

Williamsons (India) Private, Limited

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. 307 Of 1961 | 28-02-1962

Gajendragadkar, J.

1. This appeal by special leave arises out of an industrial dispute between the appellant, Williamsons (India) Private, Ltd., and the respondents, its workmen. The appellant is a private limited company which has been established and incorporated under the Indian Companies Act in 1947. Its business consists mainly of importing mills stores, such as leather belting, pickers, bobbins and machinery cloths. It no doubt buys and sells similar articles manufactured in India, but this part of its business is insignificant. The secretaries of the appellant are Gillanders Arbuthnot & Co., Ltd. The appellant has entrusted its secretarial and accounts work to the said secretaries who carry out the said work through the staff working directly under them on the remuneration which has been agreed between the appellant and them. The present dispute is concerned with the sales department managed by the appellant company itself. In this sales department, the appellant employees sixteen workmen, two of them are designed as stenographers-cum-clerks, one typist-cum-clerk, one godown-keeper, one assistant godown-keeper, eight unskilled workmen and three motor-car drivers.

2. Through their union, the respondents made demands on the appellant on 29 October 1957. These demands related to the wage structure, dearness allowance, washing allowance leave, gratuity scheme, uniforms, medical aid and bonus. These demands could not be settled amicably and so, ultimately they were referred for adjudication to the industrial tribunal by the Government of Bombay on 26 July 1958. The reference included nine demands in all, eight of which have already been specified and the ninth was in respect of the retrospective operation of the benefits of some of the demands made by the

respondents. After hearing the parties and considering the evidence led by them, the tribunal made its award on 21 April 1960. It is against this award that the appellant has come to this Court by special leave. The main point which Sri Sastri has made before us on behalf of the appellant is that on the finding made by the tribunal on the principal question about the financial position of the appellant and its capacity to bear the burden, it would follow that the major portion of the award relating to wage structure and dearness allowance cannot be sustained. He has also contended that the tribunal was in error in holding that concerns like Gillanders Arbuthnot & Co., Greaves Cotton, Gannon Dunkerley, Parry & Co. and Forbes Forbes & Co. are comparable to the appellant. It is on these two points that the validity of the substantial portion of the award is changed before us by Sri Sastri.

3. It appears that before the tribunal it was urged that the financial position of the appellant was not very satisfactory and that its business was fast decreasing. In support of this plea, a confidential statement Ex. C3 was filed by the appellant. The correctness of this statement was not challenged by the respondents. This statement shows that since 1956, the quota allotted to the appellant has been considerably reduced in regard to most of the articles and in respect of some, it has been cancelled. The appellant urged that it had been carrying on its business during the recent years because of the previous stock which remained with it and its case was that owing to the reduction in the quota in a large number of articles and its cancellation in respect of some, it would not be able to carry on the business for long and so, it would be unreasonable to impose upon it the additional burden of a new and enhanced wage structure. The tribunal party accepted this argument and held that it appeared highly improbable that for sometime to come the quotas would be increased to any appreciable extent. But it went on to observe that it was likely that some of the articles which were now imported by the appellant might be manufactured locally and that the tribunal did not think that the appellant would allow its business to come to a standstill on account of the restriction on imports. Then the tribunal had added that concerns doing purely or largely import business have turned to trade in indigenous goods, or substituted some other kind of business in place of the sale of imported goods and are doing very well. It would, therefore, be wrong, said the tribunal, to think that the import restrictions would completely cripple the finances of the appellant or imperil its very existence in future. It is this part of the decision which is seriously challenged before us by Sri Sastri. Ex. C3 which has been printed in the paper book before us, clearly shows that the quotation have considerably been reduced in a large

