

CONCEPT OF AWARD: AN OVERVIEW

Dr. Vijay V. Muradande
Assistant Professor
KLE Society's S. A. Manvi Law College, Gdadg

Abstract:

Industrialization has tended to create a hiatus between management and employees, owing to the absence of employees ownership over means of production this gap has led to industrial friction and conflicts, which ultimately cause industrial disputes.

Industrial disputes are classified into two kinds that is, individual disputes and collective disputes. Quite often the terms of reference incase of individual disputes may be a straight forward issues without much complications in adjudicating the same. On the contrary collective disputes more intimately if they relate to a well settled industrial establishment involving an organized trade union movement often involves the issues of far reaching implications for adjudication. In such situations the job of the Labour Tribunal is viewed as more critical and challenging.

The crux of the matter lies in effective interpretation and proper implementation of the 'award'. The basis for emerging of the 'award' from an Industrial Tribunal is, the terms of reference as specified by the Appropriate Government under Sec 10(1) of the Act.

It is such time of disputes invariably involves the situations of conflict in its implementation and interpretation. Though, the Act defines an 'award' in a simple manner the inter-crisis involved in it when we examine the same from the point of view of Sub Sec 4 of Sec 10 of the Act. Again the interesting point of conflict is pertaining to the last part of the Sub Sec namely, "matters incidental thereto".

Key words: Industrial Relations, Adjudication, Award, Implementation, Judicial review

I. introduction

India's Labour Policy is mainly centred towards various labour laws. These laws have reflected certain needs of individuals; society and the nation based on the Fundamental Rights guaranteed by the Constitution.¹

The growth of the industry is depends on cordial relationship between employer and employee. In a welfare State, industrial relations are not bipartite affair between employer and the employees; Government is playing a dynamic role in promoting industrial relations. Therefore, it becomes a tripartite affair between the employer, employees and the Government.

¹ Second National Commission on Labour Report, 2002

The primary object of the Industrial Disputes Act, 1947 (hereinafter referred as Act) is to secure industrial peace and harmony by providing machinery for the investigation and settlement of industrial disputes. The Act empowers the Appropriate Government to refer the industrial dispute for adjudication and in turn it imposes the duty on adjudicatory machineries to submit its award within the time specified in the order of reference.

In order to have a complete and clean picture of adjudication as a method of settlement of industrial disputes, it necessary to understand the meaning of award, its different forms, publication, enforcement and the remedies available to the aggrieved party against the award and difficulties that have been faced by the parties to enforce the award.

II. Concept of award and Difficulties in interpreting thereof: The new Trend

Sec 2 (b) of the Act defines 'award' as "an interim or a final determination of any industrial dispute or any question relating thereto by any Labour Court, Tribunal or National Tribunal and includes an arbitration award made under Section 10-A".² However, all the determination of Labour Court, Industrial Tribunal and National Tribunal are not an Award.

1. Interim or Final Determination of Industrial Dispute

The interim award means only provisional arrangement made in the matter of urgency subject to final determination of the disputes. There can be no doubt that if, for example, question of reinstatement and/or compensation is referred to a adjudication, the question of granting interim relief till the decision of the with respect to the same matter would be a matter incidental thereto under Sec 10(4) and need not be specifically referred in terms.

Supreme Court in *the Management, Hotel Imperial New Delhi v. Hotel Workers Union*,³ while reading the definition of award pointed out that it is open to the Tribunal to make an award about some of the matters referred to it while some others still remain to be decided.⁴

Supreme Court in *Management, Hindustan Machine v. Judge, Labour Court*,⁵ held that workman do not suffer on account of stay of award, which has been passed in his favour by the Labour Court. The litigation is a time consuming process and the workman cannot be made to suffer for years till the writ petition filed by the employer is disposed of finally.

² *Ibid*, Sec 2(b).

³ AIR 1959 SC 1342.

⁴ See, *Chief Engineer, P.W.D., Nagpur v. P.W.D., S.C., S.T., O.B.C.*, 1995 (70) FLR 554.

