Novex Dry Cleaners

v.

Its Workmen

(Supreme Court Of India)

HON'BLE MR. JUSTICE P.B. GAJENDRA GADKAR HON'BLE MR. JUSTICE A.K. SARKAR HON'BLE MR. JUSTICE K.N. WANCHOO

Civil Appeal No. 524 Of 1960 | 05-02-1962

Gajendragadkar, J.

1. An industrial dispute arose between the appellant, Novex Dry Cleaners and the respondents, its workers. This dispute related to seven items of demands made by the respondents against the appellant. It appears that similar demands were made by the workmen of twenty-seven other dry cleaners in New Delhi. That is how the dispute in respect of these demands between twenty-eight dry cleaners, including the appellant, and their respective workmen was referred for adjudication before the industrial tribunal, Delhi, by the Chief Commissioner of New Delhi. This reference was treated as Industrial Dispute No. 32 of 1957. At the same time, a similar dispute had arisen between the workmen and two other dry cleaning institutions in New Delhi. These institutions were Snowhite and Band Box, respectively. A separate reference was made to the same industrial tribunal for the adjudication of the said dispute and it was treated as Industrial Dispute No. 66 of 1957. The latter reference ended in two awards which were the result of a settlement between the two establishments and their respective employees. The former went to adjudication and an award was pronounced by the tribunal in that dispute on 3 September 1958. Against that award, the appellant has come to this Court by special leave and in the present appeal, the appellant has challenged the validity of the award in respect of five items in dispute.

2. The main criticism has centred around the wage structure fixed by the appellant in respect of its employees. The tribunal took the view that the case of the appellant was comparable to the cases of the Snowhite and Band Box establishments and that it would be fair and reasonable to adopt the wage scale which had been determined in the awards made between the said two

establishments and their employees. According to the tribunal, the case of the appellant was easily distinguishable from the cases of the twenty-seven other establishments involved in the reference in that the said establishments were comparatively of recent origin and financially much less stable and prosperous than the appellant. The appellant concern, said the tribunal, is one of the biggest establishments and so it would be fair and reasonable to adopt for its employees the same wage structure which would now prevail in the two other concerns, viz., Snowhite and Band Box. Accordingly, the tribunal classified the employees into six categories and prescribed a wage scale with increments for them respectively. The correctness of this part of the award is very seriously challenged before us by Sri Sastri for the appellant.It appears from the award that the tribunal addressed itself correctly to the true legal position governing the fixation of a wage structure in industrial disputes. It realized that in deciding upon a wage structure, it may be relevant to take into account the wages prevailing in the industry in the said region, that the wages will have to be fixed in a fair and just way and above all, it would be necessary to examine whether the wage structure proposed to be fixed could be fairly and reasonably borne by the financial position of the establishment. It is now well settled that in fixing a minimum wage, the capacity of the industry to pay the wage is not relevant. But in fixing a fair wage, the capacity of the industry to bear the burden of the said wage is a very relevant and very important factor. Therefore, there can be no doubt that before fixing the wage structure, it was necessary that the tribunal should have examined the financial position of the appellant and come to a definite conclusion in that behalf.

3. The award shows that in support of their claim for a higher wage, the respondents relied upon the wage structure prevailing in oil companies like the Standard Vacuum Oil Company, or in concerns like Bata Shoe Company, Marshal & Sons, and May and Baker. The tribunal refused to treat these wage structures as relevant and, in our opinion, rightly. The management relied upon the wage structure prescribed by an award in respect of the dry cleaning industry in Bombay on 24 December 1953 (Ex. M105). The tribunal refused to attach any importance to this award on the ground that it related to the industry in a different region. Since the award related to the industry in Bombay, it would naturally not be justified to attach undue importance to it; but, on the other hand, evidence supplied by the said award cannot be said to be altogether irrelevant. Then the tribunal considered the two awards made between the Snowhite dry cleaners and the Band Box dry cleaners and it held that the position of the appellant was comparable to that of the said two establishments.

It observed that the appellant is in a prosperous condition; that it is also registered under the Factories Act; that it has been in existence since 1937 and it has been making steady profits and so it was comparable with Band Box and Snowhite. It is on these grounds that the tribunal based its conclusion that the appellant had the capacity to pay incremental wage scales fixed for the Snowhite and the Band Box.In our opinion, this conclusion is open to serious criticism. In dealing with the question as to whether the appellant establishment was comparable to Snowhite and Band Box, it was obviously necessary to compare the three institutions in respect of their standing, the extent of the labour force employed by them, the extent of their respective customers and, what is more important, a comparative study should have been made of the profits and losses incurred by them for some years before the date of the award. Unfortunately, the tribunal has not even considered the balance-sheets produced by the appellant showing the position of the profit and loss of the appellant itself. These documents are Exs. M2, M4, M6, M8 and M10. The financial position of the two other concerns had not been referred to in the award and presumably no evidence about the said point was adduced before the tribunal. On the question of the strength of the labour force, it appears that the appellant engages 109 permanent employees and twenty to thirty temporary employees, whereas the Snowhite appears to have 258 persons on its rolls; about the labour force of the Band Box, there is no evidence. The oral evidence given by some of the witnesses on behalf of the respondents is very vague and cannot at all serve to support the finding about the financial position of the appellant. Therefore, in our opinion, the tribunal was in error in making a finding about the financial position of the appellant in comparison to that of the Snowhite and the Band Box without applying tits mind to the relevant factors and without calling upon the parties to adduce relevant and material evidence in that behalf. It is well known that in fixing the wage structure on a fair basis, an attempt is generally made in assessing the additional liability imposed upon the employer by the new wage structure and trying to anticipate whether the employer would be able to meet it for a reasonably long period in future. Since the tribunal has not considered these aspects of the matter at all, we cannot uphold its award whereby it has merely adopted the wage scale fixed by the two awards in respect of the Snowhite and the Band Box.Besides, having fixed six categories of workmen, the tribunal has left it to the management and the workmen in consultation with each other to place the several workmen in the relevant category. That again is not a very satisfactory solution of the problem. The tribunal should have described the functions of the different categories, and after hearing the parties, have given indications in the award itself as to how different employees should be placed in what category. Therefore, in our

