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Critical Analysis of Doctrine of '*Functus Officio*' under the ID Act, 1947

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Abstract

This article is essentially deals with the application of the doctrine of *functus officio* in the industrial adjudication in India. It's primary focus is with the question as to when a labour court/ Industrial tribunal becomes *functus officio*. It first deals with meaning and consequence of becoming *functus officio*. Afterwards, it takes a brief overview of the legal provisions dealing with the doctrine of *functus officio*. It then critically analyses the Supreme Court's judgements pertaining to the application of the doctrine of *functus officio* under the Industrial Disputes Act, 1947. This analysis is important in the light of the fact that the Supreme Court's two coordinate Benches decision has differed in their answer pertaining to the point when labour court/ industrial tribunal becomes *functus officio*. Both these decisions placed their reliance on the earlier Supreme Court judgement in *Grindlays Bank* case but gave a different interpretation to it. In 2011, after noticing this conflict, the Supreme Court made a reference to three Judge Bench to decide the question as to whether the industrial tribunal becomes *functus officio* on the expiry of 30 days from the date of publication of the award and, therefore, had no jurisdiction to set aside an award. In this paper it is argued that there is no real conflict in respect to the question of a labour court becoming *functus officio* upon an award's becoming enforceable and the conflict arose due to the Supreme Court not adequately understanding the *Grindlays Bank* case correctly.

INTRODUCTION

In the modern welfare State healthy industrial relations are a matter of paramount importance. For maintaining and sustaining good industrial relations, it is important to have a machinery to settle industrial disputes between capital and labour. In India, this, machinery is provided by the Industrial Disputes Act, 1947. The Industrial Disputes Act, 1947¹, is the principal central enactment which regulates industrial relations in India.² It provides industrial adjudication as one of the means to settle industrial disputes between employer and his workers.³ The ID Act is intended to provide a speedy, inexpensive and informal justice to workers as they can ill-afford a system which is time consuming, costly and formal in character and encumbered by the plethora of procedural laws.⁴ The drafter's of the ID Act were aware of the fact that the procedure followed by the civil courts are too lengthy and consequently, is incapable of providing an efficacious remedy. They considered civil courts a forum ill-suited to adjudicate industrial disputes. The ID Act gives the power to appropriate government to constitute labour courts and industrial tribunals to settle industrial disputes.⁵ The ID Act casts a duty on the industrial forum to hold its proceedings expeditiously and, that too, within a limited period and submit its award to the appropriate government for publication. Section 17(1) of the ID Act makes it obligatory on the government to publish the award. Once an award gets published it becomes final and cannot be called in question by any Court in any manner whatsoever.⁶ As per Sub-section (1) of Section 17A of the ID Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17 of the Act. Sub Section (3) of Section 20 of

¹ Hereinafter called 'ID Act'.

² the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Essential Services Maintenance Act, 1981, are the other enactments which regulate industrial relations.

³ The ID Act envisages conciliation, arbitration as other methods to settle the industrial disputes.

⁴ *Rajasthan State Road Transportation Corporation v. Krishna Kant* (1995) II LLJ 728 (SC)

⁵ In this article 'labour court' and 'industrial tribunal' have been used interchangeably.

⁶ Section 17, ID Act, 1947. See, *Sirsilk Ltd. v. Government of Andhra Pradesh* AIR 1964 SC 160.

the ID Act determines as to when adjudication proceedings before a labour court starts and when it concludes. According to this provision adjudication proceedings before a labour court start when a reference is made to it and conclude when the award passed by it becomes enforceable.

The question as to when a labour Court becomes *functus officio* for the first time was considered by the Supreme Court in the *Grindlays Bank Ltd. v. Central Government Industrial Tribunal*⁷. *Grindlays Bank* decision was subsequently followed by the SC⁸ and various HCs⁹. However, in 2003, in the case of *Anil Sood v. Presiding Officer II*¹⁰ the Supreme Court without fully understanding the ratio of the *Grindlays Bank* case gave a contrary ruling. After one year of this ruling, SC in *Sangham Tape Co. v. Hans Raj*¹¹ suspected *Anil Sood* and gave a ruling which is in consonance with *Grindlay Bank* case. Despite *Sangham Tape* case, the SC in 2009 in *Radhakrishna Mani Tripathi v. L H Patel*¹² relied on *Anil Sood* case and gave a contrary judgement to *Sangham Tape* case. This judgment heavily relied on Rules rather than the legal provisions as contained in the ID Act. The Supreme Court, after noticing this conflict between *Sangham Tape* case on the one hand and *Radhakrishna Mani* case on the other hand, decided to

⁷(1980) Supp. SCC 420 [hereinafter '*Grindlays Bank*'].

