SUPREME COURT OF INDIA

Management of Sone Valley Portland Cement Co. Ltd.

Vs.

Their Workmen

C.A.No.586 of 1960

(P. B. Gajendragadkar, A. K. Sarkar and K. N. Wanchoo, JJ.)

25.01.1962

JUDGEMENT

WANCHOO, J.:

1. This is an appeal by special leave in an industrial matter. There was a dispute between the appellant-company, which is a cement factory, and its workmen, and it was referred for adjudication by the Government of Bihar as far back as November 1954. There were a large number of matters which were referred. In this appeal however only three of them, namely, (i) gratuity, (ii) bonus for the year 1953, and (iii) all those whose names are on the company's roll for a year should be made permanent, have been pressed before us. An award was made on October 31,1956 by the industrial tribunal disposing of the dispute. The award was brought up before this Court by special leave and was set aside on a technical ground. Thereafter the matter went back before the tribunal. In the meantime, however, 33 out of 41 points of dispute referred originally had been disposed of by agreement between the appellant and its workmen. The tribunal therefore dealt with the remaining eight points only in the subsequent proceedings after the order of this Court, of which we are now concerned with only three as indicated above. We propose to deal with each point seriatim and the contentions of the parties will appear as we deal with the points. Before, however, we do so we may dispose of a preliminary point raised on behalf of the appellant, namely, that the appellant had not been given a fair hearing by the tribunal and was therefore unable to place relevant material before it and consequently the matter should be remanded to the tribunal to hear it again after giving an opportunity to the appellant to present its case properly before it.

2. In this connection the appellant relied on the order-sheet of the tribunal to show that sufficient opportunity was not given to the appellant to place its case before it. It may be mentioned that the earlier order of this Court was made on August 22, 1958 and thereafter proceedings began before the tribunal in September 1958. A good deal of time thereafter was spent in preliminaries which were settled by the end of November 1958. When the case came up on December 4,1958 before the tribunal, the appellant wanted time on the ground that it proposed to move the High Court in connection with the order of the tribunal of November 7,1958. An adjournment was granted thereupon. As the appellant did not move the High Court the matter was taken up again. Some time was then spent in an effort to arrive at an amicable settlement but this failed. Thereafter there were various hearings which were postponed for one reason or the other till we come to June 25, 1959. on that date the tribunal had before it a petition field by the parties jointly in which it was prayed that the hearing might take place at Japla where the cement factory is situate. Consequently the tribunal adjourned the case for hearing at Japla on June 26. on that day the parties appeared before the

tribunal; but an objection was raised by the respondents that there was no proper appearance on behalf of the appellant and in any case the appellant could not be allowed to appear by a lawyer. The tribunal held that the lawyer could not be permitted to appear as the other party was objecting to it. There were two officers of the appellant-company also present; but as objection was taken to their appearance, the tribunal asked them to produce their authority, which they were not able to produce. The tribunal therefore seems to have held, though not in so many words, that they could not properly represent the appellant. Even so it seems from the order-sheet that though the two officers were not strictly entitled to appear on behalf of the appellant the tribunal permitted them to appear. The tribunal also noted that though the matter had been ending since 1954 the appellant was trying for further adjournment to delay adjudication. The tribunal was not prepared to give a long adjournment. Even so, it postponed the case to June 27 to allow the parties to file documentary evidence. on June 27, the parties were present and their representation was as before: but on this date it appears that there was no objection on behalf of the respondents to the appearance of the two officers and so the proceedings went on. The tribunal was not however prepared to allow further time to the parties and fixed July 15, 1959 for written arguments. Eventually after more adjournments the appellant field written arguments on August 24, 1959 while the respondents did not do so. The tribunal then gave the award on September 26,1959.