⁵ (1992) ILLJ 494 Raj.

The interim order passed by the High Court in the writ application can't be treated to be an award, as determination interim or final by Labour Court and Tribunals, alone would come within the sweep of the said definition.⁶

2. Interim relief to ensure industrial peace

The Supreme Court in *Bharat bank v. Employees of Bharat Bank*,⁷ held that the adjudicatory authorities under the Act has the power to create new conditions of service or to alter existing conditions of service except those governed by legislation and to decide every dispute and grant any kind of relief for ensuring industrial peace. On the basis of the decision of the Supreme Court in the case of *Hotel Imperial*,⁸ the Tribunal has the power to grant such an interim relief under Sec 10(4) of the Act.

3. Decision on adjudicator on Preliminary Issues

The Supreme Court in *Cox and kings (Agents) Ltd. v. Their workmen*,⁹ set at rest the conflicting opinions of various High Courts and held that the decision of the adjudicator on preliminary issues like, "industry", "industrial dispute", "workman" etc., is not an award as there was no adjudication on merits and that such a decision cannot also be said to be determination of any industrial dispute or any related question or matters incidental thereto.

4. Compromise or Consent Award

Compromise or Consent Award means an award made by an adjudicator embodying the compromise arrived at between the parties during the pendency of adjudication proceedings. It has been the policy of the judiciary that if the parties arrived at a settlement of the dispute amicably, even after the same has been referred for adjudication; the settlement should be preferred, provided that the settlement is considered to be fair and just. In such a case, if the parties approach the adjudicator to pass an award in terms of the settlement, the adjudicator shall normally adopt the settlement and pass a compromise award.¹⁰

5. Withdrawal of the Dispute by the Parties

An order of the Tribunal permitting the parties to withdraw the dispute from adjudication of a private settlement by subsequent negotiations or by arbitration does not amount to an award, as there was no adjudication on merits and the disputes remains unresolved. The Supreme Court finally resolved the conflict of opinion among various High Courts on this point.¹¹

⁶ *Shri Gangadhar Balgopal Nair v. Voltas Ltd.* (2007) II LLJ 655 (Bom).

⁷ 1950 I LLJ 921.

⁸ *Supra* note 5.

⁹ 1977 (34) FLR 235 (SC).

¹⁰ *State of Bihar v. D.N. Ganguly*, (1958) I LLJ 634 (SC).

¹¹ *Supra* note 12. Reliance is sought to be placed in the decisions in the matters of *Sirsilk Ltd. v Govt of AP* AIR 1964 SC 160; *New Standard Engineering Co. Ltd. v. N. L. Abhyankar*, AIR 1978 SC 982; *Hindustan Housing Factory v Hindustan Housing Factory Ltd.* (1997) II LLJ 222 (Bom);

6. Dismissal of reference on non-appearance of Party

When a reference is dismissed for default of appearance of employer or workmen, or of both the parties, the order of the adjudicator cannot take the form of an award within the meaning of Sec 2(b) of the Act. There is no determination of any industrial dispute at all but would merely be a disposal of reference.¹² Adjudicatory machineries cannot dismiss the reference for default, but shall go into the merits and adjudicate upon the dispute and to finally determine the dispute or the question relating thereto, as to make the concerned order an “award”.¹³ Merely because it is published under Sec 17, it does not become an award enforceable under Sec 17-A and it is not binding on the parties under Sec 18(3).¹⁴

7. Ex-parte Award

The Industrial Disputes (Central) Rules, 1957, empowered the Labour Court, Tribunal and National Tribunal to precede ex-parte where any party fails to attend adjudicatory proceedings without sufficient cause being shown.

The Act provides that an award becomes enforceable on the expiry of 30 days from the date of its publication by the Appropriate Government. Such ex-parte decision is an award within the meaning of Sec 2(b), requiring publication under Sec 17 of the Act.

