relating thereto."¹ This definition was substituted by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (36 of 1956), with effect from March 10, 1957. Under the amended definition, besides industrial tribunals, labour courts and national industrial tribunals have also been added as adjudicating authorities. An arbitration award made under section 10A is also included in the definition. Thus, an order shall be deemed to be an award in terms of section 2 (b) of the Act, if :

- (i) it is an interim or final determination of an industrial dispute, or
- (ii) it is an interim or final determination of any question relating to such dispute, and
- (iii) the said interim or final determination is made by a labour court, an industrial tribunal or a national tribunal, or
- (iv) it is an arbitration award under section 10A.

The first part of the definition of 'award' specifies a determination, final or interim. The second part pertains to a determination of any question relating to the dispute. However, the basic postulate common to both the parts is the existence of an industrial dispute, actual or apprehended. The determination contemplated is of the dispute, or a question relating thereto, on merits. The mere fact that the order of a labour court is published under section 17(1) of the Industrial Disputes Act does not confer on that the status of an award.²

The Calcutta High Court has held that the Parliament has chosen not to restrict the definition of 'award' to a determination by a labour court, industrial tribunal or national industrial tribunal constituted under

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1. Section 2(b), Industrial Disputes Act, 1947.

2. *Cox & Kings (Agents) Ltd. v. Their Workmen*, 1977 LIC 897 (SC).

sections 7, 7A or 7B of the Industrial Disputes Act, 1947. While referring to an arbitration award, it has specifically referred to an arbitration award under section 10A of the Industrial Disputes Act, 1947. When the Supreme Court hears an appeal against an award and modifies the same, the court is exercising the powers of the industrial tribunal itself and the modified award is an award of the tribunal within the meaning of section 2(b) of the Industrial Disputes Act, 1947.³ Also an order passed under section 33(5) of the Act by conciliation officer under section 33(2)(b) of non-prosecution is not an award since such order would only mean that there was no application under section 33(2)(b) of the Act.⁴

Thus, an award should satisfy the following requirements :

- (a) The parties to be bound by or to perform the award must be certain.
- (b) If the payment of a sum of money by one party to another is directed, the amount to be paid must be specified, or some rule or direction given by which the sum to be paid may be calculated without any doubt.
- (c) If the performance of any conditions or terms is directed by the award, such conditions or terms must be clearly defined; and specific directions should be given as to their proper performance.
- (d) The time for performance of the award, or of any conditions or terms contained therein, must be expressly fixed, or such directions given as will enable the time to be easily determined.

2. Interim Award as 'Award'

'Award' is defined as an interim or final determination, not only of an industrial dispute, but also of any question relating thereto. It is thus clear that in regard to even a single question, both an interim and a final determination are contemplated. Thus, it is open to the tribunal to give an award about the entire dispute at the end of all proceedings. It is also open to the industrial tribunal, to make an award about some of the matters referred to it whilst some others still remain to be decided. However, such awards are not in the nature of interim relief, for, they decide the industrial dispute or some question relating thereto. Interim relief, on the other hand, is granted under the power conferred on the

3. *National Tobacco Co. of India Ltd. v. IT*, 1979 LIC 524, 525.

4. *Westinghouse Saxby Farmers Ltd. v. State of West Bengal and Others*, 1999 (3) LLN 979.

tribunal with respect to matters incidental to the points of dispute for adjudication.⁵

3. Publication of an Interim Award — When not Imperative

It is not obligatory on a tribunal to submit an interim award to the appropriate government, and if it chooses not to do so, *a fortiori*, the question of publication of such an award does not arise.⁶ An order of this nature can be published but it need not be always published. It will depend on the facts and circumstances of the case. But, where the tribunal abrogates its jurisdiction by deciding that it could never be published, it commits an error of law.⁷ An interim award finally determining one of the disputes referred must, however, be published.⁸ But, a mere publication of what is not an award does not make it an award.⁹

