

Jhagrakhand Collieries Private, Limited, and Another

v.

Central Government Industrial Tribunal, Dhanbad, and Others

(Supreme Court Of India)

HON'BLE JUSTICE P. B. GAJENDRAGADKAR HON'BLE JUSTICE K.C.DAS
GUPTA

Civil Appeal No. 88 Of 1958 And 40 Of 1959 | 15-02-1960

Gajendragadkar, J.

1. These two appeals arise from an industrial dispute which was referred by the Central Government for adjudication between the Jhagrakhand Collieries Ltd., (hereinafter called the appellant) and its workmen (hereinafter called the respondents) under Cl. (c) of Sub-sec. (1) of S.10 of the industrial Disputes Act 14 of 1947. The reference in question was made in these words :

"Are the workmen of the Jhagrakhand Collieries who were not entitled to any increase in wages under Para. 1 of the notification issued by the Korea State Government dated 15 November, 1947, entitled to any increase in wages in accordance with Para. 2 thereof, and if so, to what extent and from which date such increase should be allowed?"

This order of reference was passed on 6 June 1955.

2. The appellant is the owner of three coal mines, viz., The North, Jhagrakhand Colliery, the South Jhagrakhand Colliery and the West Jhagrakhand Colliery. All the said coal mines are situated in an area that once formed part of the Indian State of Korea. On 15 November, 1947, Mr. Sohan Lal Srivastava, the Chief Minister of Korea State issued a notification for the purpose of assuring minimum wages to colliery workers.

The notification began with the recital that there has been a general rise in the prices of essential commodities which necessitated a positive policy to bring about an improvement in the conditions of workers in the coal mining industry. It also referred

to the fact that wages of colliery workers had been increased in the coal fields of Bengal, Bihar, Orissa, the Central Provinces and Berar, and that the said increase was bound to have repercussions on the coal fields of Korea State. That is why the notification in question was issued. Clause (1) of the notification prescribed minimum basic wages which had to be paid to workers for an eight-hour shift. These workers were classified under four categories which were sub-divided into several other categories and a minimum basic wage was prescribed in respect of each one of the sub-categories. Clause (2) with which we are directly concerned provides : "any class of employees not entitled for any increase in wages under the provisions given above may be granted an increase of 12 1/2 per cent in their basic pay."

Clauses (3) and (4) deal with dearness allowance and prescribe a minimum payable in that behalf. Clauses (5), (6) and (7) deal with lead and lift, explosives, shovels and the like and the foodstuffs. Clause (8) deals with the payment of bonus; Cl. (9) with compulsory contributory provident fund, and Cl. 10 provides for the liability of the employers for disbursement of wages. The last clause lays down that this order shall apply retrospectively with effect from 1 November 1947.

3. It appears that for same time before the present reference was made, the respondents had been claiming increase as indicated in Cl. (2) in respect of workmen covered by the said clause. The appellant, however, denied its liability to make any such increase mainly on two grounds; it urged that the clause in question left it entirely to the discretion of the appellant to grant or to refuse to grant any increases and it was also alleged that subsequent to 1947 the appellant in fact had granted increases in wages to the persons falling under Cl. (2) on several occasions, and that these increases ranged between 10 to 25 per cent of their basic wages. Since the demand made by the respondents was not met by the appellant and it gave rise to an industrial dispute, the Central Government thought it fit to refer the said dispute to the industrial tribunal for adjudication. The tribunal considered the rival contentions raised before it by the parties and made its award on 14 February 1947.

4. The tribunal has held that the use of the word "may" no doubt gave discretion to the appellant but said discretion had to be exercised by the appellant not arbitrarily or capriciously but in a just and equitable manner. It also held that if the appellant did not play its part and refused to grant any increment, it would be for the tribunal to decide the dispute on the merits and make a proper award in that behalf. It appears that before the tribunal, the appellant urged that the notification issued by the Chief Minister of Korea State (which would hereinafter be called the Korea Award) was not valid. The tribunal has hold that at the time when the award was made the Korea State had no power to pass the order in question. It was in fact an administrative order of the State