In *Radhakrishna Mani Tripathi v. L.H. Patel*,¹⁵ the Supreme Court held that there was no finality attached to an ex parte award and the Tribunal had the power to deal with the application before it, and set aside the ex parte award and pass suitable orders. For an award to become binding, it should be passed in compliance with the principles of natural justice”.

The Supreme Court, in *Haryana Suraj Malting Limited v. Phool Chand*,¹⁶ held that, in case a party is in a position to show sufficient cause for its absence before the authority when it was set ex-parte, such authority is competent to entertain an application.

8. Decision on recovery of money due from an employer

The proceedings under Sec 33-C is in the nature of execution of award. The Authority in exercise of its jurisdiction under Sec 33C(2) does not resolve any fresh dispute as such and the dispute if any is in the nature of execution proceedings for enforcement of an existing right. The decision under Sec 33C(2) therefore, cannot be regarded as an interim or final determination of any industrial dispute and, therefore, cannot be treated as an award within the meaning of Sec 2(b) of the Act.

¹² *Mohitosh Dass v. M.G. Memon* (2004) II GLR 555.

¹³ *Madhusudan Konar v. State of West Bengal*, 2001 Lab.I.C. 3197.

¹⁴ *Divisional Railway Manager v. Secretary, Paschim Railway* (2002) II GLR 1164.

¹⁵ (2006) II LLJ 1064 (Bom).

¹⁶ <https://indiankanon.org/doc/97440489/>, visited on 17-01-2019.

III. Form of Award and its publication

After the completion of adjudication, the Labour Court, Tribunal or National Tribunal, shall submit its 'award' to the Government within one month¹⁷ and in respect of reference under Sec 2A within a period of three months unless such time is extended.¹⁸

Act not provides any form of award. However, Sec 16 of the Act makes the imperative provision that the 'award' of a Labour Court, Tribunal and National Tribunal shall be in writing and shall be signed by all the Members. The 'award' must be clear and certain.

According to Sec 15 of the Act the Authorities shall submit the 'award' to the Appropriate Government. The Appropriate Government shall then within a period of 30 days from date of its receipt publish the award.¹⁹ It is mandatory for the Appropriate Government to publish the award, unless it is prevented from doing so by an order of a Court of competent jurisdiction. Sometimes to avoid conflict between a settlement and award, the Courts had ordered the Government to withhold publication.²⁰

1. Publication of award: Directory or Mandatory

A question arises regarding whether publication by Appropriate Government is mandatory and also whether the time period of 30 days mentioned in Sec 17 is directory. In *Sirsilk Ltd. v. State of Andhra Pradesh*,²¹ Supreme Court held that, reading Sec 17 and Sec 17A together the intention behind Sec 17 (1) is that a duty is cast on Government to publish the award within thirty days of its receipt and the provision for its publication is mandatory and not merely directory.

But in the peculiar facts and circumstances of the case where a settlement had been arrived at after the award had been made by the Tribunal, but before the publication by the government so as to reconcile Sections 18(1) and 18(3), such a settlement should be given effect to and the Government should withhold publication of the award. It was further stated that, Sec 17(1) is mandatory and ordinarily the Government has to publish an award sent to it by the Tribunals; but where a situation like the one in the present case arises which may lead to conflict between a settlement under Sec 18(1) and an award binding under Sec 18(3) on publication, the only situation is to withhold the award from publication and this would not in any way affect the mandatory nature of the provision in Sec 17(1).

Sirsilk Ltd v. State of Andhra Pradesh,²² the Supreme Court held that publication of an award is mandatory and not directory. This observation was given go by the Supreme Court in *Ramington Rand of India Ltd v.*

¹⁷ The Industrial Disputes (Central) Rules, 1957, Rule 10-B (10).

¹⁸ The Industrial Disputes (Central) Rules, 1957, Rule 10-B (11).

¹⁹ *Supra* note 2. Sec 17(1).

²⁰ *Sirsilk Ltd. v. Government of A.P.*, AIR 1964 SC 160.

