Remington Rand of India

v.

Its Workmen

(Supreme Court Of India)

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

Civil Appeal No. 12 And 13 Of 1961 | 26-02-1962

Gajendragadkar, J.

1. A claim for an increase in the dearness allowance made by then workmen of the management of Remington Rand of India was referred for adjudication to the Industrial tribunal at Delhi and had been partly allowed. Against the award pronounced by the tribunal partially upholding the claim of the workmen, two cross-appeals have been brought to this Court by special leave. The company in its Appeal No. 12 of 1961, contends that no case had been made out for an increase in the existing rate and schemes of dearness allowance, whereas the workmen in their Appeal No. 13 of 1961 argue that the relief granted by the award in insufficient; the higher rates of dearness allowance should have been awarded and that the revised rates should have been brought into force, not from 1 December 1959, but from the date when the demand was made by the workmen in that behalf.

2. It appears that on 9 April 1953, a comprehensive agreement was reached between the parties in respect of several terms of employment. Amongst the items included in the compromise was one in relation to the dearness allowance. This is how the agreement had fixed the payment of dearness allowances

"DEARNESS ALLOWANCE.

Rate of dearness allowance when Variation in the Slab in rupees. the working class cost of living percentage in Col. index is in the 351-360 group (2) to be

allowed (March 1953 figure). per 10-point movement in the index figures for Delhi.

(1) (2) (3)

1-100 .... 70 per cent of the basic pay ... 5

101-200 .... 35 per cent of the basic pay ... 2 1/2

201 and .... 17 1/2 per cent of the basic ... 1 1/4 over pay

Miximum Rs. 200. Minimum Rs. 58."

3. It is common ground that by virtue of the operation of the clause providing for the variation in the payment of the dearness allowance with the rise in the index of cost of living, at present the workmen are paid on the first hundred 95 per cent, on the second hundred 47 1/2 per cent and on the third hundred 23 3/4 per cent of the basic pay. This percentage is determined on the cost of living index base 401-410.In 1958, a dispute was raised by the workmen in regard to dearness allowance and in fact, on 3 September 1958, they had given a strike notice to the company. Subsequently, the matter was discussed by the company with its workmen and as a result of the discussions, an interim settlement was evolved by consent. By this interim settlement, it was agreed that the adjustment in the dearness allowance by reference to the rise in the cost of living index will be made by the management every month instead of every six months as was being done till then. It was also agreed that the minimum dearness allowance in Delhi Rs. 60 per month. This agreement was to be effective from the month ending 20 August 1958, that is to say, its operation began from 20 July 1958. The last clause of this agreement provided that the parties will negotiate amongst themselves for a final settlement and in case no settlement is reached, it will be open to the union to approach the conciliation officer. This agreement was signed on 8 October 1958.

4. It appears that the parties were unable to come to a final settlement in respect of the dispute raised by the workmen and so, on 25 July 1959, the said dispute was referred for adjudication. Before the arbitrator the workmen placed their claim in this way :

"(1) The existing rate of dearness allowance should be increased by 40 per cent on the first hundred, 20 per cent on the second hundred and 10 per cent on the third hundred up to a maximum of Rs. 200.

(2) The minimum dearness allowance should be raised to Rs. 80 and provision should be made for an increase in the minimum dearness allowance with the rise in cost of living.

(3) The scheme of dearness allowance should be linked to middle class cost of living index either of Bengal Chamber of Commerce, or of the Delhi Chamber of Commerce.(4) The new rates of dearness allowance including minimum dearness allowance should be made applicable retrospectively from 21 July 1958."

5. In fact, it is in regard to the claim thus made by the workmen that the four corresponding issues formed the subject-matter of the terms of reference. During the course of the proceedings before the tribunal, the workmen gave up their claim that the dearness allowance payable to them should be linked to middle class cost of living index either of Bengal Chamber of Commerce, or of the Delhi Chamber of Commerce, and so, that part of the workmen's case was not considered by the tribunal and the problem of making changes in the dearness allowance was naturally dealt with on the footing that the relevant cost of living index would be that of the working class and not of the middle class.