4. All Orders are Not Awards

An order dismissing the reference for non-prosecution,¹⁰ recording withdrawal of a demand,¹¹ allowing a dispute to be withdrawn in order that it may be referred to an arbitrator,¹² declaring no industrial dispute existed and hence the reference was incompetent,¹³ leaving some issues to be settled by the parties themselves,¹⁴ determining that the tribunal had not been properly constituted,¹⁵ is not an award. Any award by a chief minister is not an award.¹⁶ The Andhra Pradesh High Court has also held that the order passed by the labour court under section 33-C(2) of the Act is not an award within the meaning of section 2(b) of the Industrial Disputes Act, 1947. The court pointed out that an award

5. *Management of Hotel Imperial v. Hotel Workers' Union*, 1959 II LLJ 544 (SC); *Rajasthan State Road Transport Corporation v. IT*, 1974 LIC 310 (Raj). *Asbestos Cement Ltd. v. P.D. Sawarkar*, 1970 II LLJ 129 (SC).

6. *Allen Berry and Co. Ltd. v. Their Workmen*, 1951 I LLJ 228 (LAT).

7. *Jeewanlal (1929) Ltd. v. State of West Bengal*, 1975 LIC 1161 (Cal).

8. *Management of Hotel Imperial*, *supra* note 5.

9. *Supra* note 2.

10. *Workmen of Travancore Rayons Ltd. v. Travancore Rayons Ltd.*, 1967 I LLJ 518 (Ker).

11. *Technological Institute of Textiles v. Its Workmen*, 1952 II LLJ 149 (SC).

12. *Committee v. Lt. Governor, Delhi*, 1972 LIC 1228, 1231 (Del).

13. *Supra* note 2.

14. *Life Insurance Corporation Higher Grade Assistants Ass. v. Life Insurance Corporation of India*, 1973 I LLJ 87 (Mad).

15. *Management of Ambala Cantonment Electric Supply Corpn. Ltd. v. Workmen*, 1971 LIC 854 (P&H).

16. *East Coast Commercial Co. Ltd. v. A Prakasa Rao*, 1977 LLJ 18 (AP).

means only an interim or final determination of any industrial dispute or any question relating thereto by any labour court industrial tribunal or national industrial tribunal and includes an arbitration award made under section 10A, and according to section 2(k) 'industrial dispute' means any dispute or difference between the employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or with the conditions of labour of any person.

The court further held that the labour court under section 33-C(2) 'decides' as to the quantum of amount due to the workman and it is a 'decision'. That is the duty imposed upon the labour court under section 33C(2), as is evident from the opening words of sub-section (4) of section 33C, whereas the duty of the labour court, tribunal or national tribunal, when an industrial dispute has been referred to them, is to submit its award to the appropriate government. Section 15 of the Industrial Disputes Act expressly uses the expression 'award', whereas in section 33C(2) and (4) the expression used is 'decision'.¹⁷

Section 7A of the Industrial Disputes Act provides for the publication of every report of a board or court together with any minute of dissent given by any member, every arbitration award and every award of an adjudicating authority. It further requires that such publication shall take place within a period of thirty days from the date of its receipt by the appropriate government in such manner as it thinks fit. Normally, these reports and awards are published in the official gazette of the state government. Sub-section (2) provides that, subject to the provisions of section 17A, an award published under sub-section (1) shall be final and shall not be called in question by any court in any manner whatsoever.

5. Publication Mandatory but Provision Regarding Time not So

Sub-section (1) of section 17 provides that an award shall be published in such manner as the government may think fit within a period of thirty days from the date of its receipt. However, mere non-publication within the time mentioned in sub-section (1) would not invalidate the award itself. There is nothing in the Act to indicate that publication contrary to the provisions of sub-section (1) would go to the root of the award itself or make the award illegal or void. Delay in publishing the award only postpones its finality under section 17(2) of

¹⁷ *Divisional Forest Officer, Nalgonda & Anr. v. Dy. Commissioner of Labour RR Zone, Chikkadapally, Hyderabad & Ors*, 1999 LLR 697 (AP).

its becoming enforceable under section 17A. No other consequence flows from the delay and, therefore, the provision of subsection (1) should be considered to be merely directory and not mandatory.¹⁸