²¹ *Ibid.*

²² *Ibid.*

Workmen,²³ when it held that in *Sirsilk* case the Supreme Court “never meant to lay down that the period of time for publication was mandatory.”

2. Period of Publication of award - Directory or Mandatory

Difficulties are faced in determining whether the publication is mandatory or discretionary. In *Remington Rand of India Ltd vs The Workmen*,²⁴ Supreme Court held that a provision as to time in Sec 17(1) is merely directory and not mandatory. If we were to hold that the award would therefore be rendered invalid, it would be attaching undue importance to a provision not in the mind of the legislature.²⁵

Another factor which led the Supreme Court to hold the provision to be directory was the fact that the non-publication of the award within the period of 30 days does not entail any penalty.

IV. Commencement and Termination of Award

Subject to the power of the Appropriate Government to defer the enforceability and later to reject or modify the award in the circumstances specified in Sec 17A (2), the ‘award’ which has been published shall become enforceable on the expiry of 30 days from the date of its publication.

The issue as to when would the Award becomes enforceable, thereby; rendering the Labour Court/Tribunal “*functus officio*” is no longer *res integra*.²⁶ 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 publication of the award, was first raised and answered in *Grindlays Bank* case.

The Supreme Court dealt with the issue of the Labour Court/Tribunal becoming “*functus officio*”²⁷ in the case of *Grindlays’ Bank v. Central Government Industrial Tribunal and others*.²⁸

In *Vasant Govind Shirsekar v. M/s Mhatre Pen and Plastics Private Limited*,²⁹ Court held that the applicability of Sec 29(2) of the Indian Limitation Act, 1963 is not excluded by the Industrial Disputes Act or by its Rules, the period of condonation of delay will have to be considered in view of the law laid down by the Supreme Court in the *Grindlay's Bank's* case.

In *M/S Sangham Tape Company v. Hans Raj*,³⁰ and *Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Ltd. and Another*,³¹ the Supreme Court held that while an Industrial Court will have jurisdiction to set aside an ex-parte award but having regard to the provision contained in Sec 17A of the Act, an application therefore must be filed before the expiry of 30 days from the publication thereof.

²³ AIR 1968 SC 224.

²⁴ *Ibid*.

²⁵ *Ibid*, See also, *Erumeli Estate v. Industrial Tribunal* (1962) IILLJ 144 (Ker).

²⁶ “*res integra* means an entire thing; an entirely new or untouched matter. This term is applied to those points of law which have not been decided, which are untouched by dictum or decision”.

²⁷ “Once an authority becomes *functus officio*, it cannot vary the terms of his order and only a higher court can vary it”.

²⁸ AIR 1981 SC 606.

²⁹ 2005 (3) Mah.L.J. 272.

³⁰ *Supra* note 34.

³¹ (2005) 13 SCC 777.

There are two cases of the Supreme Court which has misinterpreted *Grindlays Bank* case and gave birth to the recent controversy. Firstly, in *Anil Sood v. S. K Saruaria*³² Supreme Court relied on *Grindlay Bank* to affirm that due to wide ambit of Sec 11(1) and (3) of the Act and Rule 22 of the Central Rules, a Tribunal has power to set aside an ex-parte award at any time as long as sufficient cause could be shown. Secondly, in *Radhakrishna Mani Tripathi v. L H Patel*,³³ The Supreme Court, while dismissing the appeal of the workman, held that notwithstanding the publication of the award in the manner prescribed under Sec 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.

In the light of the above analysis, it can be conclude that in *Grindlays Bank* the Supreme Court has laid down the exact law, therefore, 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.

a. **Operation and Enforceability of Award**

Under Sec 17 read with Sec 17A, the Award of the adjudicating authority becomes enforceable on the expiry of 30 days from its publication by the Appropriate Government. Thus, it is clear that till the 'award' is published in the manner contemplated by Sec 17, it cannot be enforced.³⁴

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-sec (2) provides that the Appropriate Government or the Central Government may, within ninety days from the publication of the award, make an order rejecting or modifying the award.³⁵

The 'award' shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub-sec (1) or sub-sec (3) of Sec 17A.