⁸*Satnam Verma v. Union of India* (1984) Supp SCC 712, *J. K. Synthetics v. CCE* (1996) 6 SCC 92, *Anil Sood v. Presiding Officer, Labour Court II* (2001) 10 SCC 534, *Sangam Tape Company v. Hans Raj* (2005) 9 SCC 331, *KapraMazdoorEkta Union v. Birla Cotton Spinning and Weaving Mills Ltd.* (2005) 13 SCC 777, *Jammu Tehsil v. Hakumar Singh* (2006) 12 SCC 193.

⁹*K. Manoharan v. Presiding Officer* (2014) II LLJ 200 (Madras), *Greaves Cotton Limited v. Government of NCT of Delhi* (2011) III LLJ421 (Del), *Management of M/s. Stallion Garments v. Presiding Officer Labour Court, Salem and others* 2010(126)FLR488 (Mad.), *Management, Tamil Nadu Khadi and Village Industries Board v. P Subramaniam*(2009) I LLJ 267 (Mad.), *Obedurahaman Shaikh v. Suresh J. Khade* (2002) IV LLJ (Suppl) 918 (Bom.).

¹⁰ (2001) 10 SCC 534 [hereinafter '*Anil Sood*'].

¹¹ (2005) 9 SCC 331 [hereinafter '*Sangam Tape*'].

¹²(2009) 2 SCC 81 [hereinafter '*Radhakrishna Mani*'].

make a reference to a three Judge Bench to decide the issue pertaining to as to when labour court becomes *functus officio* in the case of *M/s. Haryana Suraj Malting Ltd. v. Phool Chand*¹³.

In this paper an attempt is made to highlight the Supreme Court's recent approach in juxtaposition to its earlier decisions. It tries to offer a critique of the recent decisions of the Apex Court and points out the consequences of following such approach. This paper is divided into five parts. The first part deals with the meaning and consequence of becoming '*functus officio*'. The second part is crafted to give a general background of law. The third part will focus on *Grindlays Bank* case and its interpretation by the Supreme Court. It will critically analyse the *Sangham Tape* and *Radhakrishna Mani* case. The fourth part will be answer the question as to can an award be set aside after it becomes enforceable with help of the case law. Lastly, the fifth part will draw a conclusion.

MEANING AND CONSEQUENCE OF BECOMING '*FUNCTUS OFFICIO*'

Before answering the question as to at what stage a labour court becomes *functus officio*, it becomes important to know what is the meaning and consequence of becoming *functus officio*. So in this part first meaning of expression '*functus officio*' is explained and then it will explain the consequence of becoming '*functus officio*'.

MEANING OF '*FUNCTUS OFFICIO*'

'*Functus officio*' is a Latin term which literally means "having discharged his duty."¹⁴ According to P. Ramanatha Aiyar's Advance Law Lexicon a judge become *functus officio* when "he has

¹³ (2012) 8 SCC 579.

decided a question brought before him” and “cannot review his own decision.”¹⁵ The Supreme Court in *SBI v. S N Goyal*¹⁶ held that a judge becomes *functus officio* when the order passed by him has entered. Entered means when judgement is formally recorded by the court after it has been given. Meaning thereby, a judge becomes *functus officio* when he pronounces, signs and dates the judgement or order.¹⁷

But, this is not the case when the adjudication is done by a *quasi-judicial* authority as *quasi-judicial* authority is not a court but has trappings of a court¹⁸. In case of a *quasi-judicial* authority, the authority will become *functus officio* only when its order is pronounced, or published/notified or communicated (put in the course of transmission) to the party concerned as per the statute under which it was created.¹⁹

CONSEQUENCE OF BECOMING *FUNCTUS OFFICIO*

After acquainting with the meaning of the term *functus officio*, it becomes important to know the consequence of becoming *functus officio*. Once an authority becomes *functus officio*, it cannot vary the terms of his order and only a higher court can vary it. In other words, once an authority exercising *quasi-judicial* power, takes a final decision, it cannot, subsequently, review its decision unless the relevant statute or rules permit such review.²⁰

¹⁴ *Words and Phrases* vol. 17B at 363 (2004).

¹⁵ *P. RamanathaAiyar's Advance Law Lexicon*, 3rd Edition, Vol.2 at 2822.

¹⁶ (2008) 8 SCC 92 at 108.

¹⁷ *Id.* at 109.

¹⁸ *Bharat Bank Ltd. v. Employees of Bharat Bank Ltd* A.I.R. 1950 SC 188.

¹⁹ *Supra* note 16 at 109.