with no legal sanction behind it; but it observed that this did not in any way affect the validity of the proceedings before the tribunal itself and could not impair the tribunal's jurisdiction to make an appropriate award. The tribunal was dealing with an industrial dispute validly referred to it for adjudication by Central Government, and so it was open to the tribunal to fix the basic wages of workmen concerned in the light of relevant facts and circumstances. The award which the tribunal would make in this matter would be valid subject to the decision of the Labour Appellate Tribunal. It is on these findings that the tribunal considered the matter on the merits apart from Cl. (2) of the Korea award and granted to the workmen increments which it thought would be fair and just. Having thus decided the main dispute between the parties about the increments by reference to different categories of employees the tribunal directed that in case of workmen not drawing more than Rs. 30 per month on 1 November, 1947, the increase in the basic pay would be allowed with effect from 1 November, 1947, and that all arrears would be paid within three months from the date of the publication of the award. In the case of other workmen who drew more than Rs. 30 per month as basic pay on 1 November, 1947, the increase would be effective as from 27 September, 1952, and the arrears due in that behalf would be paid within six months from the date of the publication of the award. This latter date was fixed by the tribunal because it held that it was on that date the demand for increase in wages was expressly made by the respondents. As soon as this award was pronounced the appellant applied to the High Court at Patna for a writ of certiorari quashing the award. On its behalf it was urged before the Patna High Court that the award was illegal and ultra vires because the tribunal had gone beyond the scope of the reference. Reliance was placed on the observations made by the tribunal about the invalidity of the Korea award and it was urged that, once the Korea award was held to be invalid, the tribunal had no jurisdiction to deal with the dispute. The High Court took the view that the question about the validity of the Korea award was not included in the reference and the observations made by the tribunal in that behalf were no more than obiter. According to the High Court, what the tribunal had been called upon to decide was the question of the construction of Cl. (2) of the Korea award, and this question, the High Court held, had been properly decided by the tribunal. It was also urged before the High Court that in making its award the tribunal had failed to consider the fact that the appellant had given several increments to the workmen concerned. The High Court was not impressed by this plea. It held that such a plea cannot sustain a claim for a writ of certiorari under Art. 226 of the Constitution. Since the contentions raised by the appellant in challenging the validity of the award were not accepted by the High Court the writ petition filed by the appellant was dismissed on 3 April, 1957. It is against this decision of the High Court that Civil Appeal No. 88 of 1958 has been filed in this Court by special leave.

5. Meanwhile the award made by the tribunal was taken before the Labour Appellate Tribunal and it was modified in favour of the respondents in two material particulars.

The Appellate Tribunal has confirmed the wage structure evolved by the tribunal in its award but it has directed that the increments allowed by the new structure should be retrospective in respect of all the employees as from 1 November, 1947. That is one modification made in favour of the employees. The other modification is that the benefit of the new structure has been extended to employees who joined the appellant oven after 1 November, 1947. It appears that the question about the validity of the Korea award was argued at length before the Appellate Tribunal, and it has been held by it that the award was valid and suffered from no legal and constitutional infirmity. It incidentally observed that no party had over challenged the validity of the award until the dispute was referred to the industrial tribunal and that in fact a benefit of increased prices sanctioned by the State which in fact was co-related with the Korea award had been fully availed of by the appellant. The Appellate Tribunal has considered the argument based on the formation of the Eastern States Union and the consequent absence of constitutional power in the Korea State to make the award; and it has held that there was no substance in the said argument. Thus the Appellate Tribunal's view was that the Korea award was effective and binding. Even so, the Appellate Tribunal agreed with the view taken by the industrial tribunal that the industrial dispute which had been referred for adjudication could be decided even if the Korea award was invalid. All that the tribunal was required to do on the reference was to consider the particular aspects of the problem whatever they may be as arising from Para. 2 of the Korea award. In regard to the wage structure itself the Appellate Tribunal held that though it did not agree with everything that the adjudicator had said in his award it felt that his conclusions should be upheld as a fair exercise of discretion except as to the period of retrospective effect in respect of categories with basic wages above Rs. 30. According to it, though the adjudicator was right in treating the problem of wage structure on a flexible basis he was wrong in attributing flexibility as to the date from which the increases ordered in the basic wages had to take effect. It is on these grounds that the Appellate Tribunal has modified the award in two particulars as already indicated. This decision of the Appellate Tribunal has by special leave given rise to Civil Appeal No. 40 of 1959. It is this appeal which has been pressed before us by Mr. Viswanatha Sastri on behalf of the appellant. The other appeal which arises from the decision of the High Court in the writ petition filed before it has now assumed a subsidiary position because the decision of the main appeal would substantially govern the decision of the subsidiary appeal. Before dealing with the points raised before us in the principal appeal we ought to make it clear that as far as wages payable to the employees in coal mines in this area are concerned that matter would be governed by the award pronounced by the Colliery Disputes Tribunal in 1956. This award has comprehensively considered the question of wage structure and it has become enforceable from 26 May, 1956. It is common ground that as from this date the question of wages of the respondents would be governed by the said award. We would also like to make it clear that we do not propose to consider the appellant's contention that the Korea award is invalid. In our opinion, the tribunals below were right in taking the view that even if the Korea award was invalid the dispute referred