In *Management of Bangalore Woolen, Cotton and Silk Mills v. State of Mysore*,³⁶ held that the true effect of Sec 17A sub-sec (4) read with sub-sec (1) 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-sec (1) of Sec 17A.

In *Rashtriya Hair Cutting Saloon v. The Maharashtra Kamgar Sabha*,³⁷ the Court held that adjudicating authority has power to give retrospective operation to the award, from the date of demand or earlier. In *The*

³² 1997 Lab.I.C. 944.

³³ *Supra* note 18.

³⁴ *Pamwi Tissues v. State of Himachal Pradesh* (1998) II LLJ 138 (HP).

³⁵ *Management of Naga Theatre v. Sri R. Raja* (1999) I LLR 822 (Kar).

³⁶ AIR 1958 Kar 85.

³⁷ (1994) III LLJ 1086 (Bom).

Hindustan Times Ltd. v. Their Workmen,³⁸ the Supreme Court held that, by virtue of Sec 17A (4) Industrial Tribunal has been given the power to make the award effective from such date as may be specified in the order.³⁹

In *Modern Theatres Ltd. v. Presiding Officer, Labour Court*,⁴⁰ Court held that “once the earlier contract is extinguished and fresh conditions of service are created by the award or the settlement, the inevitable consequence is that even though the period of operation and the span of binding force expire, on the notice to terminate the contract being given, the said contract continues to govern the relations between the parties until a new agreement by way of settlement or statutory contract by the force of an award takes its place”.

In *Priya Darsan Agarbatti v. State of M.P.*⁴¹ The Court held that “period of operation is the period referred to in Sec 19(3) of the Act, namely one year or the period which may be reduced or extended by the Government.

b. Termination of Award:

In *Judhisthir Chandra Adak v. P.R. Mukherjee*,⁴² Court held that the ‘award’ may be terminated in the manner prescribed by Sub-sec (6) of Sec 19. Once the ‘award’ is concluded by notice, the employer by failing to abide by the terms of the ‘award’ does not incur the penalties provided by the Act, nor can the award be enforced.

In *Ghatage and Patil Company Employees Union v. K.R. Powar*,⁴³ Bombay High Court held that, “the Tribunal has no jurisdiction to make the Award for a period longer than one year in view of the language of Sec 19(3) and unless the Government has extended the period of operation of award in exercise its power under the proviso to Sec 19(3), the Award could remain in force for a period of one year”. May be the intention of the legislature is to strengthen the collective bargaining movement in the field of labour management relations in maintaining the trend of *status quo anti*.

In *All India Regional Rural Banks v. Union Of India*,⁴⁴ Court held that “by virtue of the provisions in Sec 19 (6) in spite of the expiry of the period of operation under sub-sec (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award”.

A termination of the ‘award’ under sub-sec (6) of Sec 19 of the Act does not relieve party of its liability incurred under the award during the period of its operation.⁴⁵

V. Persons on whom Awards are Binding

According to Sec 18 sub sec (3) of the Act “an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on

³⁸ AIR 1963 SC 1332

³⁹ *All India Reserve Bank Employees Association v. Reserve Bank of India*, AIR 1966 SC 305.

⁴⁰ (2002) III LLJ 41 (Mad).

⁴¹ (1995) II LLJ 1084 (MP).

⁴² AIR 1950 Cal 577.

⁴³ (1966) I LLJ 250 (Bom).

⁴⁴ 2000 (3) KarLJ 157.

⁴⁵ *Apseb Employees Union v. Apseb* (2004) II LLJ 439 (AP).

- (a) all parties to the industrial dispute;
- (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;
- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates; and
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part".⁴⁶

Once the 'award' is binding on the parties to the dispute any breach of terms of such 'award' is punishable under Sec 29 of the Act.