opinion, the grievance made by the appellant against that part of the award which deals with the wage structure and the categorization of the employees is justified and it must be set aside. We tried to see if this problem could be settled in this Court and so we gave time to the parties to attempt to find a solution by consent. That attempt, however, failed and so the only alternative left is to send the matter back to the tribunal with a direction that the tribunal should examine the problem afresh in the light of this judgment, allow the parties to lead relevant evidence in respect of their rival contentions and deal with the question of wage structure according to law.

4. The next contention raised is in respect of the direction issued by the tribunal for the continuance of the payment of the seasonal allowances. The tribunal has directed that the seasonal allowance that is being paid to the workmen will continue to be paid irrespective of the wages fixed as above. It is fairly conceded by Sri Kumar for the respondents that this direction is presumably the result of an oversight. It appears that pending the enquiry before the tribunal, the employees suggested to the tribunal that by way of interim relief some payment should be made to them before the final award was made. It was urged by them that the employer had agreed before the conciliation officer to give some interim relief as suggested by the conciliation officer himself and that was the basis of the claim which was ultimately awarded by the tribunal under the clause of seasonal allowances. That being so, it would be illogical to direct the continuance of the said seasonal allowance even after the wage structure is fixed. That is why the order made by the tribunal that the seasonal allowance should be a permanent fixture of the wage structure must be set aside. But as we have set aside the wage structure as fixed by the tribunal, the seasonal allowance will continue till such time as the tribunal fixes the wage structure again.The next item of controversy is in relation to the leave facilities prescribed by the award. Here again through oversight, the tribunal has directed the appellant to grant more leave under three items than has been provided for by the awards against the Band Box and the Snowhite Festival leave in factory which has been fixed by the tribunal at twelve, presumably on the ground that it is existing at present, is more than what has been awarded in the Band Box and Snowhite cases. Relevant leave allowed by the said awards is nine days. Similarly, casual-cum-sick leave in factory is fixed at twelve days whereas it is fixed at seven days in the case of the other two concerns and casual-cum-sick leave in shops is fixed at twelve days instead of ten days in the two other concerns. It is not seriously disputed that no injustice would be done to the respondents if in respondents in the same way as the workmen in the two

concerns have been treated. Accordingly, leave under the three items would be reduced from twelve, twelve, twelve, to nine, seven and ten, respectively.

5. That takes us to the appellant's contention about the bonus ordered to be paid by the tribunal for the relevant year. The tribunal has held that the available surplus is Rs. 14, 812-12-0 and so it has directed the appellant to pay a month's wages to the respondents by way of bonus. Several contentions have been raised against the award of bonus by the tribunal and it is urged that even the calculation about the total monthly wage bill of the appellant is erroneous. It is, however, not necessary to deal with the appellant's contentions on this point because by consent it has been agreed between the parties that by way of bonus, the appellant should pay to all its employees together Rs. 2, 000 for the relevant year.That leaves only one point to be considered and it relates to the provident fund. The tribunal has directed that since the appellant is a fairly established concern, it can afford to have a provident fund scheme and it has ordered that a contributory provident fund scheme and it has ordered that a contributory provident fund scheme shall be introduced by the appellant in accordance with the provisions of and on the lines of the Employees' Provident Fund Act. The rate of contribution by the employees has been fixed by the tribunal at six and a half per cent of their wages and the employer is required to contribute an equal amount to the fund. In our opinion, there would be no justification for interfering with this part of the award. The liability imposed on the appellant by the introduction of the provident fund scheme is not shown to be either excessive or to be beyond the paying capacity of the appellant. Unlike the wage structure which cannot be fixed without determining the financial position of the appellant and deciding whether the appellant concern is comparable to Snowhite and Band Box, the liability imposed by the provident fund is not shown to be unreasonable at all. Indeed, though Sri Sastri suggested that the scheme should not be introduced, he was unable to give any satisfactory reason in support of his contention. A provident fund scheme like the one framed by the tribunal in the present case has now become almost a normal feature in many industrial concerns and so, Sri Sastri could not seriously press his objections against the scheme. His main attack was against the wage structure.

6. The result is, the award in respect of provident fund is confirmed, in respect of bonus is modified by consent, and is modified in regard to the leave facilities in the three items indicated and reversed in regard to the seasonal allowance and the wage structure, and the matter is sent back to the tribunal for the decision of

the last item in accordance with law. The appeal is accordingly partly allowed. There would be no order as to costs.