If an award is not published, it never becomes effective and any claim under section 33C(2) founded thereupon can not be enforced.¹⁹ When a tribunal refuses to forward its interim award for publication by the government under section 17, it fails to exercise the jurisdiction vesting in it and there is an error of law apparent on the face of the record.²⁰ The State Government has no power to rescind the publication of an award, particularly in view of the provisions of section 17A.²¹ This section does not require publication in the manner prescribed by the state government, of a judgment or order of the Supreme Court.²²

6. Finality of the Award

By the express words of sub-section (2) of section 17 of the Industrial Disputes Act, 1947, the award of the tribunal is final. There is no right of appeal to the high court. In the exercise of its supervisory jurisdiction, the high court cannot convert itself into a court of appeal and correct errors of fact, errors in the appreciation of oral and documentary evidence and errors in drawing inferences or omission to draw inferences.²³

7. Commencement of an Award

Sub-section (1) provides that on the expiry of thirty days from the date of its publication under section 17, an award, including an arbitration award, shall become enforceable. Some exceptions to this general rule have, however, been provided. The exceptions are to the effect that if, in the opinion of the appropriate government or the central government, in the cases specified, it is inexpedient on public grounds affecting the national economy or social justice to give effect to the whole or any part of an award, the government concerned may declare that the award shall not become enforceable on the expiry of the said period of thirty days. After such a declaration has been made, sub-section (2) provides that the appropriate government or the central government may, within ninety days from the publication of the award, make an order rejecting

18. *Erumell Estate v. IT*, 1962 II LLJ 144 (Ker).

19. *Rasbehari Mohanty v. LC*, 1974 II LLJ 222 (Ori).

20. *Jeewanlal (1929) Ltd. v. State of West Bengal*, 1975 LIC 1161 (Cal).

21. *Kashi Prasad & Sons v. State of UP*, 1976 LIC 924.

22. *Jessop & Co. v. M. Mukherjee*, 1975 LIC 1307 (Cal); see also *Management of Hotel Imperial*, *supra* note 5.

23. *Workmen of Kettlewell Bullen & Co. Ltd. v. Kettlewell Bullen & Co. Ltd.*, 1960 II LLJ 189 (SC).

or modifying the award. In one case it has been held that breach of an award is a continuing offence and the embargo placed under section 468 Cr PC of limitation is not applicable to the case of present nature. Even otherwise, in the cases of social beneficial legislation and of offence arising under the same, the court can and should take note of provisions of section 473 Cr PC which empowers the court to extend the period of limitation in certain circumstances. This provision under section 473 Cr PC is based on principles of natural justice.²⁴

8. Date of Operation of the Award

The benefits conferred by an award may relate to a period prior to the award. The tribunal has jurisdiction to confer benefits for a period prior to the award.²⁵ Where it is specifically mentioned in the award that it shall come into operation within a week from the date of its publication, such a provision does not violate the provision relating to the enforceability of the award under section 17A and such a direction is not *ultra vires* the powers of the tribunal nor does it vitiate the award.²⁶

The true effect of sub-section (4) of section 17A read with sub-section (1) of the said section is that in an award the date with effect from which its terms shall come into operation may be mentioned which may be a past date, but the period from which those terms can be enforced will be the period mentioned in sub-section (1) of section 17A. In other words, the terms of an award may be retrospective in operation, but the period from which those terms may be enforceable will be the period mentioned in section 17A. In other words, in saying that "the award shall come into operation with effect from such date as may be specified in the award", and in saying that "the award becomes enforceable under sub-section (1) of section 17A, the legislature meant two different things.

9. An Award is Binding upon Successors and Assignees

After raising the disputes and on failure to resolve the same through conciliation, if the appropriate government is approached it may make reference of the disputes to the appropriate forum under section 10 of

24. *Management of M/s. Naga Theatre v. Sri R. Raja*, 1999 LLR 822 (Karn).

25. *Bombay Garage Ltd. v. IT*, 1953 1 LLJ 14 (Bom).