to the industrial tribunal for adjudication by reference to Cl. (2) of the said award would nevertheless have to be considered on the merits. In fact, though the industrial tribunal had held that the Korea award was invalid, it still considered the merits of the dispute and made its award. The Appellate Tribunal has come to a contrary conclusion on the question about the validity of the Korea award. We do not propose to discuss or decide whether the view of the Appellate Tribunal is right or not. We will proceed on the basis that, even though the Korea award was invalid, the industrial dispute between the parties has been validly referred to the tribunal, and the tribunal as well as the Appellate Tribunal had jurisdiction to deal with it on the merits. There is one more point to which reference must be made. After the award was made by the industrial tribunal the appellant no doubt challenged it by a writ petition before the Patna High Court. It, however, did not prefer any appeal against the said award before the Labour Appellate Tribunal; and so it would not be open to the appellant to challenge any of the provisions of the said award on the merits. With these preliminary observations we will now deal with the points raised before us by the appellant. The first contention is that Cl. (2) of the award leaves to the discretion of the appellant to decide whether any increment should be given to the workers not falling under Cl. (1); that being so, the tribunal had no jurisdiction to deal with the dispute. On the other hand, Mr. Dipak Choudhri, has urged on behalf of the respondents that Cl. (2) in substance and in effect imposes an obligation on the appellants to give to the workmen covered by it the increments specified in it. The argument for the respondents is that though Cl. (2) uses the word "may" when it says that the persons specified "may" be granted an increase of 12 1/2 per cent in their basic pay, in the context the word "may" means "shall, " In support of this argument reliance is placed on the rule of interpretation mentioned in Maxwell in these words :

"Statutes which authorize persons to do acts for the benefit of others, or, as it is sometimes said, for the public good or the advancement of justice, have often given rise to the controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they may or shall if they think fit or shall have power or that it shall be lawful for them to do such acts, a statute appears to use the language of mere permission but it has been so often decided as to have become an axiom that in such cases such expressions may have to say the least a compulsory force and so would seem to be modified by judicial exposition" (Vide *Julius v. Bishop of Oxford* [(5) A.C. 214]; *Allcroft v. Lord Bishop of London* [(1891) A.C.] 666] and *Vetcha Sreeramamurthi v. Incometax Officer Vizianagaram* [(1956) Andhra Law Times 656]

In our opinion it would be difficult to construe the word "may" in Cl. (2) as introducing a compulsive element or as meaning "shall." It is significant that whereas all the other clause in the Korea award used the word "shall" or "will" the word "may" is used only in Cl. (2). The context shows that the award wanted to make it

compulsory for the employer to pay to the employees minimum basic wages. Similarly it wanted to enforce the payment of a minimum dearness allowance. It is with that object that the relevant provisions are made in a mandatory form. Clause (2) deals with employees some of whom in any case would be earning more than what the Korea award regarded as the basic minimum wage. This fact is not in dispute. Clause (2), therefore, did not purport to make it compulsory for the employer to make the increase of 12 1/2 per cent in the case of basic pay of employees to which it applied. The scheme of the award and the words used in the other clauses as distinguished from Cl. (2) irresistibly suggest that the word "may" used in the latter clause is intended to leave it to the discretion of the employer to give effect to the increase there stipulated. That is the view which both the tribunals have taken and we see no reason to differ from it. This conclusion, however, does not mean that the industrial tribunal cannot deal with the dispute referred to it in the present instance. Though Cl. (2) left it to the discretion of the employer to award the specified increase in the basic wages of the concerned employees, it undoubtedly imposed an obligation on the employer to consider the matter and to decide it in a fair and reasonable manner. The discretion given to the employer would not justify the employer's refusal to consider the problem at all, and that is what the appellant has done in the present case. Therefore, we are not impressed by the argument that because Cl. (2) is discretionary, the industrial tribunal cannot deal with the dispute arising from its stipulation. Besides, as we have already indicated, the order of reference by which the industrial dispute has been sent to the industrial tribunal for adjudication gave jurisdiction to the tribunal to deal with the merits of the dispute apart from the said clause. Therefore, we do not think that any question of jurisdiction really raises.