6. After hearing both the parties and considering the evidence led by them, the tribunal has directed that :

"DEARNESS ALLOWANCE

Rate of dearness allowance Variation in the Slab in rupees. when the working class cost percentage in Col. (2) of living index is in to be allowed per 381-390 group. 10-point movement in the index figures for Delhi.

(1) (2) (3)

1-100 .... 110 per cent of the .... 5 basic pay

101-200 .... 55 per cent of the .... 2.50 basic pay

201 and over .... 27.50 per cent of the .... 1.25 basic pay

Maximum Rs. 200. Minimum Rs. 70."

7. It has also ordered that it would be fair that the revised rate should come into force from 1 December 1959 and not from 21 July 1958, as claimed by the workmen.

8. On behalf of the company, Sri Sen has contended that the tribunal was in error in allowing the workmen to raise a dispute in regard to the increase in the dearness allowance because since the parties had reached a comprehensive agreement in 1953, no change of circumstances had occurred and so the claim made by the workmen was, in effect, barred by res judicata. In support of this contention he has relied on the decision of this Court in Burn & Co., Calcutta v. Their employees [1957 - I L.L.J. 226]. In that case this Court has held that an award of an industrial tribunal is intended to have a long-term operation and can be reopened under S.19(6) of the Industrial Disputes Act (14 of 1947) only when there has been a material change in the circumstances on which it was based. In appreciating the effect of this decision, however, it is necessary to remember that the claim made by the workmen was in respect of the scales of pay which had been fixed by the Palit award on 12 June 1950 and the claim for revision was referred for industrial adjudication on 16 December 1952. In fact,

purporting to act under S.19(6) of the Act, the union had issued a notice to the company on 12 July 1951, being exactly one year from the date of the publication of the Palit award declaring its intention not to be bound by it. Therefore, it is clear that though the Palit award had carefully examined the problem of wage structure and prescribed scales of pay, as soon as one year expired, the union purported to determine the said award and made a claim for the revision of the pay scales once again. It is in that context that this Court observed that an award fixing wage scales is normally intended to be in operation for a fairly long time and it can be revised only if it is shown that since it was made, there has been a material change in circumstances. From that judgment itself it follows that the considerations which were relevant in regard to the fixation of the wage scale by an award would not be relevant in respect of the dearness allowance. Indeed, it is hardly necessary to add that the decision of industrial disputes in a large number of matters may not easily admit the application of all the technical implications of the doctrine of res judicata. We are, therefore, not inclined to accept Sri Sen's argument that the claim made by the workmen in the present case can be shut out on the ground of res judicata.It is, however, urged by Sri Sen that though a claim for the revision of dearness allowance may generally be admissible with the rise in the cost of living index, it cannot be entertained where the scheme for the payment of dearness allowance contains a clause for the increase in the dearness allowance with the rise in the cost of living index. He has invited our attention to the fact that the agreement of 1953 specifically provides for making necessary adjustments in the payment of dearness allowance consequent on the increase in the cost of living index and so, it would not be fair to allow a claim for revision of the dearness allowance solely on the ground that the cost of living index shows an upward tendency. It is true that if the scheme about the payment of dearness allowance allows for increase in the dearness allowance consequent on the increase in the cost of living index, that would be one factor in favour of allowing the scheme to operate for a fairly long period. But it would be idle to suggest that because a provision is made for the adjustment of the dearness allowance consequent upon an increase in the cost of living index, the scheme of dearness allowance can never be altered, for that would be the logical conclusion of the contention raised by Sri Sen on the ground of res judicata. It is quite conceivable that if the cost of living shows a tendency to rise very high the workmen would be entitled to claim that there should be a change in the rates of dearness allowance basically fixed in order to allow them more neutralization, and such a demand cannot be rejected without examining its merits solely on the ground that because a provision is made for adjustment from time to time, the scheme ought to remain in force for all time and cannot be reopened or re-