26. *South Travancore Electrical Workers' Union v. Nagercoil Electric Supply Corpn.*, 1954 1 LLJ 16 (TC).

the Act. The forum to which the dispute might have been referred is required to conduct the proceedings before it and pass award as provided under section 17 of the Act. Once it is published it becomes final subject to the provisions of section 17A of the Act, and it cannot be called in question in any court in any manner whatsoever. Unless by declaration made under section 17A of the Act the appropriate government states otherwise it becomes enforceable on the expiry of the period of 30 days from the date of publication of the award. Such award is binding on all the parties to the industrial dispute. It may be binding, to all other parties who might have been summoned to appear in the proceedings as party to the dispute. It may be binding the successor of employer and the employee who might have been employed subsequent to the date of reference. Thus it is evident from the scheme of the Industrial Disputes Act that the award is binding, not only on the parties to the award or all the parties summoned to appear in the proceedings as party to the dispute but also on the successors or assignees in respect of the establishment to which the dispute relates.

10. Enforcement under Section 33C

By the amending Act (43 of 1953), the legislature took a further step by adding Chapter V-A to the Act, dealing with lay-out and retrenchment. In this context section 33C reads as under :

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue :

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer ;

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Initially at the time of enactment of the Industrial Disputes Act, 1947 the machinery for the enforcement of awards was very defective. The only remedy available was by way of prosecution and punishment under section 29. There was no statutory procedure for the recovery of money awarded to workmen. The workmen could resort to the common law right to sue the employer which was held by Calcutta High Court,²⁷ but, the workmen being numerous and usually illiterate and poor and the amount due to each being normally small, the procedure presented practical difficulties.

Section 33C(1) provides that where any money is due to a workman from employer in the circumstances stated therein, and if the appropriate

27. *Judhistri Chandra v. Mukherjee*, AIR 1950 Cal 577.

government is satisfied on an application made to it that the money is so due, it shall issue a certificate for the amount to the collector. The question to be presently considered is the extent of the jurisdiction of the appropriate government under section 33C(1). A certificate under section 33C(1) can be issued only in a case where the money due has already been ascertained. The labour commissioner cannot, on his own, proceed to ascertain the amount and issue the recovery certificate.²⁸

11. Recovery of Dues Arising out of an Award

The proceedings contemplated by section 33C(2) of the Industrial Disputes Act are, in many cases, analogous to execution proceedings. The labour court which is called upon to compute in terms of money the benefit claimed by an industrial employee is, in such cases, in the position of an executing court like the executing court in execution proceedings governed by the Code of Civil Procedure. The labour court under section 33C(2) is competent to interpret the award on which the claim is based, and it would also be open to it to consider the plea that the award sought to be enforced is a nullity. There is no doubt that if a decree put in execution is shown to be a nullity, the executing court can refuse to execute it. The same principle would apply to proceedings taken under section 33C(2) and the jurisdiction of the labour court before which the said proceedings are commenced.

The labour court has jurisdiction to decide the question as to whether the applicant was a workman and entitled to claim the benefit and whether the relationship of master and servant existed at the material time.

12. Breach of an Award Punishable

Section 29 of the Industrial Disputes Act provides for the punishment of any person who commits a breach of any term of an award which is binding upon him under the Act. The punishment provided for is imprisonment for a term which may extend to six months, or fine, or both. In the case of a continuing breach after the first conviction, additional punishment is a further fine of upto two hundred rupees for every day during which the breach continues. By the latter part of the section, the court, if it fines the offender, is given the power to direct payment of the whole or any part of the fine realised from the offender by way of compensation to any person who, in the opinion of the court,

28. *Malout Transport Co. (P) Ltd. v. State of Punjab*, 1959 1 LLJ 641, 642; affirmed in *State of Punjab v. Malout Transport Co. (P) Ltd.* 1963 11 LLJ 40.

has been injured by the breach. Thus, the ingredients of the offence under section 29 are :

- (i) a breach of any term of a settlement or award,
- (ii) the binding character of the settlement or award upon the person who is charged with the offence, and
- (iii) the award is an award within the meaning of section 2(b).