²⁰ *Id.* at 108

LEGAL PROVISIONS

The Industrial Disputes Act, 1947, deals with industrial disputes. It provides for conciliation, adjudication and settlements, and regulates the rights of parties and the enforcement of awards and settlements. When a reference of an industrial dispute is made under Section 10 of the ID Act, the legal process springs into action. A labour court has a duty to adjudicate industrial dispute referred to it expeditiously and submit its award in writing to the appropriate Government after a regular hearing.²¹ Section 17(1) lays down that every award 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.²² An award when published under Section 17(1) acquires finality by virtue of Section 17(2) unless the same is rejected or modified by the appropriate government under Section 17A(1).²³

Section 18 of the Industrial Disputes Act identifies the parties on whom settlements and awards are binding. The period of operation of settlements and awards is fixed under Section 19. As far as legal force of settlements and awards are concerned, the ID Act does not make any distinction.²⁴ Section 20 provides as to when proceedings before various forums commence and when they conclude. Sub Section (3) of Section 20 of the ID Act provides that proceedings before a Labour Court, Industrial Tribunal or National Tribunal or arbitrator commence from the date when reference of the dispute is made for adjudication or arbitration, as the case may be. It

²¹The ID Act, Section 15 and 16.

²²*Sirsilk Ltd v. State of Andhra Pradesh* [(1964) 2 SCR 448] the Supreme Court held that publication of an award is mandatory and not directory. In this case the Apex Court further observed that “it seems to us that when the word “shall” was used in Section 17(1) the intention was to give a mandate to Government to publish the award *within the time fixed therein*.” This observation was given by the Supreme Court in *Ramington Rand of India Ltd v. Workmen* [AIR 1968 SC 224] when it held that in *Sirsilk* case the Supreme Court “*never meant to lay down that the period of time for publication was mandatory*.” [emphasis supplied]

²³ Section 17-A has been declared unconstitutional by the Andhra High Court in *Telugumadu Workcharged Employees v. Govt. of India* 1997 (3) ALT 492. Recently, Madras High Court has followed the suit in *Textile Technical Tradesmen Association v. Union of India* (2011) 1 LLJ 297.

²⁴*State of Bombay v. K P Krishnan* AIR 1960 SC 1223 at 1226; *LIC v. D. J. Bahadur* ((1981) 1 SCC 315 at 339.

further states that such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under section 17A. Sub Section (1) of Section 17A makes an award enforceable on the expiry of thirty days from the date of its publication under Section 17. It means proceedings before an Industrial Tribunal/ Labour Court conclude after thirty days from the date of publication under Section 17(1).

GRINDLAYS BANK CASE AND ITS INTERPRETATION BY THE SUPREME COURT

The question as to whether an industrial tribunal/ labour court becomes functus officio after 30 days of the pronouncement/ publication of the award and loses all powers to recall and set aside such an award on an application made by the aggrieved party after 30 days from the date of pronouncement/publication of the award, was first raised and answered in *Grindlays Bank* case. Hence, this part will first deal with the case of *Grindlays Bank*²⁵. Subsequent to this it will deal with the cases which correctly interpreted the *Grindlays Bank* case and then it will analyse the cases in which the Supreme Court went wrong in interpreting *Grindlays Bank*.

A. GRINDLAYS BANK CASE

Facts:

In *Grindlays Bank*²⁶, the Government of India, Ministry of Labour by an order dated July 26, 1975 referred an industrial dispute between the employers in relation to the Grindlays Bank Ltd., Calcutta and their workmen, to the Central Government Industrial Tribunal in exercise of its powers under Section 10 of the ID Act, 1947, for adjudication. The Tribunal passed an *ex parte* award on December 9, 1976. On December 25, 1976, that award was published by the Central Government in the Gazette of India. On January 19, 1977, respondent No. 3, acting for

²⁵*Supra* note 7.

²⁶*Ibid.*

respondents Nos. 5 to 17 moved an application for setting aside the *ex parte* award on the ground that they were prevented by sufficient cause from appearing when the reference was called on for hearing on December 9, 1976. The Tribunal by its order dated April 12, 1977 set aside the *ex parte* award on being satisfied that there was sufficient cause within the meaning of Order IX, Rule 13 of the Code of Civil procedure, 1908. The appellant challenged the order passed by the Tribunal setting aside the *ex parte* award but the Calcutta High Court declined to interfere. Hence, the appellant filed a special leave petition in the Supreme Court.

Questions before the Supreme Court

There were two questions which were answered by the Supreme Court in this case, namely

- (1) Whether the Tribunal had any jurisdiction to set aside the *ex parte* award, particularly when it was based on evidence? and
- (2) Whether the Tribunal became *functus officio* on the expiry of the 30 days from the date of publication of the *ex parte* award under Section 17, by reason of Sub-section (3) of Section 20 and, therefore, had no jurisdiction to set aside the award and the Central Government alone had the power under Sub-section (1) of Section 17A to set it aside.