examined. The tribunal has held that since 1953, there has been considerable rise in the cost of living and that would justify the claim of the workmen for re-examination of the said scheme. In our opinion, the consideration which has thus opinion, the consideration which has thus weighed with the tribunal cannot be said to be irrelevant.There is another aspect of the matter to which reference must be made. In 1953, when the agreement was made, the financial position of the company was far from satisfactory. In fact, it appears from the record that a claim for additional bonus which was made by the workmen for the years 1952, 1953, 1954 and 1955 was rejected by the tribunal on the ground that the company had incurred losses during the relevant years. Thus, the agreement was made at a time when the company was not in a prosperous condition. At the present time, the company is undoubtedly in a much better financial position. A material change in the financial position of the company is another fact on which the tribunal has relied in coming to the conclusion that the scheme of dearness allowance needs to be re-examined as claimed by the workmen.

9. In this connexion, it would also be relevant to recall that when an interim settlement was arrived at between the parties in 1953, they greed to change the minimum dearness allowance and wanted to negotiate amongst themselves for a final settlement in respect of the other demands made by the workmen. The agreement expressly provided that if no final settlement could be reached by agreement, it would be open to the union to approach the conciliation officer. The learned Attorney-General contends and we think with some force that this clause in the interim settlement itself contemplates that a revision of the dearness allowance scheme should be considered and if no compromise is reached on it, it should be adjudicated upon in the ordinary way by going before the conciliation officer and failing conciliation, by arbitration before the industrial tribunal.

10. It is true that in dealing with the question about the material change in circumstances, the tribunal was impressed by what it thought to be the result of a change made by the company in respect of the payment of dearness allowance to its employees at Lucknow. The tribunal has taken the view that in its Lucknow branch the dearness allowance paid by the company has been increased from 68 per cent to 88 per cent with effect from 21 April, 1958. If this assumption was correct, then undoubtedly it would have been a material fact in favour of the workmen and against the company. But in assuming that the increase in the dearness allowance was from 68 per cent to 88 per cent, the

tribunal has committed an obvious error. Dearness allowance in the Lucknow branch was fixed at the lumpsum of Rs. 86 and since the cost of living showed an upward tendency, this lumpsum was raised from Rs. 68 to Rs. 88. That however is an entirely different matter. If the dearness allowance is fixed at a lumpsum, it has to be increased if the cost of living goes upwards. Therefore, one reason given by the tribunal in support of its conclusion that the company cannot resist the revision of the dearness allowance in the present proceedings, cannot be sustained. Even so, as we have already pointed out, there has been a material change in the cost of living since 1953 and there has been material change in the financial position of the company. Therefore, we are satisfied that the tribunal was right in rejecting the plea of res judicata raised by the company.The next contention raised by Sri Sen is that the question about the dearness allowance should have been considered by the tribunal on an industry-cum-region basis, and in support of this argument he has referred us to the decision of this Court in Express Newspapers (Private), Ltd. and another v. Union of India and others [1961 - I L.L.J. 339] where this Court has observed that in the matter of fixing wages, the capacity of the industry to pay has to be considered on an industry-cum-region basis after taking a fair cross-section of the industry into account. In appreciating this argument, it is necessary to bear in mind the position occupied by the company in the industry in question. The company is a subsidiary of Sperry Rand of New York and it has 45 branches in India. It owns a factory for manufacturing typewriters at Calcutta. Under the regional officer, Delhi, there are a number of branches. It is admitted that 75 per cent of the business of typewriters in India is handled by the company. It is undoubtedly the largest concern in India manufacturing and selling various models of typewriters, and its sales far exceed the total sales of the other concerns selling typewriters. The other companies which operate in the same field are Godrej and Boyce, and Royala Corporation. There is no doubt at all that these are by no means comparable to the Remington Rand of India. Thus, on the finding of the tribunal, the company has a distinctive and special position in the industry and has attained in its business the position of a semi-monopolist. There are no industrial concerns which are comparable to the company and that is the main reason which weighed with the tribunal in rejecting the company's plea that the wage scales and the dearness allowance paid by other typewriting concerns should be taken into account. In the circumstances of this case, we are not prepared to hold that the tribunal was in error in taking this view.Sri Sen then contends - and that is the main point which has been strenuously urged before us - that in considering the dearness allowance paid by certain concerns which the tribunal regarded as comparable to the company, it has made a serious mistake inasmuch as a majority of these