number of articles and in some cases, they have been cancelled and the extent of the business of the appellant has naturally been proportionately reduced. Ex. C2 which refers to the financial position of the appellant also tells a similar story. Indeed, the tribunal itself has accepted the appellant's case that if business has not so far shown signs of collapse, it is partly because of its old stocks. The balance-sheets for the years 1956, 1957 and 1958 show that whereas the appellant had valued its goodwill at a lakh of rupees and has adjusted its profit and loss accounts on that basis, it owes debts to a large extent and its reserve or surplus is very little. Having regard to these facts, it is not easy to appreciate how the tribunal reached the conclusion that the financial position of the appellant was very satisfactory and that it could be compared in that behalf to Gillanders Arbuthnot & Co. It may be that the tribunal happens to know that some other concerns which were dealing in import of foreign goods have turned to trade in indigenous goods or have substituted some other kind of business and have prospered in the new line. But, surely, that cannot be a valid or legitimate basis for assuming by anticipation the appellant would also undertake a new line of business and will prosper in it. It is well-settled that in constructing a wage structure with a scale of increments, industrial adjudication had to take a long-range view and it has to examine very carefully the impact of the wage structure on the financial position of the concern in question. Having found that the business of the appellant was on the decline and that in the light of business in which the appellant was operating so far there was no chance of improvement, the tribunal should have hesitated before imposing additional burden on the appellant by constructing a new wage structure. Therefore, in our opinion, having regard to the findings of fact recorded by the tribunal, the appellant is entitled to contend that the ultimate decision of the tribunal about the financial capacity of the appellant is based purely on speculation and that such speculation cannot supply a proper basis for the decision of the main dispute between the parties. There is another argument which has been strongly pressed before us and that is that the tribunal was in error in treating Gillanders Arbuthnot & Co. as a comparable concern. This Court has repeatedly observed that in considering the question about comparable concerns, tribunals should bear in mind all the relevant facts in relation to the problem. The extent of the business carried by the concern, the capital invested by them, the profits made by them, the nature of the business carried on by them, their standing, the strength of their Labour force, the presence or absence and the extent of reserves, the divides declared by them and the prospects about the future of their business - these and all other relevant facts have to be born in mind. In the present case, the tribunal itself was conscious that the Gillanders Arbuthnot & Co. was a much bigger concern with a much bigger capital and with a much

larger business spread all over India. Even so, the tribunal thought that because the number of employees engaged by Gillanders Arbuthnot was much larger, whereas the employees engaged by the appellant were only sixteen, it would be safe to compare Gillanders Arbuthnot & Co., with the appellant. In our opinion, the approach adopted by the tribunal in dealing with this aspect of the question is open to serious criticism. Therefore, we are satisfied that the criticism, made by Sri Sastri against the award in so far as it assumes that Gillanders Arbuthnot was a comparable concern, is also not without justification.

4. Having reached this conclusion, the question which we have to consider is : what order we should make on the present appeal ? Sri Dudhia for the respondents saw the infirmity of some of the reasons adopted by the tribunal, but he contended that in considering the financial position of the appellant it may not be irrelevant to have regard to the fact that the appellant was distributing to its three directors an unconsciously large amount under the head "commission, remuneration, motor-car, travelling and entertainment allowance." In fact, according to Sri Dudhia, the total emoluments paid to the directors are of the order of Rs. 2, 20, 875. If the appellant can afford to fritter away such a large amount on its directors, it is not open to the appellant to contend that its financial position is not satisfactory. There may be some force in this argument. Besides, Sri Dudhia stated before us that in fact, the appellant's business during the years subsequent to the date of the award has very much improved and what looks like speculation in the award has actually come true. In that connexion, he pointed out that in the last year, the appellant has given by way of bonus four months' basic wages to its employees. Sri Dudhia's suggestion, therefore is that of the award is set aside, his clients should be given a chance to justify their claim before the tribunal and so, the matter be remanded to the tribunal with a direction that it should examine the problem once again in the light of such additional evidence as the parties may lead before it. In fact, having come to the conclusion that the reasons given by the tribunal in support of its finding that the appellant should bear the financial burden of the wage structure devised by the award are not satisfactory, we tried to see if we could settle the dispute ourselves in appeal, but that turned out to be very difficult; and so, we have decided to set aside the award and send the case back for disposal in accordance with law in the light of this judgment.

5. Of the demands referred to the industrial tribunal for adjudication, no grievance has been made before us in respect of demand 3 in regard to washing

allowance; demand 5 in regard to leave with pay and allowance and demand 7 in regard to uniforms. In respect of demand 5 as to leave with pay and allowances, Sri Sastri had first attempted to argue that the provisions made by the award under this demand were unreasonable, but Sri Dudhia pointed out that the material provisions in that behalf are consistent with the statutory provisions which have now been included in the Bombay Shops and Establishments Act (79 of 1948) by the Amending Act 26 of 1961. Therefore there is no grievance about the relief granted by the award in respect of leave with pay and allowances. Just as the wage structure with scales of increments cannot reasonably be constructed unless the financial position of the appellant is properly ascertained and the result of the impact of the wage structure in future is judged, so adequate dearness allowance provision also cannot be made unless the said facts are ascertained. That is why the award in regard to wage structure and the dearness allowance must be set aside. For the same reasons, the award in respect of the gratuity must also be set aside. The demand in respect of retrospective operation of these provisions must, as a consequence, be set aside.