VI. Judicial Review of Industrial Awards

The 'award' of the Labour Court, Tribunal and National Tribunal whose functions are of *quasi-judicial* nature, are reviewable in writ jurisdiction under Art 32 by the Supreme Court and under Art 226 by the High Courts.

Further, after the decision of the Supreme Court in *Bharat Bank Ltd v. Employees of Bharat Bank Ltd*,⁴⁷ it was established that the order and awards of industrial adjudicators are subject to judicial review by the Supreme Court directly under the Special Leave Petition under Art 136 of the Constitution.

In addition to the above remedies, the aggrieved party may also invoke jurisdiction of High Court under Art 227, which confers the power of superintendence on the High Court over all subordinate Courts and Tribunals within its territorial jurisdiction.

In *D.P. Maheshwari v. Delhi Administration*,⁴⁸ Court held that, the nature of the jurisdiction under Art 226 is supervisory and not appellate while that under Art. 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice.

In *Bharat Bank Ltd. v. Employees of Bharat Bank Ltd*,⁴⁹ 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 *General Navigation and Railway Co. Ltd. v. Their Workmen*,⁵⁰ exercised its jurisdiction under Article 136 to set aside an award passed by the industrial Tribunal.

⁴⁶ *The Rajasthan State Road v Krishna Kant* AIR 1995 SC 1715.

⁴⁷ *Supra* note 9.

⁴⁸ AIR 1984 SC 153, 1983 SCR (3) 949.

⁴⁹ *Supra* note 9. See, for contrary view, *State of Maharashtra v. Labour Law Practitioners' Association* (1998) 2 SCC 688.

⁵⁰ AIR 1960 SC 219, (1960) II SCR 1.

Apex Court in number of cases,⁵¹ laid down that while a writ petition ought not to be allowed where an alternative remedy is available under the Act. The setting aside of ex parte award in fact constitute such category wherein the Act stipulate any remedy once the Labour Court become *functus officio*. Recently, Madras High Court in *K Manoharan v. Presiding Officer*,⁵² 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.

In *Smt. Sushila Sharma vs Sh. Pawan Sharma*,⁵³ the Court held that, writ Courts has to exercise its power of judicial review well within certain parameters. A series of judgments have been rendered by the Supreme Court in this context.⁵⁴

The specific grounds on which the writs are issued are briefly discussed below.

- (1) **Violation of Fundamental Rights:** In *Ram Prasad v. State of Bihar*⁵⁵ and *Chintamani Rao v. State of M.P.*,⁵⁶ the Supreme Court held that the award will be quashed when they contravene the fundamental rights.
- (2) **Excess or Abuse of Jurisdiction:** The jurisdiction of the adjudicatory authorities under the Act is restricted by certain statutory provisions like, Sections 10 (1) (c) and first proviso to it, 19(4), 33, 33A, 33-C (2) and 36-A of the Act. Therefore, if the Award does not in conformity with these provisions of law, it is illegal and may be quashed.⁵⁷
- (3) **Error of Law Apparent on the Face of the Record:** It is now well established that the writ can be issued to quash a decision of Tribunal on the ground of error of law.⁵⁸ In *Kays Concern v. Union of India*,⁵⁹ the Supreme Court held that, if an adjudicatory authorities disposes of a matter without applying its mind to a material circumstances, which has been duly brought to its notice, it amounts to a patent error of law. Similarly, if the authority ignores relevant considerations or takes into account irrelevant considerations in reaching its decisions, it amounts to a patent error of law.⁶⁰
- (4) **Failure to Exercise Jurisdiction:** If the adjudicating authorities declines to exercise the jurisdiction which they have under the provisions of the Act, a writ of mandamus may be issued commanding the authority to hear and decide the matter according to law and submit the award without causing unnecessary delay.⁶¹
- (5) **Violation of Principles of Natural Justice:** Natural justice in administrative law contains two fundamental rules of fair procedure, namely that no one shall be a judge in his own cause (*nemo iudex in re sua*) i.e., Rule against bias and the rule of reasonable opportunity of hearing. These principles aim is to secure justice.⁶²

⁵¹ *Rajasthan State Road Transport Corporation v. Krishna Kant* (1995) 5 SCC 75; *Scooters India v. E. V. Eldred* (1998) 6 SCC 549.