concerns pay dearness allowance based on the cost of living index prepared for the middle class. The argument is that though the workmen had originally claimed that their dearness allowance should be linked with the middle class cost of living, that claim was given up, evidence was led about concerns paying dearness allowance based on the middle class cost of living; and through oversight, the tribunal has considered this evidence, ignoring the fact that the claim, for linking up dearness allowance with the middle class cost of living had been given up. In support of this argument, Sri Sen has referred us to the fact that the tribunal has considered the dearness allowance pad by the Imperial Chemical Industries, Dunlop Rubber Company, Gillanders Arbuthnot & Co., Ltd., and Hindustan Lever, Limited and some others. It is clear that the cost of living index adopted by these companies in fixing the dearness allowance payable to their employees was the middle class cost of living index, and some of these cases have, no doubt, been mentioned by the tribunal in its award. There is considerable force in the contention thus raised by Sri Sen. His suggestion was that since part of the evidence on which the relevant portion of the award is based is inadmissible, it is necessary that the award should be set aside and the matter sent back to the tribunal for fresh consideration.

11. We have carefully considered this plea but we do not think that the ends of justice require that the course suggested by Sri Sen should be adopted. What has weighed in our minds in reaching this conclusion is the fact that the tribunal appears to have attached considerable importance to the evidence supplied by the dearness allowance paid by Marshall Sons & Co., and Voltas, Ltd., and the final order passed by the tribunal leaves no doubt that it is in the light of these two instances that it ultimately decided upon the extent of the increase which should be allowed in the present case; and there is also no doubt that in both these instances, the dearness allowance is based on the working class cost of living. Therefore, we are satisfied that there is sufficient legal evidence on which the final conclusion of the tribunal can be sustained. That is why we do not think any useful purpose would be served by sending the matter back to the tribunal for reconsideration.Sri Sen has, no doubt, contended that the tribunal was not justified in treating Voltas, Ltd., and Marshall Sons & Co., as comparable concerns and he has argued that the list of concerns and companies filed by the company under Ex. M3 really contains evidence about comparable concerns. According to Sri Sen, the profits made by Voltas are much larger than those made by his client and the profits made by the companies specified in Ex. M3 are really near about the profits made by his client. It is true that in deciding the question as to what concern or company may be comparable, regard must be

had to the extent of the business carried on by the said company; the extent of the profits made by it and the nature of its business. It may also be necessary to consider the standing of the said company and the strength of its labour force, as well as the wage structure prevailing in that company. It may also be conceded in favour of Sri Sen that the cases of oil companies stand in a class by themselves and unless the relevant evidence justifies the contrary conclusion, it would not be reasonable to treat them as comparable concerns in dealing with ordinary employers in other industries. But these are all considerations which the tribunal has to bear in mind and having considered the award pronounced by the tribunal in the present case, we cannot say that these considerations have been ignored by it. Therefore, we do not think we would be justified in asking the tribunal to consider the same matter once again.