6. That takes us to the demand for medical aid. The tribunal has ordered that medical relief should be given by the appellant to its employees on the same lines as Gillanders Arbuthnot & Co. The direction issued by the tribunal requires that the company should bear the cost of simple prescriptions and also pay Rs. 3 on any patent or proprietary medicine included in any single prescription by the company's doctor. No ceiling has been placed in respect of medical aid and the fact that the company has no doctor of its own has not been taken into account. Besides, the main basis of the relief granted by the tribunal under this demand appears to be that the tribunal was inclined to treat the appellant as comparable to Gillanders Arbuthnot & Co. We would, therefore, set aside this part of the award as well.

7. That leaves the question of bonus to be considered. Sri Sastri has raised two conditions against the award in respect of bonus. His first argument is that in directing the appellant to pay three months' total wages as bonus, the tribunal has departed from the usual convention in such matters which is to award a specified number of months' basic wages and not total wages as bonus. The second contention raised by Sri Sastri goes to the root of the matter. He contends that the calculations made by the tribunal contain an obvious mistake in regard to the allowance made for income-tax. It appears that in the statement filed by the appellant, it had claimed deduction of Rs. 43, 449 by way of tax and

this claim was made on this specific ground that the said amount of tax had in fact, been paid for the year 1956-57 which is relevant. There is no doubt that what the tribunal has to find in working out the formula is not the amount of tax actually paid but the amount of tax which under the relevant rates would be payable notionally on the profits determined under the formula. There is no dispute about the amount of profits; the dispute is about the rate. The tribunal has calculated income-tax at seven annas in a rupee, whereas Sri Sastri contends that the proper rate is 61.5 nP in a rupee and in support of his argument he has referred us to the relevant provisions of the Finance Act (18 of 1956). On the other hand Sri Dudhia has contended that in proceedings between the parties in this Court in relation to stay, an affidavit had been made on behalf of the appellant admitting that the relevant rate for tax is 51.5 nP. That, no doubt, appears to be so; but the rate at which tax has to be levied has to be governed by the relevant provision of the statute and if Sri Sastri can show that the rate prescribed by the statute is 61.5 nP then the affidavit on which Sri Dudhia relies cannot go against the appellant. It must be held to be a mistake committed by the person who made mistake committed by the person who made the affidavit. We would have ourselves decided this question in appeal, but Sri Dudhia has argued that before determining the rate which was applicable, considerations of rebate will have to be borne in mind and he, therefore, contends that he should be given a chance to justify the finding of the tribunal that the rate was seven annas in a rupee and no more. According to Sri Dudhia, it would not be possible for him to say what rebates the appellant could claim and how the rate would not be 61.5 nP but seven annas. Since we are remanding the matter for the consideration of the major items of dispute between the parties, we have decided to set aside that portion of the award which deals with bonus and send this dispute for the consideration of the tribunal on the narrow point as to the relevant rate at which the calculation of the income-tax should be governed. If the rate turns out to be 61.5 nP. as alleged by Sri Sastri, then, of course, there would be no scope for making any payment of bonus. If the rate turns out to be seven annas in a rupee as at present assumed by the tribunal, then the only point which the tribunal may consider is whether three months' total wages should be awarded as bonus or three months' basic wages, or any thing less. Since we are setting aside the award in regard to demands 1, 2, 4, 6, 8 and 9, it follows that the terms of employment between the appellant and the respondents would be governed by the existing conditions until a fresh award is made by the tribunal. It appears that pending the appeal in this Court, the appellant has paid dearness allowance at the increased rate awarded by the tribunal to the respondents. But the payment of the said dearness allowance will now have to be stopped until a new award is made. It would be open to the respondents to apply to the tribunal

for any interim order in that behalf and if such an application is made, the tribunal may deal with it in accordance with law.

8. In the result, the appeal substantially succeeds and the award in respect of the items already specified is set aside. The matter will now be sent back to the tribunal for disposal in accordance with law in the light of this judgment. There would be no order as to costs.