⁵² (2014) II LLJ 200.

⁵³ (2007) II LLJ 865 (Del).

⁵⁴ *Staff Canteen Workers* AIR 2000 SC 1508; *Parimal Chandra Raha v. LIC* AIR 1995 SC 1666.

⁵⁵ AIR 1951 SC 118.

⁵⁶ AIR 1953 SC 215.

⁵⁷ *Punjab National Bank v. Industrial Tribunal* (1959) SCR 220.

⁵⁸ *H.V.Kamath v. Ahmed Ishaque*, AIR 1955 SC 233.

⁵⁹ AIR 1976 SC 1525.

⁶⁰ *Shanmugam v. S.R.V.S.*, AIR 1963 SC 1626.

⁶¹ *Gujarat Steel Tubes v. Its Mazdoor Sabha* AIR 1980 SC 1897.

⁶² *A. K. Kripak v. Union of India*, AIR 1970 SC 150.

- i.Rule against Bias:** Sec 7-C of the Act incorporates the rule against bias. It declares that no person shall be appointed to, or continue in the office of the presiding officer, if he is not an independent person, if he is unconnected with the industrial dispute referred to him or with any industry directly affected by such dispute.⁶³
- ii.Hearing Both the Sides:** Rule 13 of the Industrial Disputes (Central) Rules, 1957 prescribes that the adjudicator shall inform the parties to the industrial dispute of the time and place of hearing. If no notice is given to the parties, it may be considered as inadequate and the proceedings are liable to be quashed for violation of the principles of natural justice.⁶⁴

(6) **Preliminary issues:** The preliminary issues, which generally arise under the Act for determination, upon which the jurisdiction of the authority to go into the merits depends on whether the establishment where the dispute existed is an industry, whether the dispute is an industrial dispute, whether the Government making the order of reference is the Appropriate Government etc? These preliminary issues may, therefore, be raised only before the High Court and Supreme Court.

(7) **Fraud and Collusion:** The Award can't be enforced if it has been obtained by fraud. The Supreme Court and High Court have an inherent jurisdiction to quash such award if it has been obtained by fraud or collusion.⁶⁵

VII. Conclusion and suggestions

Thus, it is clear from the definition of 'award' as well as the legal formalities relating to enforcement and period of its operation involve variegated issues which are viewed as most challenging in the context.

Further, the crucial issues are, the discretionary power vested with the Appropriate Government in bringing the terms of 'award' into operation. This provision is critical in the sense that it vests with the Appropriate Government an administrative power which is discretionary in nature. One should not forget the crucial aspects involved in the matter namely, it is the Appropriate Government with its discretion formulate the terms of reference for adjudication before the Industrial Tribunals and interestingly it sits as an arbiter in deciding the implementation of the spirit of the terms so referred by it for adjudication. The fundamental question here is what wisdom prevails in the spirit of Sec 17A of the Act.

Suggestions:

1. Provisions relating to reference of industrial disputes under Sec 10 (1) must be done away.
2. Labour Courts are to be given powers to issue decrees alike decree of Civil Court
3. Adjudicatory authorities to be empowered to initiate contempt proceedings for non implementation or non-compliance of awards.
4. There should be a separate appellate authority at Supreme Court which could deal with industrial and labour dispute.

⁶³ *Bengal Chemical Pvt Ltd. v. their Employees* AIR 1959 SC 633.

⁶⁴ *Clerk Depot and Cashiers of the Calcutta Tramway Co.* AIR 1957 SC 387.

⁶⁵ *Sovintorg (India) Ltd v. State Bank of India, New Delhi* (1999) 6 SCC 406.