6. The next question which calls for our decision is whether the Appellate Tribunal was justified in directing that the increment ordered by the award should take effect as from 1 November 1947, in respect of employees whose basic wages exceed Rs. 30 per month. Normally we would be reluctant to interfere with the direction given by the Appellate Tribunal in such a matter, but in the present case the modification made by Appellate Tribunal suitors from obvious infirmities. The Appellate Tribunal no doubt started with the observation that the dispute came for decision nearly ten years after the Korea award; but it thought that the appellant had taken full advantage of the increase in prices permitted by the Korea Government as a corollary to the obligations imposed on the employer by the Korea award. If the appellant had the benefit of increasing the prices of coal why should it not submit to the obligation of increasing the wages of employees ? This consideration has been emphatically stated by the Appellate Tribunal more than four times in the course of its judgment. However, it appears that the Appellate Tribunal over-looked the fact that though the prices were allowed to be increased by the State Government as a consequence of the obligations imposed on the employer by the Korea award, the said increase was substantially reduced by the Government of India as from 1 January 1948, that is to say, the

original increase permitted by the Korea State was in operation for no more than a month and a half. The increased price originally permitted was Rs. 16-6-0 for run of mine, duet coal and slack but it was subsequently reduced to Rs. 14-3-0. Similarly, the original increased price for steam coal, rubble and smithy nuts which was fixed at Rs. 17-6-0 was reduced to Rs. 15-3-0. This fact has been completely ignored by the Appellate Tribunal. Besides, in considering the question as to bow much retrospective effect should be given to the award, it was clearly necessary to bear in mind the fact that on subsequent occasions the appellant has given increases to the concerned employees. Whether or not these increases were referable to Cl. (2) of the award is really immaterial in dealing with this aspect of the matter. The fact that increases have admittedly been given to the employees should have been taken into account in determining the extent of the retrospective operation of the present order. That has not been done by the Appellate Tribunal. Besides, the Appellate Tribunal has failed to consider the fact that the present demand was made for the first time in September 1952. The industrial tribunal had considered this question and had definitely found that notwithstanding the suggestion by the respondents to the contrary there was no reliable evidence to show that this demand had been specifically and clearly made prior to 27 September, 1952. Now, if the respondents did not make a specific claim until September 1952 it would not be fair or just to allow them the benefit of the present increase directed by the award even prior to the date of the demand. It is true that the industrial tribunal has allowed retrospective operation as from 1 November 1947, in the case of employees; drawing monthly wages below Rs. 30 but, as we have already pointed out, there was no appeal by the appellant against this award before the Appellate Tribunal, and so the validity of the said direction cannot be allowed to be impeached before us. We are, therefore, satisfied that the Appellate Tribunal was plainly and clearly in error in modifying the original award by giving direction that the benefit of the increments awarded to the employees drawing a basic monthly wage beyond Rs. 30 should take effect from 1 November 1947, instead of 27 September 1952.

7. The next question is whether the Appellate Tribunal was justified in allowing the benefit of the present award to employees who had entered service of the appellant subsequent to 1 November 1947. Mr. Sastri contends that the scheme of the award is that the increase should be granted to the employees who were in the employment of the appellant as from 1 November 1947. That no doubt is true; but, if on a consideration of all the relevant factors, the tribunal has found that the wages paid by the appellant to its employees needed an increment on principles of social justice, we think it would not be reasonable to suggest that the benefit of the said increase should be denied to such employees as entered the appellant's service subsequent to 1 November 1947. As we have already observed the present dispute has been considered by the tribunal on its own merits apart from Cl. (2) of the award. That being so, we do not think we would be justified in interfering with the direction given

by the Labour Appellate Tribunal extending the benefit of the present award to employees who had joined the appellant's service subsequent to 1 November 1947. In the result Civil Appeal No. 40 of 1959 partly succeeds and the direction issued by the Labour Appellate Tribunal making the award retrospective from 1 November 1947, in respect of employees receiving more than Rs. 30 as monthly basic wages is set aside and the original award restored in that behalf. The other modification made by the Labour Appellate Tribunal is confirmed.

8. Since we have held that the tribunals have jurisdiction to deal with the dispute and since we have considered the merits of the award passed in this dispute, Civil Appeal No. 88 of 1958 preferred by the appellant against the decision of the High Court on the appellant's writ petition does not really survive. This position is not disputed. That is why we do not propose to deal with any of the points urged by the appellant in its writ petition before the High Court. This appeal, therefore, fails and is dismissed.

9. In view of the fact that the principal appeal has been partly allowed we direct that the parties should bear their own costs in both the appeals.