Both questions are distinctly different and the apex court answered them one by one.

While dealing with first question the Supreme Court noted that, despite there being no express provision in the ID Act or the rules framed thereunder giving the Tribunal jurisdiction to set aside an *ex parte* award, every tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In the instant case, the Court held that tribunal is

“invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary.”²⁷

The Apex Court first noted that “sub-section (1) of Section 11 of the ID Act expressly and in clear terms confers power upon the Tribunal to regulate its own procedure, it must necessarily be endowed with all powers which bring about an adjudication of an existing industrial dispute, after affording all the parties an opportunity of a hearing.”²⁸ The Court further opined that where a party is prevented from appearing at the hearing due to a sufficient cause, and is faced with an *ex parte* award, it is as if the party is visited with an award without a notice of the proceedings. The Court did not find any need to stress that where the Tribunal proceeds to make an award without notice to a party, the award is nothing but a nullity. The Court held that in such circumstances, the Tribunal has not only the power but also the duty to set aside the *ex parte* award and to direct the matter to be heard afresh.

The Apex Court made distinction between procedural review and review on merits. As far as procedural review is concerned, the Court held that every court or authority has an incidental and ancillary power to have procedural review. In the instant case, the Apex Court made the power to pass *ex parte* award subject to the condition of having no sufficient reason to absent by a party. For holding that the Court relied on the language of Rule 22 of the Industrial Disputes (Central) Rules, 1957. The court further held that if there was sufficient cause shown which prevented a party from appearing, then under the terms of Rule 22, the Tribunal will have had no jurisdiction to proceed and consequently, it must necessarily have power to set aside the *ex parte* award. The Court ruled that the power to proceed *ex parte* under Rule 22 carries with it

²⁷*Id.* at 423.

²⁸*Id.* at 424

the power to enquire whether or not there was sufficient cause for the absence of a party at the hearing. As far as review on merits is concerned the Court held that no review lies on merits unless a statute specifically provides for it. So, the Supreme Court held that when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debitojustitiae* to prevent the abuse of its process, and such power inheres in every court or Tribunal. Thus, the court held that the power under Rule 24 (b) of the Industrial Dispute (Central) Rules attracts Rule 13 of Order IX of The Code of Civil Procedure Act, thus enabling setting aside of an *ex-parte* award.

With regard to the second question, the Supreme Court relied on a conjoint reading of Section 17A read with Section 20(3) of the ID Act, to state that proceedings with regard to a reference under Section 10 of the Act are not deemed to be concluded till the award becomes enforceable, i.e. until the expiry of 30 days from the publication of the award and that it is till such a stage that the tribunal retains jurisdiction over the dispute and has the power to entertain the application in connection with such dispute. After this stage, it becomes *functus officio*. It also stated that “the jurisdiction of the tribunal had to be seen on the date of the application made to it and not on the date on which it passed the impugned order”²⁹ Meaning thereby, if application is made before the award become enforceable the Tribunal will not become ‘*functus officio*’

Thus, the judgment had two limbs-one where the Supreme Court recognized the power of Industrial Tribunal/ Labour Court to set aside an *ex-parte* award subject to the existence of sufficient cause, and second where Apex court prescribed a time limit for subsistence of such

²⁹*Id.* at 426.

power, i.e. till 30 days after the publication of award. After this stage, the court held the tribunal becomes '*functus officio*'.

Independent of these two conclusions the court made an another observation at the end of the judgment where it says that “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”³⁰. However, while it conceded that an *ex-parte* award can always be set aside, it did not go so far as to say that it can always be set aside by an Industrial labour court. Moreover, it was merely an *obiter* and not the operative part of the judgment. One more thing which the Supreme Court indirectly accepted was that it accepted that an *ex parte* award is an award and not a ‘no award’. With respect to the setting aside power of the labour court the Supreme Court prescribed a time limit mentioned in the ID Act after which the labour Court becomes *functus officio*. Thus, the judgment did not comment on other avenues for getting such an award set aside. It only spoke of the power of a labour court. The Apex Court held that

“Sub-section (3) of Section 20 of the Act it is provided that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable under Section 17A. Under Section 17A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17. The proceedings with regard to a reference under Section 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 upto 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 Section 17A.*”³¹(emphasis supplied)

The Apex Court held that the Tribunal has the jurisdiction to entertain an application for setting aside the *ex parte* award and decide it on merits before the expiry of 30 days of its publication-

³⁰*Ibid.*

³¹*Id.* 425-426.

that is before the award becomes enforceable. The Court further held that 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 passes the *ex parte* award. The Court actually upheld a well-established canon of construction that of any section must be interpreted in the setting and in context of other sections of the Act. Because of this reason the Court dismissed the Special Leave Petition in this case as the application for setting aside the *ex parte* award was filed before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal.