3. On these facts it is submitted on behalf of the appellant that it was not given a fair hearing and had been deprived of the opportunity of placing relevant material before the tribunal; and this is based firstly on what happened on June 26, 1959 on the objection of the respondents as to the authority of the two officers to represent the appellant- and secondly, on the refusal of the tribunal on June 27 to give any further time to the appellant to file further material in support of its case. We are of opinion that though technically the tribunal held that the two officers could not represent the appellant, in fact it appears from the proceedings that the two officers were allowed to represent the appellants both on June 26 and 27, 1959. Further we cannot forget that the main evidence in this case was led on the earlier occasion when the award was made in 1956 and that evidence was accepted by the parties on the second occasion and on the present occasion all that the appellant wanted was to supplement that evidence by a few more documents. Considering that the hearing was being given at Japla where the appellant-company is situate we do not see why it should have been difficult for the appellant to be ready with the material it wanted to produce on June 27. Further as this case had been going on since 1954. we do not think that the tribunal was unjustified in refusing to grant further adjournment and on insisting on the production of whatever material was to be produced within 24 hours. In any case we are not prepared to say that there was not a fair hearing in the circumstances. Nor are we disposed to remand this case for further hearing after this interval of seven years.

4. Turning now to the three points which have been raised before us we shall first take the contention with respect to that part of the award by which the tribunal has ordered that 50 per cent of the cement packers should be made permanent. The reasons given by the tribunal for making this order are (i) that cement packing is not work of a temporary nature but is part of the manufacturing process which goes on all the time, and (ii) that the figures supplied by the appellant as to the number of temporary cement packers and the work done by them in 1954 show that there was sufficient work for at least 50 per centum of them being made permanent. We agree with both the reasons given by the tribunal and are of opinion that the order passed by it that 50 per centum of the cement packers should be made permanent is justified. We therefore reject the contention of the appellant in this behalf.

5. Turning now to the question of gratuity it appears that there was a provident fund scheme in force

in this company and the workmen wanted double retirement benefit by the introduction of a gratuity scheme, their case being that this was the general pattern for cement factories in that region. It appears that this matter was under adjudication in 1948. At that time the appellant had conceded that retiring workmen were entitled to gratuity also on principle but pleaded that the implementation of this principle should wait for legislation on the subject which was then expected. It was also conceded by the appellant that if any cement concern in this country had the practice of paying gratuity to retiring workmen the appellant would follow suit subject to the fact that both gratuity scheme and provident fund scheme were simultaneously in vouge in any other cement concern. This being the position in 1948, the tribunal has pointed out that the system of both provident found and gratuity was already in force in the cement factory belonging to the Associated Cement Companies Limited at khelari and also in the factory of Rohtas Industrials Limited Dalmianagar. Therefore the tribunal was of the view that if the financial condition of the appellant permitted it the gratuity scheme should be introduced as conceded by the appellant as far back as 1948. The tribunal then went into the question of financial capacity of the appellant to bear the burden of gratuity and came to the conclusion that there was nothing to show that the appellant would not be able to bear the burden of gratuity.

The appellant relied on certain figures submitted by it in the written arguments to show that a heavy burden was likely to be placed on the company by the introduction of the gratuity scheme which it could not bear. The tribunal has said about these figures that they are mere guess work. As was pointed out by this Court in Bharatkhand Textile Mfg. Co. Ltd. v. Textile Labour Association, 1960-3 SCR 329 at p. 349:(AIR 1960 SC 833 at p. 842), there are two ways of looking at this matter of the burden of a gratuity scheme. One is to capitalise the burden on actuarial basis and that would naturally show theoretically that the burden would be heavy. The other is to look at the scheme with respect to its practical aspect and that shows that generally speaking not more than three to four per centum of the employees retire each year. If the burden is calculated on the basis of this practical approach as it should be there is in our opinion no reason to interfere with the view of the tribunal that the appellant can bear this burden. We therefore see no reason to disagree with the tribunal that the appellant would be able to bear the burden of the gratuity scheme in addition to the provident fund scheme already in force.