12. That takes us to the question about the capacity of the company to bear the additional burden imposed by the increased dearness allowance. We have already referred to the fact that in 1957, when the workmen of the company had made a claim for bonus for the years between 1952 to 1955, the tribunal had found that the company had incurred losses and that there was no available surplus which would justify the awarding of any additional bonus. Sri Sen has naturally relied upon this finding in support of his argument that the burden imposed by the present award would be beyond the capacity of the company. On the other hand, as the tribunal has pointed out, the financial difficulties of the company have now become a matter of the past and since the company has established its own factory at Calcutta, restrictions on imports, which previously affected its business, do not make any difference now. The profit and loss account of the company for the year ended 31 March, 1958, shows a profit of Rs. 24, 16, 905. Besides, it appears that for the year 1958-59, the company had declared 2 1/2 months' basic wages as bonus, whereas in the previous year the bonus declared was 1 1/2 months' basic wages. Exs. M7 and M8 which have been produced by the company show that the company has been making fairly good profits. It appears that the difficulties of the company in expanding its business arose from the restrictions on imports and that difficulty has now been overcome by the fact that the company has started a factory of its own in Calcutta. In our opinion, therefore, the tribunal was clearly right in holding that the company can easily bear the burden of the additional dearness allowance which the award has imposed on it.There is one more point which still remains to be considered. Sri Sen contends that the finding of the tribunal as to the increase in the dearness allowance which would be justified and his final order are inconsistent. In our opinion, this connexion is well founded. While

discussing the question as to the rate at which dearness allowance should be fixed, the tribunal has observed :

"that it is sufficient to meet the ends of justice if the existing rate of dearness allowance is increased by 15 per cent, i.e., to 110 per cent on the first hundred, by 7 1/2 per cent, i.e., to 55 per cent on the second hundred, and to 27 1/2 per cent from the existing 23 3/4 per cent on the remainder."

13. There is no doubt that when the tribunal decided to increase the rate of dearness allowance in this manner, it took the existing rate of dearness allowance for its calculations, and that necessarily postulates that it accepted the base of cost of living index at 401-410. We have already seen that by operation of the clause in the agreement of 1953 which provided for the adjustment of dearness allowance consequent on the rise in the cost of living index, at the time when the tribunal was dealing with this dispute, the employees were drawing 95 per cent, 47 1/2 per cent and 23 3/4 per cent in the three categories of pay scales. That was because the cost of living had risen from 351-360 to 401-410. Therefore, having regard to the existing rate of dearness allowance based on the cost of living index at 401-410, the tribunal decided to make the increase as indicated by it in Para. 28 of its award.

14. Having reached this conclusion, the tribunal considered the question as to whether the basis of 351-360 which had been adopted in the agreement of 1953 should be retained or should be changed, and it held that it would be reasonable to have variation in dearness allowance on the basis of 381-390 in the index figure. Nobody can quarrel with this conclusion of the tribunal. But the grievance made by Sri Sen is that having adopted the basis of 381-390, the tribunal has allowed the increased rate of dearness allowance on that basis and in doing so, it has overlooked the fact that the increase, was determined by it on the basis of 401-410. In other words, the final order passed by the tribunal, in effect, and in effect, and in substance, gives the workmen much more than was intended by its finding in Para. 28. That being so, we think that we ought to modify the final order by directing that the increased rate should be 100 per cent of the basic pay between 1-100; 50 per cent of the basic pay within 101-200 and 25 per cent of the basic pay between 201 and over.In the result, the appeal filed by the company substantially fails, except for the modification in the final order as indicated above.

15. The cross-appeal filed by the workmen claims dearness allowance at a rate higher than that awarded by the tribunal. We do not think there is any justification for increasing the rate already awarded by the tribunal, and so the claim made by the workmen in the behalf in the present appeal must be rejected.

16. Then it is urged that the revised rate of dearness allowance should come into force from 21 July 1958 and not from 1 December 1959. The learned Attorney-General has contended that one of the issues referred to the tribunal specifically was in regard to the retrospective operation of the revised rate and his grievance is that the tribunal has given no reason for not making the revised scale retrospective. We are not impressed by this argument. It is not as if the revised scale must, as a matter of law, be made retrospective every case. The question about the retrospective operation of the revised scale has always to be decided on the facts of each case. The tribunal has stated that having regard to all the facts, it would be fair and reasonable to bring the said revised scale into force from 1 December 1959. In coming to this conclusion, the tribunal has exercised discretion vested in it and we see no reason to interfere with the order made by it in that behalf.

17. The result is, the cross-appeal wholly fails and is dismissed. Parties to bear their own costs in both are appeals.