This decision in *Grindlays Bank* was followed subsequently in many decisions by the Supreme Court³² and the High Courts³³.

B. INTERPRETING GRINDLAYS BANK –THE RIGHT DIRECTION

*SatnamVerma v. Union of India*³⁴ was the first case in which the Supreme Court relied on the *Grindlays Bank* case. In this case an *ex parte* award was passed by the labour court. Subsequently, the award was published by the government. An application to recall that *ex parte* award was filed before the labour court before the expiry of 30 days from the date of publication of award. The Labour Court held that after publication of award, it has no jurisdiction to recall the award or to set aside the *ex parte* award and to restore the case to file. Subsequently, the High Court upheld the Labour Court's decision. Against the decision of the High Court, the appellant filed a special leave petition in the Supreme Court. The Supreme Court

³²*SatnamVerma v. Union of India* (1984) Supp SCC 712, *J. K. Synthetics v. CCE* (1996) 6 SCC 92, *Anil Sood v. Presiding Officer, Labour Court II* (2001) 10 SCC 534, *Sangam Tape Company v. Hans Raj* (2005) 9 SCC 331, *KapraMazdoorEkta Union v. Birla Cotton Spinning and Weaving Mills Ltd.* (2005) 13 SCC 777, *Jammu Tehsil v. Hakumar Singh* (2006) 12 SCC 193.

³³*K. Manoharan v. Presiding Officer* (2014) II LLJ 200 (Madras), *Greaves Cotton Limited v. Government of NCT of Delhi* (2011) III LLJ 421 (Del), *Management of M/s. Stallion Garments v. Presiding Officer Labour Court, Salem and others* 2010(126)FLR488 (Mad.), *Management, Tamil Nadu Khadi and Village Industries Board v. P Subramaniam* (2009) I LLJ 267 (Mad.), *ObedurRahaman Shaikh v. Suresh J. Khade* (2002) IV LLJ (Suppl) 918 (Bom.).

while placing reliance on the *Grindlays Bank* case held that both the labour court and the High Court denied to itself the jurisdiction vested in it to entertain an application for setting aside an *ex parte* award and reached an erroneous conclusion. It further held that if an application is filed to labour court before the award becomes enforceable then labour court has the power to set aside the *ex-parte* award if sufficient cause exist.

The case of *Sangham Tape Company v. Hans Raj*³⁵ presented a different factual situation before the Supreme Court. In this case an *ex parte* award was passed by the Labour Court on February 5, 1996. An application was moved for setting aside the same after passing one month from the date of the publication of the award. By an order dated May 11, 2000, the *ex parte* award was set aside. A writ petition was filed in the Punjab and Haryana High Court. The High Court set aside the order of the Labour Court on the ground that that the Labour Court had no jurisdiction to set aside the *ex parte* award after a lapse of 30 days from the date of publication of the award. Dissatisfied with the decision of the High Court, the appellant preferred an appeal to the Supreme Court.

The Supreme Court while upholding the High Court judgement held that *Grindlays Bank* case is “an authority for the proposition that while an Industrial Tribunal/ Labour Court will have jurisdiction to set aside an *ex part* award but having regard to the provision contained in Section 17A of the Act, an application therefore must be filed before the expiry of 30 days from the publication thereof. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and only upto that date, it has the power to entertain an application in connection

³⁵*Supra* note 11.

with such dispute.”³⁶ It was further held that such jurisdiction could be exercised by the labour court within a limited time frame, namely, within thirty days from the date of publication of the award. Once an award becomes enforceable in terms of Section 17A of the Act, the labour court cannot retain any jurisdiction in relation to setting aside of an award passed by it. In other words, upon the expiry of 30 days from the date of publication of the award in the gazette, the same having become enforceable, the Labour Court would become *functus officio*.

The Apex Court has followed *Sangham Tape* case in *Jammu Tehsil v. Hakumar Singh*.³⁷

C. (MIS)INTERPRETING *GRINDLAYS BANK* -WRONG APPROACH

There are two cases of the Supreme Court which has misinterpreted *Grindlays Bank* case and gave birth to the recent controversy. First case is *Anil Sood v. Presiding Officer, Labour Court*³⁸ and the other case is *Radhakrishna Mani Tripathi v. L. H. Patel*³⁹. This part will first analyse *Anil Sood* and then will analyze *Radhakrishna Mani case*.