6. It is however urged on behalf of the appellant that the tribunal should have followed the scheme in force in the factories of Associated Cement Companies. Limited where there is a maximum of fifteen months wages provided for gratuity. The tribunal in the present case has introduced no maximum and the appellant contends that the maximum should be introduced in its case also. It seems to us that the appellant was so concerned in opposing the introduction of the gratuity scheme at all that it did not worry about its terms. What the tribunal has done is to introduce the scheme which it has introduced in another concern, namely, Rohtas Industries Limited, Dalmianagar. Considering that the appellant did not apparently make any submissions about the details of the scheme of gratuity before the tribunal and also considering that no points as to the details of the scheme have been reaised in the special leave petition, we are not prepared to allow the appellant in challenge the details of the scheme at this late stage. The appellant can only succeed by showing that no gratuity scheme should be introduced; but as it fails in that, we see no reason to go into the details of the scheme which has been introduced by the tribunal in conformity with what it did in another concern in the same region. We have already pointed out that we are not satisfied that the appellant has not the financial capacity to bear the burden of both the provident fund and gratuity. The contention of the appellant therefore on this score must also fail.

7. This brings us to the question of bouns. The appellant had already given bonus equivalent to two

months wages to the respondents. The respondents however claimed three months wages as bonus. The tribunal has allowed them fifteen days extra bonus over and above the two months' bonus given to them by the appellant. The contention of the appellant is that it has already given to its workmen more than it would have been required to give under the Full Bench formula and there was therefore no reason for the tribunal to award bonus for fifteen days' extra, which would amount to about Rs. 1 1/4 lacs, the monthly wage bill being Rs. 2 1/2 lacs. It was not disputed before the tribunal and it is not disputed before us that if the available surplus is to be calculated from the balance sheet and the profit-and-loss account of the appellant for the relevant year, accepting them as correct, there would be no scope for awarding any further bonus beyond the two months' bonus already given by the appellant to its workmen. The tribunal however, without finding that the balance-sheet and the profit-and-loss account of the appellant are in any way incorrect, has apparently not relied on them because of a certain discrepancy of Rs. 38 lacs between the price of cement as it words out according to the price fixed by the Government and the amount shown in the balance-sheet and the profit-and-loss account on that behalf. According to the tribunal this discrepancy has not been explained and therefore if this sum of Rs. 38 lacs or even a fraction of it is treated as profit there will be sufficient surplus to allow fifteen days' extra bonus. The tribunal however overlooked the evidence of J.C. Dutt, the Accountant of the appellant at the time in this connection. He was asked about this discrepancy and stated that the discrepancy was accounted for by deduction of selling agents' commission, freight elements and adjustment of claims etc. He further stated that the figures relating to Rs. 38 lacs which was the difference were available in the office and could be supplied if required. The balance-sheet and the profit- and-loss account also show that the figure entered in them is after deduction of the commission, though not of other items mentioned by the Accountant. After this statement of the Accountant, no attempt was made either by the respondents or by the tribunal to send for those documents. What is however urged on behalf of the respondents is that it was for the Accountant to bring the papers and explain the matter fully to the tribunal, and as the Accountant failed to do so the tribunal was justified in holding that this figure of Rs. 38 lacs had not been explained. We are of opinion that this was not a fair way of dealing with the matter. The Accountant had given an explaination and was prepared to substantiate his explanation from documents if required to do so. In these circumstances it was open either to the respondents or the tribunal to require him to bring the documents and substantiate his statement, which was already corroborated in part by the fact that the balance-sheet and the profit-and-loss account did mention that the price entered in them was after deducting the commission. Further, the appellant had filed the income-tax return for the relevant year, where the income-tax department had accepted the position with respect to the sale price. In the circumstances it was not fair on the part of the tribunal to disallow this amount of Rs. 38 lacs without calling upon the appellant to produce the documents which Dutt said were available and which he was prepared to produce if required to do so. We cannot agree with the tribunal in holding that there is anything wrong with the balance-sheet and the profit-and-loss account of the relevant year with respect to this amount of Rs. 38 lacs. Therefore as soon as the balance-sheet and the profit- and-loss account are accepted as correct, it cannot be disputed and it has not been disputed that the workmen would not be entitled to anything more as bonus than what the appellant has already given to them. We therefore set aside this part of the award of the tribunal with respect to the grant of further bonus for fifteen days to the respondents.

8. The appeal is therefore dismissed with respect to gratuity and the order relating to permanency of certain staff but is allowed with respect to bonus. In the circumstances we order the parties to bear their own costs.

Appeal partly allowed.

</html