In *Anil Sood*⁴⁰ the decision was flawed not just on law but also on facts. Before the Delhi HC, the facts on record stated that the *ex-parte* award was made on May 18, 1995, published on September 11, 1995, and an application for setting it aside was made on November 6, 1995.⁴¹ At the same time, the facts before the Supreme Court state that an *ex-parte* award was made on September 11, 1995, and an application was filed to set it aside on November 6, 1995.⁴²

³⁶*Id.* at 334.

³⁷ (2006) 12 SCC 193.

³⁸*Supra* note 10.

³⁹*Supra* note 12

⁴⁰*Supra* note 10.

⁴¹*Anil Sood v. S. K Saruaria* 1997 Lab. I. C. 944.

⁴²*Supra* note 10 at 534.

Moreover, the Supreme Court judgment did not mention the date of publication of the award, which gave to be criticized by the Supreme Court in the *Sangham Tapes Case*⁴³. Basing its judgment on incorrect facts, the sanctity of the judgment immediately becomes suspect. However, other than this, it also made flawed reasoning in two respects.

- I. It relied on *Grindlay Bank* to affirm that due to wide ambit of Section 11(1) and (3) of the ID Act and Rule 22 of the ID Rules, a Tribunal has power to set aside an *ex-parte* award at any time as long as sufficient cause could be shown.⁴⁴ Based on this, the Bench declared that the Tribunal and High Court decisions were flawed and that labour court did not become *functus officio*.⁴⁵ However, this reasoning focuses on only first limb of the *Grindlay Bank* judgment, completely ignoring the second limb which placed fixed time limit on the subsistence of such power. On this half-baked reasoning, it declared that the tribunal did not become *functus officio* and retain the power to recall an *ex-parte* award at any time.
- II. In following this approach, not only does this decision misinterprets the decision in *Grindlay Bank*, but it also completely disregards the statutory provision of Section 17A and Section 20 (3) of the ID Act, upon which the operative part of the court's reasoning in *Grindlay Bank* was based.

It is therefore clear that this decision was flawed on many counts and does not provide tenable legal reasoning on the question before this court.

⁴³*Supra* note 11 at 334. The Court observed that “in *Anil Sood* case no date of publication of the award is mentioned as to establish that even on fact, the application was made 30 days after the expiry of publication of the award.”⁴³

⁴⁴*Supra* note 10 at 536.

⁴⁵*Ibid.*

In *Radhakrishna Mani*⁴⁶ case the facts were that the labour court, Thane, passed an *ex-parte* award in an industrial dispute concerning the termination of service of the workman in favour of the workman on June 12, 1998. The Labour Court directed reinstatement with full back wages and continuity in service. The award was made after taking evidence (*ex-parte*) led on behalf of the workman. It was published on August 5, 1998. On January 29, 1999, respondent in case filed a petition before the labour court making a prayer for recall of the award. It was stated on behalf of the respondent that no notice was served on him and he was not aware of the proceedings before the labour court as he came to know about the matter only on January 27, 1999, on receiving a copy of the award sent to him by the court. And then without any loss of time he filed the petition for recall of the award. The labour court, after a full dressed hearing on the recall petition, found and held, through its order dated July 12, 2005, that the workman obtained the order for *ex-parte* hearing of the reference by knowingly suppressing the correct address of respondent and as a result the notice issued by the labour court was never served on him. In light of the finding, the labour court recalled its earlier award dated June 12, 1998, and fixed the matter for fresh hearing.

This order of labour court was challenged in the Bombay High Court by filing a writ petition by the workman. The High Court, by its judgment and order dated January 25, 2006, dismissed the writ petition and confirmed the order passed by the labour court. The workman preferred an appeal against the orders passed by the High Court and the labour court in the Supreme Court.

⁴⁶*Supra* note 12.

The Supreme Court, while dismissing the appeal of the workman, held that notwithstanding the publication of the award in the manner prescribed under Section 17-A of the ID Act, if the rules provides for setting aside the *ex parte* award it is akin to a power of Civil Court under Order IX Rule 13 Code of Civil Procedure and the labour court will continue to have jurisdiction. The Court relied on rule 26 (2) of the Industrial Disputes (Bombay) Rules which provides

26. Board Court, Labour Court, Tribunal or Arbitrator may proceed ex-parte -

(1) If without sufficient cause being shown, any party to a proceeding before a Board, Court, Labour Court, Tribunal or an Arbitrator fails to attend or to be represented the Board, Court, Labour Court, Tribunal or Arbitrator may proceed ex-parte.

(2) Where any award, order or decisions made ex-parte under sub-rule(1), the aggrieved party, may within thirty days of the receipt of a copy thereof, make an application to the Board, Court, Labour Court, Tribunal or an Arbitrator, as the case may be, to set aside such award, order or decision. If the Board, Court, Labour Court, Tribunal or Arbitrator is satisfied that there was sufficient cause for non-appearance of the aggrieved party, it or he may set aside the award, order or decisions so made and shall appoint a date for proceeding with the matter:

Provided that, no award, order or decision shall be set aside on any application as aforesaid unless notice thereof has been served on the opposite party.

The Apex Court held that the order of the labour court recalling the *ex- parte* award was completely in accord with Rule 26(2) of the Bombay Rules. The Court rejected the argument that under Section 17-A of the ID Act an award becomes enforceable on expiry of thirty days from the date of its publication whereupon the labour court is rendered *functus officio*. The Court further held that it is wrong to say that any application for recall could only be made within thirty days

from the date of publication of the award. In Support of this argument the workman relied on the *Grindlays Bank* case.

It was argued before the Court that the provision of Rule 26(2) of the Bombay Rules was in derogation of Section 17-A of the Industrial Disputes Act in so far as it extended the time for making an application for recall of the award and stretched it to a point where the labour court ceased to have any control or authority over the matter.⁴⁷ Hence Rule 26(2) of the Bombay Rules was in conflict with Section 17-A of the Act and tended to supplement it. The provision of the rule must, therefore, be held to be invalid and inoperative. In support of the submission the workman relied upon a number of decisions which the Court, for unknown reasons, did not think necessary to mention.

The Court noted that the “case of *Grindlays Bank* arose under the Industrial Disputes (Central) Rules in which there is nothing like Rule 26(2) of the Maharashtra Rules except rule 22 which is almost identical to rule 26(1) of the Maharashtra Rules.”⁴⁸ In this case the Court has misinterpreted the law as declared in case of *Grindlays Bank*. The Court quoted one very important paragraph from the *Grindlays Bank* where Court observed that

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 Section 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable under Section 17-A. Under Section 17-A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17. The proceedings with regard to a reference under Section 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*

⁴⁷*Id.* at 84.

⁴⁸*Id.* at 85.

*the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under Section 17-A.*⁴⁹

The last line in the above quoted paragraph, if interpreted in the context in which it is used, would mean that the stage of labour court becoming *functus officio* is not reached till the award becomes enforceable under Section 17-A. That means the stage at which the Tribunal become *functus officio* is reached when the award becomes enforceable under Section 17A.⁵⁰

The Supreme Court further, wrongly, interpreted *Grindlays Bank* case when it stated that in *Grindlays Bank* “this Court didn't say that the industrial courts would have no jurisdiction to entertain an application for setting aside an award made after 30 days of its publication.”⁵¹ But in *Grindlays Bank* case the Court has held that the stage at which the Tribunal become *functus officio* is reached when the award becomes enforceable under Section 17A.

If we take this interpretation as correct interpretation than we are going against the legal provision contained in sub section (3) of Section 20 of the ID Act. So, here the Supreme Court instead adopting a harmonious construction is taking wrong interpretation.

There is another ground for critiquing this judgement of the Supreme Court. The Supreme Court itself has said several times that there is a well-settled principle of law that in case of a conflict between a substantive act and delegated legislation, the former shall prevail inasmuch as delegated legislation must be read in the context of the primary/ legislative act and

⁴⁹ *Supra* note 6 (para. 16).

⁵⁰ AIR 1981 SC 155 at 158.

⁵¹ *Ibid.* (para. 17).

not the vice-versa.⁵² Here Rule 26(2) the Bombay Rules are clearly in breach of the Section 20(3) read with Section 17(2) of the Industrial Disputes Act, 1947.

In this case the Supreme Court heavily relied on *Anil Sood* case. We do not found any mention of *Satnam Verma* or *Sangham Tape or Kapra Mazdoor Ekta Union* case. One reason for misinterpreting the *Grindlays Bank* case was can be ignorance of these cases.

CAN AN EX PARTE AWARD BE SET ASIDE AFTER IT BECOMES ENFORCEABLE

In *Bharat Bank Ltd. v. Employees of Bharat Bank Ltd*⁵³ the Supreme Court held that though industrial Tribunal is not court in the strict sense of the term but since it discharges *quasi-judicial* functions it will be subject to the overriding jurisdiction under Article 136 of the Constitution. Applying the *Bharat Bank* case the Supreme Court in *India General Navigation and Railway Co. Ltd. v. Their Workmen*⁵⁴ exercised its jurisdiction under Article 136 to set aside an award passed by the industrial Tribunal. In this case Industrial Tribunal passed its Award on November 15, 1956. This Award was published on December 19, 1956, in the Assam Gazette by the Assam Government. This Award became enforceable on January 18, 1957. The said Award was challenged by the India General Navigation and Railway Co. Ltd. by way of filing a Special Leave Appeal in the Supreme Court after some months from the date when it became enforceable.

It was contended before the Supreme Court that by virtue of Section 17 (2) of the Industrial Disputes Act, the Award became “final and shall not be called in question by any court

⁵² *ITW Signode India Ltd. v. Collector of Central Excise* (2004) 3SCC 48 at 71.

⁵³ A.I.R. 1950 SC 188. See, for contrary view, *State of Maharashtra v. Labour Law Practitioners' Association* (1998) 2 SCC 688.

⁵⁴ AIR 1960 SC 219.

in any manner whatsoever”, subject to the provisions of S. 17A. It was, further, contended that as the Award was challenged after January 18, 1957 when the Award had⁵⁵ become enforceable and had acquired the force of law by operation of the statute, it cannot become subject to challenge before any court of law.

The Supreme Court has, rightly, rejected this argument by carving out one exception. It held that the “provisions of the Act are subject to the paramount law as laid down in the Constitution. Article 136 of the Constitution, under which the Supreme Court grants special leave to appeal (in this case, from a determination of the Tribunal), cannot be read as subject to the provisions of the Act. The provisions of the Act must be read subject to the over-riding provisions of the Constitution, in this case, Art. 136. Therefore, whatever finality may be claimed under the provisions of the Act, in respect of the Award, by virtue of Ss. 17 and 17A of the Act, it must necessarily be subject to the result of the determination of the appeal by special leave.”⁵⁶ So, it was held by the Apex Court that an award passed by the Industrial Court/Labour Court can be set aside even after it has become enforceable under Article 136.

Likewise, a writ petition under Article 226 and 227 of the Constitution of India is available as an alternative remedy. Although the same has not been adopted in any case, it has been generally laid down by the Apex Court in catena of cases⁵⁷ that while a writ petition ought not to be allowed where an alternative remedy is available under the ID Act, no such bar exist when an exceptional circumstance exists and the ID Act does not provide any remedy. The setting aside of *ex parte* award in fact constitute such category wherein the ID Act stipulate any remedy once the labour court become *functus officio*. Recently, Madras High Court in *K*

⁵⁵ *Ibid.*

⁵⁶ AIR 1960 SC 219.

⁵⁷ *Rajasthan State Road Transport Corporation v. Krishna Kant* (1995) 5 SCC 75; *Scooters India v. E. V. Eldred* (1998) 6 SCC 549.

*Manoharan v. Presiding Officer*⁵⁸ has taken the same position. It held that the High Court can set aside an *ex parte* award even when labour court's award becomes enforceable.

CONCLUSION

In the light of the above analysis we can conclude that in *Grindlays Bank* the Supreme Court has laid down the correct law. It is well known that the ratio of a decision has to be appreciated in its context.⁵⁹ That is why *Grindlays Bank* case was followed both by the Supreme Court and the High Courts.⁶⁰ The Apex Court misunderstood and misinterpreted *Grindlays Bank* case in *Anil Sood and Radhakrishna Mani*. In *Grindlays Bank* the Apex Court held that an *ex parte* award can be set aside by a labour court only when an application to recall that award is made before an award becomes enforceable and not afterwards. The Court relied on Section 20(3) of the ID Act as labour court becomes *functus officio* after the award has become enforceable. The Court did not hold that an *ex parte* award cannot be set aside by the High Court or the Supreme Court.

In light of the above reasons it appears that there was no need of making reference to three judges Bench in *Haryana Suraj Malting*⁶¹ case as the same issue has already been settled in the *Grindlays Bank* case and followed by the Supreme Court in *Sangham Tape case*. As the Court has already made the reference to three Judges' Bench we can hope that that the Court will

⁵⁸ (2014) II LLJ 200 at 207. In this judgment the Madras High court erroneously mentioned that *Grindlays Bank* case was decided by a three Judge Bench of the Supreme Court when in fact it was a two Judge Bench decision.

⁵⁹ *Siemens Ltd v. Siemens Employees Union* 2011 [2011] 15 (ADDL.) SCR 1157 at 1179 (para. 36).

⁶⁰ See *Supra* note 13.

⁶¹ *Supra* note 13.

upheld the interpretation taken in *Grindlays Bank* case and *Sangaham Tape* and overrule *RadhaKrishna Mani Tripathi* case. But in future the Supreme Court should keep in mind what recently it observed in *Sandhya Educational Society v. Union of India*⁶². It held that “Judicial decorum and discipline is paramount and, therefore, a coordinate Bench has to respect the judgments and orders passed by another coordinate Bench and cannot on mere assumptions refer the matter for consideration by a larger Bench. Only by keeping this thing in mind the Court can not only reduce the uncertainty of law but can save lot of judicial time also.

⁶²(2014) 7 SCC 701 at 704